

**ROPEWAYS AND RAPID TRANSPORT SYSTEM DEVELOPMENT
CORPORATION H.P. LIMITED**



REQUEST FOR PROPOSAL (Volume I)

For

**Development of Ropeways System between Khalincha and
Lambadug in Manali, Himachal Pradesh on PPP Mode**

November 2020

INSTRUCTIONS TO BIDDERS

Disclaimer

The information contained in this Request for Proposal document (the “RFP”) or subsequently provided to Bidder(s), whether verbally or in documentary or any other form by or on behalf of Ropeways and Rapid Transport System Development Corporation H.P. Limited (RTDC) or any of its employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP is not an agreement and is neither an offer nor invitation by RTDC to the prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in making their financial offers pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by RTDC in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all persons, and it is not possible for RTDC, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in the Bidding Documents, especially in RFP, Draft Concession Agreement (DCA) and Schedules, may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Bidder(s) is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The RTDC accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The RTDC, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way for participation in this Bid Process. The RTDC also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP.

The RTDC may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP. The issue of this RFP does not imply that RTDC is bound to select a Bidder or to appoint the Selected Bidder or Concessionaire, as the case may be, for the Project and RTDC reserves the right to reject all or any of the Bidders or Bids without assigning any reason whatsoever.

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by RTDC or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and RTDC shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

Contents of the RFP Document

Volume-I:	Instruction to Bidders
Volume-II:	Draft Concession Agreement
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1 INTRODUCTION

1.1 Preamble

- 1.1.1 The Ropeways and Rapid Transport System Development Corporation H.P. Limited (RTDC) (the “**Concessioneing Authority**”/ “**Authority**”) is engaged in the development of Tourism and Urban Transport Infrastructure in the State of Himachal Pradesh and as part of this endeavour, the Authority has decided to undertake development, operation/ maintenance of the Ropeway Project (the “Project”) through Public-Private Partnership (the “PPP”) on Design, Build, Finance, Operate and Transfer (the “DBFOT”) basis, and has decided to carry out the bidding process for selection of the bidder to whom the Project may be awarded. Brief particulars of the Project are as follows:

Name of the Work	Total Length approx. (km*)	Total Project Cost (in INR) (Approx.) +
Design, Engineering, Development, Construction, Testing, Commissioning, and Operation & Maintenance of a Passenger Ropeway System between Khalincha and Lambadug in Manali, Himachal Pradesh on PPP Mode (the “Project”)	2.7	162 Crores

RTDC through an open competitive bidding process in accordance with the procedure set out herein intends to pre-qualify and short-list suitable Applicants (the “Bidders”) who are found to be eligible and thereafter select a Bidder to whom the Project may be awarded, (the “**Selected Bidder**”).

- 1.1.2 The Selected Bidder will be required to incorporate a Special Purpose Vehicle under the provisions of the Companies Act, 2013 (“**SPV**”)/ (the “**Concessionaire**”) who shall be responsible for designing, development, engineering, financing, procurement, construction, operation and maintenance of the Project under and in accordance with the provisions of the Concession Agreement (the “**Concession Agreement**”) to be entered into between the Concessionaire and he Concessioneing Authority in the form provided as part of the Bidding Documents pursuant hereto.

* It’s an indicative length and not binding on RTDC, bidders have to do their own due diligence for ascertaining the same

+ It’s an indicative cost and not binding on RTDC, bidders have to do their own due diligence for ascertaining the same

- 1.1.3 The Concession Agreement sets forth the detailed terms and conditions including the scope of the Concessionaire's services and obligations (the "**Concession**"). The period of Concession is 40 years (the "**Concession Period**") which is exclusive of a Construction Period of 1 years (**12 months**) for construction/development/ setting up of the Ropeway System extendable by another **3 months** at the sole discretion of the Authority; the period for achieving Conditions Precedent is 90 days to be reckoned from the date of execution of the Concession Agreement by the Authority. For detailed terms and conditions kindly refer the Draft Concession Agreement. The CEN standards shall be adopted for the construction/installation of Ropeways System.
- 1.1.4 The assessment of actual cost of the Project will have to be made by the Bidders themselves.
- 1.1.5 The statements and explanations contained in this RFP are intended to provide a better understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Concessionaire set forth in the Concession Agreement or the Concessioneing Authority's rights to amend, alter, change, supplement or clarify the scope of work, the Concession to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained either by the Concessioneing Authority
- 1.1.6 RTDC shall receive Bids pursuant to this RFP in accordance with the terms set forth in this RFP and other documents to be provided by RTDC pursuant to this RFP, as modified, altered, amended and clarified from time to time by RTDC (collectively the "**Bidding Documents**"), and all Bids shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 for submission of Bid (the "**Bid Due Date**").

1.2 Brief description of Bidding Process

- 1.2.1 RTDC has adopted a Single-Stage Bidding Process for selection of the bidder for award of the Project. The first phase of single stage (the "Qualification Phase") Bidding Process involves pre-qualification of interested parties/ consortium in accordance with the provisions of Clause 3. At the end of the Qualification Phase, RTDC will shortlist Bidders whose bids are considered eligible for opening in the second phase of the single stage (the "Financial Proposal Phase") in accordance with the provisions of Clause 3. The Bid shall be valid for a period of not less than 120 days from the date specified in Clause 1.3 for submission of bids.

The RFP document comprises of three volumes:

- Volume I: Instruction to Bidders;
- Volume-II: Draft Concession Agreement; and

- Volume-III: Schedules of Draft Concession Agreement.

The RFP document can be downloaded from **website of Transport Department, Government of Himachal Pradesh i.e. www.himachal.nic.in/transport** and the Bidding document is downloaded from the website, then the Bidder will pay a sum of **Rs 10,000/- (Rupees Ten Thousand Only) + applicable GST** as non-refundable cost of the Bidding documents during the submission of the Bid. The payment shall be made through demand draft in favour of 'Ropeways and Rapid Transport System Development Corporation H.P. Limited (RTDC)' payable at Shimla.

The Bidder shall be required to submit the Bid in hard bound cover as specified in Clause 2.12.2. The Financial Offer as per Clause 1.2.3 and 1.2.5 shall be submitted by the Bidder in hard copy only.

- 1.2.2** In the Qualification Phase, Bidders would be required to furnish all the information as specified in this RFP and other documents to be provided by RTDC. Only those Bidders that are pre-qualified and short-listed by RTDC shall be eligible for the Financial Proposal Phase.
- 1.2.3** In the Financial Proposal Phase, the financial offer (the "Financial Offer") submitted by the Bidders will be evaluated. The Financial Offer shall be submitted by the Bidder (Appendix-V) as per Clause 1.2.5.
- 1.2.4** A Bidder is required to deposit, along with its Bid, a **Bid Security of Rs. 1.62 Crores (One Crore and Sixty Two Lakhs Only), in the shape of FDR/Bank Guarantee with 270 days (9 Months) validity** (the "Bid Security"), exclusive of a claim period of 12 (twelve) months, refundable not later than 90 (Ninety) days from the Bid Due Date, except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the Concession Agreement. The Bid shall be summarily rejected if it is not accompanied by the Bid Security. The format for the bank guarantee has been given in Appendix-VI.

Bids are invited for the Project on the basis of **Annual Concession Fee (the "Concession Fee") payable to the Concessioneing Authority** for award of the Concession. The Concession Fee shall be paid yearly throughout the Concession Period by way of bi-annual installments from the **1st anniversary of Commercial Operation Date**. The Annual Concession Fee shall be **increased by 5% yearly over the previous year's Annual Concession Fee**. The mode and manner of payment of Annual Concession Fee is specified in the draft Concession Agreement.

The Project will be awarded to the Bidder on the basis of the **Highest Annual Concession Fee offered** by the bidders. The Bidder whose Financial Offer has the **highest quoted Annual Concession Fee** payable to the Concessioneing Authority shall be term as the **"Highest Bidder"** or successful bidder.

- 1.2.5 Generally, the Highest Bidder shall be the Selected Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in Clause 3 of this RFP, be invited to match the Bid submitted by the Highest Bidder in case such Highest Bidder withdraws or is not Selected for any reason. In the event that none of the other Bidders match the Bid of the Highest Bidder, RTDC, in its discretion may annul the Bidding Process or invite fresh Bids through Re-bidding of the Project, as the case may be.
- 1.2.6 The Concessionaire shall for the due and faithful performance of its obligations, provide to the Concessioneing Authority no later than 180 days from the date of this Agreement, Construction Period **Performance Security** in the form of an unconditional and irrevocable Bank Guarantee from a scheduled commercial bank acceptable to the Concessioneing Authority and payable at Shimla of Rs. **3.24 Crores (Three Crores Twenty Four Lakhs only)**
- 1.2.7 The Concessionaire shall for the due and faithful performance of its obligations, provide to the Concessioneing Authority on achievement of successful project construction completion, an Operation Period Performance Security in the form of an unconditional and irrevocable Bank Guarantee from a scheduled commercial bank acceptable to the Concessioneing Authority, and payable at Shimla of **Rs 3.24 Crores (Three Crores Twenty Four Lakhs only)**. The Concessioneing Authority shall release the Construction Period Performance Security after receiving the Operation Period Performance Security and till such time the Concessionaire provides the Operation Period Performance Security, the validity of the Construction Period Performance Security shall be kept alive by the Concessionaire.
- 1.2.8 As part of the Bidding Documents, RTDC will provide a Concession Agreement prepared by RTDC/ its advisors and any other information pertaining/relevant to the Project available with it.
- 1.2.9 Any queries or request for additional information concerning this RFP shall be submitted in writing or by fax and e-mail to this office at least 3 days (three days) prior to the date of pre-bid conference given in Clause 1.3 below. The envelopes/ communications shall clearly bear the following identification/ title:
- 1.2.10 Queries/ Request for Additional Information: RFP for “**Development of Passenger Ropeway System between Khalincha and Lambadug in Manali, Himachal Pradesh on PPP Mode**”.

1.3 Schedule of Bidding Process

RTDC shall endeavour to adhere to the following schedule:

S. No.	Event Description	Date
1.	Last date for receiving Pre-Bid queries	04.01.2021(1700 Hrs)
2.	Pre-Bid conference	11.01.2021 (1200 Hrs)

S. No.	Event Description	Date
3.	Concessioneing Authority's response to queries latest by	18.01.2021(1700 Hrs)
4.	Bid Due Date	15.02.2021 (upto 1700 Hrs)
5.	Opening of Technical Bids	16.02.2021 (1200 Hrs)
6.	Opening of Financial Offer	to be intimated later
7.	Letter of Award (LOA)	to be intimated later
8.	Signing of Concession Agreement	Within 45 days of award of LOA

2 INSTRUCTIONS TO BIDDERS

2A GENERAL

2.1 Scope of Bids

- 2.1.1 RTDC intends to receive Bids to pre-qualify and short-list suitable Bidders, whose Bids shall be eligible for opening in the Financial Proposal Phase and selection of the preferred Bidder/ Selected Bidder pursuant thereto.

2.2 Eligibility of Bidders

- 2.2.1 For determining the eligibility of Bidders for their pre-qualification hereunder, the following shall apply:

- (a) The Bidder for pre-qualification may be a single entity or a group of entities (the **"Consortium"**), coming together to develop the Project. Qualification is open to any legal entity in India/Abroad. However, no Bidder applying individually or as a member of a Consortium, as the case may be, can be member of another Bidder. The term Bidder used herein would apply to both a single entity and a Consortium. A Bidder may be an International/ National independent legal entity/ies including Joint Ventures and Consortium (not more than three entities). A Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.2.6 below.
- (b) A Bidder shall not have a conflict of interest (the **"Conflict of Interest"**) that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. A Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
 - i) the Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding of more than 10% (ten per cent) of the paid up and subscribed share capital of such Bidder, Member or Associate, as the case may be) in the other Bidder, its Member or Associate is less than 10% (ten per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in section 4A of the Companies Act, 1956. For the purposes of this Clause 2.2.1 (b), indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the **"Subject Person"**) shall be taken into account for computing the shareholding of such controlling person in the Subject

- Person; and (bb) subject always to sub- clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% (twenty six per cent) of the subscribed and paid up equity shareholding of such intermediary; or
- ii) a constituent of such Bidder is also a constituent of another Bidder; or
 - iii) such Bidder, or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, or any Associate thereof or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Associate thereof; or
 - iv) such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
 - v) such Bidder, or any Associate thereof has a relationship with another Bidder, or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each other's' information about, or to influence the Bid of either or each other; or
 - vi) such Bidder, or any Associate thereof has participated as a consultant to the Concessioneing Authority in the preparation of any documents, design or technical specifications of the Project.
- (c) A Bidder shall be liable for disqualification if any legal, financial or technical adviser of RTDC in relation to the Project is engaged by the Bidder, its Member or any Associate thereof, as the case may be, in any manner for matters related to or incidental to the Project during the Bidding Process or subsequent to the (i) issue of the LOA or (ii) execution of the Concession Agreement. In the event any such adviser is engaged by the Selected Bidder or Concessionaire, as the case may be, after issue of the LOA or execution of the Concession Agreement for matters related or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LOA or the Concession Agreement and without prejudice to any other right or remedy of RTDC, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which the Concessioneing Authority may have there under or otherwise, the LOA or the Concession Agreement, as the case may be, shall be liable to be terminated without the Concessioneing Authority being liable in any manner whatsoever to the Selected Bidder or the Concessionaire for the same. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of this RFP. Nor will this disqualification apply where

such adviser is engaged after a period of 1 (one) year from the date of signing of the Concession Agreement.

Explanation:

In case a Bidder is a Consortium, then the term Bidder as used in this Clause 2.2.1, shall include each Member of such Consortium.

2.2.2 To be eligible for pre-qualification and short-listing, a Bidder shall fulfill the following conditions of eligibility:

- (A) **Technical Capacity:** For demonstrating technical capacity and experience (the “Technical Capacity”), the Bidder, during the last five financial years preceding the bid due date, should possess experience of undertaking projects in any one or more of the following categories:

Category 1

Owned, operated & managed at least 1 (one) Passenger Ropeway System with minimum carrying capacity of **1000 PPHPD** of project **cost of Rs.80 Cr. or more/** having collected average annual revenue of **Rs. 5.00 Cr.** from it.

AND/OR

Category 2

Owned, Operated & Managed at least one project in Core Sector having minimum project cost of **Rs. 160 Crores (Rupees One hundred and Sixty Crores) excluding land cost.** The project should have been undertaken as a PPP project on BOT, BOLT, or on EPC/ Turnkey project basis or other similar basis for providing its output or services to a public sector entity or for providing non-discriminatory access to users in pursuance of its charter, concession or contract, as the case may be. For the avoidance of doubt, a project which constitutes a natural monopoly such as an airport or port should normally be included in this category even if it is not based on a long-term agreement with a public entity.

In this RFP, the Core Sector would be deemed to include highways & bridges, power, telecom, ports, airports, railways, metro rail, industrial parks/ estates, logistic parks, pipelines, irrigation and water supply & sewerage sectors.

AND/OR

Category 3

- (i) Installed at least one 1 (one) Passenger Ropeway System with minimum carrying capacity of **1000 PPHPD of project cost of Rs. 80 Cr or more during the last 5 (five) financial years prior to the Bid Due Date.**
- (ii) Further such entity should be able to demonstrate presence in installing and servicing Ropeway equipment during the last 5 (five) financial years prior to Bid Due Date.

However, for a document executed or issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the documents are being issued. However, a document provided by the Bidder from countries that have signed the Hague Legislation Convention 1961 is not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.

(B) Financial Capacity:

In case of Category 1 & 2 Projects:

1. The Bidder shall have a minimum Net Worth (the “Financial Capacity”) of **Rs. 40 crore (Rupees Forty Crore Only)** at the close of the preceding financial year.
2. The Bidder or its holding/ Associate company should be a net profit making entity for the last five financial years preceding the bid due date.

In case of Category 3 Projects :

1. The Bidder shall have a minimum **Net Worth (the “Financial Capacity”)** of **Rs. 50 crore (Rupees Fifty Crore Only)** at the close of the preceding financial year.
2. The Bidder or its holding/ Associate company should be a net profit making entity for the last five financial years preceding the bid due date.

In case of a Consortium, the combined technical & financial capacity of those Members, who have and shall continue to have an equity share of at least 26% (twenty six per cent) each in the SPV, should satisfy the above conditions of eligibility; provided that each such Member shall, for a period of 2 (two) years from the date of full commercial operation of the Project, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity of the SPV; and (ii) 5% (five per cent) of the Total Project Cost.

(C) High Net worth Route

The prospective bidder(s) having a Net-worth of **Rs 80 Crores (Rupees Eighty Crores only)** & above, as on 31st March 2019 will be exempted from the Technical Capacity & Financial Capacity as per Clause 2.2.2 (A) and Clause 2.2.2 (B) above (the “Minimum Eligibility Criteria”). However, such Bidder shall have to demonstrate this Net-worth independently, without forming a Joint Venture / Consortium.

- 2.2.3 **Technical Tie Up:** The Bidder(s) applying under **Category 2** or **High Net Worth Route(C)** shall enter into a MoU / agreement for technical support with an entity having below mentioned experience in respect of the Ropeway projects in conformity with the provisions of the Concession Agreement:

- Owned, Operated & Managed at least 1 (one) Passenger Ropeway System with minimum carrying capacity of **1000 PPHPD of project cost of Rs. 80 Cr. or more/ having collected average annual revenue of Rs. 5.0 Cr. from it**

Or

- Installed at least one 1 (one) Passenger Ropeway System with minimum carrying capacity of **1000 PPHPD of project cost of Rs. 80 Cr. or more** during the last 5 (five) financial years prior to the Bid Due Date.

Or

- CEN Standard OEM Ropeway Technology supplier with experience of manufacturing and commissioning at least 100 passenger ropeways on CEN Standards across the globe.

The Bidder undertakes and agrees that in case the Project is awarded to it, the above technical tie up shall be valid for the entire Concession Period. The Bidders shall as part of their technical bid, attach the MoU / agreement for their technical tie up and other relevant documents (such as client certificates, statutory auditor certificate, etc.) in respect of the projects specified above in this Clause 2.2.3 so as to demonstrate the relevant technical experience of the Technical Tie Up Partner. However, the Bidder is permitted to change the Technical Tie Up partner after the Commercial Operation Date provided the new technical tie up partner meets the minimum eligibility criteria defined in RFP document. Considering the limited Technical Tie up Partners available in the field of ropeway, there is no restriction on the ropeway system Technical Tie up Partner to associate with only one bidder. Different Bidders can submit the MOU with a particular Technical Tie up Partner. However, the Bidder is not permitted to change the Technical Tie up Partner after the submission of Bid.

2.2.4 The Bidder shall enclose with its Bid, to be submitted as per the format at Appendix-I, complete with its Annexes, the following:

- (1) Certificate(s) from its statutory auditors¹ or the concerned client(s) and/ or other relevant documents in respect of the projects specified in paragraph 2.2.2 (A) above; and
- (2) Certificate(s) from its statutory auditors specifying the Turnover and net profit of the Bidder, during the preceding 5 (five) financial years.

¹ In case duly certified audited annual financial statements containing explicitly the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 2.2.4 (i). In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Applicant may provide the certificates required under this RFP.

- 2.2.5 The Bidder should submit a Power of Attorney as per the format at Appendix-II, authorising the signatory of the Bid to commit the Bidder. In the case of a Consortium, the Members should submit a Power of Attorney in favour of the Lead Member as per format at Appendix-III.
- 2.2.6 Where the Bidder is a single entity, it will be required to form an appropriate Special Purpose Vehicle, incorporated under the Companies Act, 2013 (the “SPV”), to execute the Concession Agreement and implement the Project. In case the Bidder is a Consortium, it shall, in addition to forming an SPV, comply with the following additional requirements:
- (a) Number of members in a consortium shall not exceed 3 (three) and information sought in the Bid be provided for all members in the order of their equity contribution;
 - (b) subject to the provisions of sub clause (a) above, the Bid should contain the information required for each member of the Consortium;
 - (c) members of the Consortium shall nominate one member as the lead member (the “Lead Member”), who shall have an equity share holding of at least 26% (twenty six per cent) of the paid up and subscribed equity of the SPV. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix-III, signed by all the other members of the Consortium;
 - (d) the Bid should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial and technical obligations;
 - (e) an individual Bidder cannot at the same time be member of a Consortium applying for the Bid. Further, a member of a particular Bidder Consortium cannot be member of any other Bidder Consortium applying for the Bid;
 - (f) the members of a Consortium shall form an appropriate SPV to execute the Project, if awarded to the Consortium;
 - (g) members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Appendix-IV (the “Jt. Bidding Agreement”), for the purpose of making the Bid. The Jt. Bidding Agreement, to be submitted along with the Bid, shall, inter alia:
 - (i) convey the intent to form an SPV with shareholding/ ownership equity commitment(s) in accordance with this RFP, which would enter into the Concession Agreement and subsequently perform all the obligations of the Concessionaire in terms of the Concession Agreement, in case the concession to undertake the Project is awarded to the Consortium;
 - (ii) clearly outline the proposed roles and responsibilities, if any, of each member;
 - (iii) commit the minimum equity stake to be held by each member;
 - (iv) commit that each of the members, whose experience will be evaluated for the purposes of this RFP, shall subscribe to 26% (twenty six per cent) or more of the paid up and subscribed equity of the SPV and shall further commit that each such

member shall, for a period of 2 (two) years from the date of full commercial operational of the Project, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement;

(v) members of the Consortium undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity of the SPV at all times until the second anniversary of the full commercial operation date of the Project; and

(vi) include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Concessionaire in relation to the Project until the Financial Close of the Project is achieved in accordance with the Concession agreement; and

(h) except as provided under this RFP and the Bidding Documents, there shall not be any amendment to the Jt. Bidding Agreement without the prior written consent of RTDC.

2.2.7 Any entity which has been barred by the Central/ State Government, or any entity controlled by it, from participating in any project (Infrastructure or otherwise), and the bar subsists as on the date of Bid would not be eligible to submit a Bid, either individually or as member of a Consortium.

2.2.8 A Bidder including any Consortium Member or Associate should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder, Consortium Member or Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder, Consortium Member or Associate.

2.2.9 In computing the Technical Capacity and Turnover of the Bidder/ Consortium Members under Clauses 2.2.2, 2.2.4 and 3.2, the Technical Capacity and Turnover of their respective Associates would also be eligible hereunder.

For purposes of this RFP, Associate means, in relation to the Bidder/ Consortium Member, a person who controls, is controlled by, or is under the common control with such Bidder/ Consortium Member (the "Associate"). As used in this definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law.

2.2.10 The following conditions shall be adhered to while submitting a Bid:

- (a) Bidders should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Bidders may format the prescribed forms making due provision for incorporation of the requested information;
- (b) Information supplied by a Bidder (or other constituent Member if the Bidder is a Consortium) must apply to the Bidder, Member or Associate named in the Bid and not, unless specifically requested, to other associated companies or firms.;
- (c) in responding to the qualification phase, Bidders should demonstrate their capabilities in accordance with Clause 3.1 below; and
- (d) In case the Bidder is a Consortium, each Member should substantially satisfy the pre-qualification requirements to the extent specified herein.

2.2.11 While Qualification is open to persons from any country, the following provisions shall apply:

- (a) Where, on the date of the Bid, not less than 15% (fifteen percent) of the aggregate issued, subscribed and paid up equity share capital in a Bidder or its Member is held by persons resident outside India or where a Bidder or its Member is controlled by persons resident outside India; or
- (b) if at any subsequent stage after the date of the Bid, there is an acquisition of not less than 15% (fifteen percent) of the aggregate issued, subscribed and paid up equity share capital or control, by persons resident outside India, in or of the Bidder or its Member; then the Qualification of such Bidder or in the event described in sub clause (b) above, the continued Qualification of the Bidder shall be subject to approval of RTDC from national security and public interest perspective. The decision of RTDC in this behalf shall be final and conclusive and binding on the Bidder.

The holding or acquisition of equity or control, as above, shall include direct or indirect holding/ acquisition, including by transfer, of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, RTDC shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, or any substitute thereof, as in force on the date of such acquisition.

The Bidder shall promptly inform RTDC of any change in the shareholding, as above, and failure to do so shall render the Bidder liable for disqualification from the Bidding Process.

2.2.12 Notwithstanding anything to the contrary contained herein, in the event that the Bid Due Date falls within three months of the closing of the latest financial year of a Bidder, it shall ignore such financial year for the purposes of its Bid and furnish all its information and certification with reference to the 5 (five) years or 1 (one) year, as the case may be, preceding its latest financial

year. For the avoidance of doubt, financial year shall, for the purposes of a Bid, hereunder, mean the accounting year followed by the Bidder in the course of its normal business.

2.3 Change in composition of the Consortium

2.3.1 Change in the composition of a Consortium will not be permitted by RTDC during the Bidding process.

2.4 Number of Bids and costs thereof

2.4.1 No Bidder shall submit more than one Bid for the Project. A Bidder applying individually or as a member of a Consortium shall not be entitled to submit another Bid either individually or as a member of any Consortium, as the case may be.

2.4.2 The Bidders shall be responsible for all of the costs associated with the preparation of their Bids and their participation in the Bid Process. RTDC will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

2.5 Site visit and verification of information

Bidders are encouraged to submit their respective Bids after visiting the Project site and ascertaining for themselves the site conditions, traffic, alignment, location, surroundings, climate, availability of power, water and other utilities for construction, access to site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them.

2.6 Acknowledgement by Bidder

2.6.1 It shall be deemed that by submitting the Bid, the Bidder has:

- (a) made a complete and careful examination of the RFP;
- (b) received all relevant information requested from RTDC;
- (c) accepted the risk of inadequacy, error or mistake in the information provided in the RFP or furnished by or on behalf of RTDC relating to any of the matters referred to in Clause 2.5 above;
- (d) agreed to be bound by the undertakings provided by it under and in terms hereof;
- (e) satisfied itself about all matters, things and information including matters referred to in Clause 2.5 hereinabove necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations there under; and
- (f) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.5 hereinabove shall not be a basis for any claim for compensation,

damages, extension of time for performance of its obligations, loss of profits etc. from RTDC, or a ground for termination of the Concession Agreement by the Concessionaire.

- 2.6.2 RTDC shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to this RFP or the Bidding Process, including any error or mistake therein or in any information or data given by RTDC.

2.7 Right to accept or reject any or all Bids

- 2.7.1 Notwithstanding anything contained in this RFP, RTDC reserves the right to accept or reject any Bid and to annul the Bidding Process and reject all Bids, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons therefor. In the event that RTDC rejects or annuls all the Bids, it may, in its discretion, initiate re-bidding process by inviting fresh Bids for the project.

- 2.7.2 RTDC reserves the right to reject any Bid if:

- (a) at any time, a material misrepresentation is made or uncovered, or
- (b) the Bidder does not provide, within the time specified by RTDC, the supplemental information sought by RTDC for evaluation of the Bid.
- (c) If the Bidder is a Consortium, then the entire Consortium may be disqualified/ rejected. If such disqualification/ rejection occurs after the Bids have been opened and the Highest Bidder gets disqualified/ rejected, then RTDC reserves the right to:
- (d) invite the remaining Bidders to match the Highest Bidder; or
- (e) take any such measure as may be deemed fit in the sole discretion of RTDC, including annulment of the Bidding Process.

- 2.7.3 In case it is found during the evaluation or at any time before signing of the Concession Agreement or after its execution and during the period of subsistence thereof, including the concession thereby granted by the Concessioneing Authority, that one or more of the qualification conditions have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Concessionaire either by issue of the LOA or entering into of the Concession Agreement, and if the Bidder/SPV has already been issued the LOA or has entered into the Concession Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by RTDC to the Bidder, without RTDC being liable in any manner whatsoever to the Bidder. In such an event, RTDC shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy which RTDC may have under this RFP, the Bidding Documents, the Concession Agreement or under applicable law.

- 2.7.4 RTDC reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP. Any such verification or lack of such verification by RTDC shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of RTDC thereunder.
- 2.7.5 Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.
- 2.7.6 The documents including this RFP and all attached documents, provided by RTDC are and shall remain or become the properties of RTDC and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause 2.7.6 shall also apply mutatis mutandis to Bids and all other documents submitted by the Bidders, and RTDC will not return to the Bidders any Bid, document or any information provided along therewith.

2B DOCUMENTS

2.8 Contents of the RFP

- 2.8.1 This RFP comprises the disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.10.

Volume I: Instruction to Bidders

Volume-II: Draft Concession Agreement

Volume-III: Schedules of Draft Concession Agreement

- 2.8.2 The Draft Concession Agreement and Schedules provided by RTDC as part of the Bid Documents shall be deemed to be part of this RFP.

2.9 Clarifications

- 2.9.1 Bidders requiring any clarification on the RFP may notify RTDC in writing or by fax and e-mail in accordance with Clause 1.2.8. They should send in their queries before the date specified in the schedule of Bidding Process contained in Clause 1.3. RTDC shall endeavor to respond to the queries within the period specified therein, but no later than 10 (ten) days prior to the Bid Due Date. RTDC will forward all the queries and its responses thereto, to all purchasers of the RFP via e-mail and /or upload the same on website of transport department (www.himachal.nic.in/transport) without identifying the source of queries.
- 2.9.2 RTDC shall endeavor to respond to the questions raised or clarifications sought by the Bidders. However, RTDC reserves the right not to respond to any question or provide any clarification, in

its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring RTDC to respond to any question or to provide any clarification.

- 2.9.3 RTDC may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by RTDC shall be deemed to be part of the RFP. Verbal clarifications and information given by RTDC or its employees or representatives shall not in any way or manner be binding on RTDC.

2.10 Amendment of RFP

- 2.10.1 At any time prior to the deadline for submission of Bid, RTDC may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of Addenda.
- 2.10.2 Any Addendum thus issued will be uploaded on Website of Transport Department (www.himachal.nic.in/transport).
- 2.10.3 In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, RTDC may, in its sole discretion, extend the Bid Due Date.

2C PREPARATION AND SUBMISSION OF BID

2.11 Language

The Bid and all related correspondence and documents in relation to the Bidding Process shall be in English language. Supporting documents and printed literature furnished by the Bidder with the Bid may be in any other language provided that they are accompanied by translations of all the pertinent passages in the English language, duly authenticated and certified by the Bidder. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Bid, the English language translation shall prevail.

2.12 Format and signing of Bid

- 2.12.1 The Bidder shall provide all the information sought under this RFP. RTDC will evaluate only those Bids that are received in the required formats and complete in all respects. Incomplete and /or conditional Bids shall be liable for rejection.
- 2.12.2 The Bidder shall prepare 1 (one) original set of the Bid (together with originals/ copies of documents required to be submitted along therewith pursuant to this RFP) and clearly marked "ORIGINAL". In addition, the Bidder shall submit 2 (two) copies of the Bid, along with documents required to be submitted along therewith pursuant to this RFP, marked "COPY". The Bidder shall also provide 2 (two) soft copies in Pen Drive. In the event of any discrepancy between the original and the copy, the original shall prevail.

2.12.3 The Bid and its copy shall be typed or written in indelible ink and signed by the authorized signatory of the Bidder who shall also initial each page in blue ink. In case of printed and published Documents, only the cover shall be initialed. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialed by the person(s) signing the Bid. The Bid shall contain page numbers and shall be bound together in hard cover.

2.13 Sealing and Marking of Bids

2.13.1 The Bidder shall submit the Bid in the format specified at Appendix-I, together with the documents specified in Clause 2.13.2A and seal it in an envelope and mark the envelope as “Technical Bid”. The Bidder shall submit the Financial Offer in the format specified at Appendix- V and seal it in another envelope and mark the envelope as “Financial Bid”. Both the envelopes of the Technical Bid and the Financial Bid shall then be sealed in an outer envelope and mark the envelope as “Bid”. The Bidder shall seal the original and the copy of the Bid, together with their respective enclosures, in separate envelopes duly marking the envelopes as “ORIGINAL” and “COPY”. The envelopes shall then be sealed in an outer envelope which shall also be marked in accordance with Clauses 2.13.2 and 2.13.3.

2.13.2 (A) Each Technical Bid envelope shall contain:

- (i) Bid in the prescribed format (Appendix-I) along with Annexes and supporting documents;
- (ii) Power of Attorney for signing the Bid as per the format at Appendix-II;
- (iii) if applicable, the Power of Attorney for Lead Member of Consortium as per the format at Appendix-III;
- (iv) copy of the Jt. Bidding Agreement, in case of a Consortium, substantially in the format at Appendix-IV;
- (v) copy of Memorandum and Articles of Association, if the Bidder is a body corporate, and if a partnership then a copy of its partnership deed;
- (vi) copies of Bidder’s duly audited balance sheets and profit and loss account for the preceding five years;
- (vii) Demand Draft or Payment Receipt towards the cost of the Bidding Documents as specified in Clause 1.2.1;
- (viii) Bid Security as specified in Clause 1.2.4;

- (ix) {copies of the requisite documents/ evidences in support of the claim of the Technical Tie Up Partner of possessing the mandatory experience in respect of the projects specified in Clause 2.2.3}²; and
- (x) a copy of the Instruction to Bidders, Draft Concession Agreement and Schedules of the Draft Concession Agreement, Addendum (if any) with each page stamped and initialed by the person signing the Bid in pursuance of the Power of Attorney referred to in sub-clause (ii) hereinabove.

(B) Each Financial Bid envelope shall contain:

- (i) Financial Offer in the prescribed format (Appendix-V);

The final outer envelopes having the Original and Copy, shall clearly bear the following identification:

Bid for: “Development of Ropeways System between Khalincha and Lambadug in Manali, Himachal Pradesh on PPP Mode” and shall clearly indicate the name, address, fax number of the Bidder, along with contact person’s name, mobile number & email address. In addition, the Bid Due Date should be indicated on the right hand corner of each of the envelopes.

2.13.3 Each of the envelopes shall be addressed to:

ATTN. OF:	The Chief General Manager Ropeways and Rapid Transport System Development Corporation H.P. Limited (RTDC)
ADDRESS:	US Club, Shimla – 171001
PHONE NO.:	+91-9418481177, 9418457129
E-mail ID:	cgmrtldchp@gmail.com

2.13.4 If the envelopes are not sealed and marked as instructed above, RTDC assumes no responsibility for the misplacement or premature opening of the contents of the Bid and consequent losses, if any, suffered by the Bidder.

2.13.5 Bids submitted by fax, telex, telegram or e-mail shall not be entertained and shall be rejected.

2.13.6 Submission of the Bid

² Applicable only in case a Bidder is applying through the High Turnover Route or under Category 2 under Clause 2.2.2.

- Hardcopy of the Bid should be submitted before HHMM hours on or before the Bid Due Date.
- The Bidder shall submit the Hardcopy of the Bid in the format specified at Appendix-I, together with the documents specified in Clause 2.13.2A and seal it in an envelope and mark the envelope as “Technical Bid”.
- The Demand Draft or Bank Guarantee in original towards the payment of the Bid Security shall be put in a separate envelope inside the Technical Bid envelope and mark the envelope as “Bid Security”.
- The Bidder shall submit the Financial Offer in the format specified at Appendix-V and seal it in another envelope and mark the envelope as “Financial Bid”.
- Both the envelopes of the Technical Bid and the Financial Bid shall then be sealed in an outer envelope and mark the envelope as “Bid”.
- The Bidder shall seal the original and the copies of the Bid, together with their respective enclosures, in separate envelopes duly marking the envelopes as “ORIGINAL” and “COPY”.
- The envelopes shall then be sealed in an outer envelope which shall also be marked in accordance with Clauses 2.13.2 and 2.13.3.

RTDC may, in its sole discretion, extend the Bid Due Date by issuing an Addendum in accordance with Clause 2.10 uniformly for all Bidders.

2.14 Bid Due Date

2.14.1 Bids should be submitted before HHMM hours IST on or before Bid Due Date at the address provided in Clause 2.13.3 in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the office of the person specified in Clause 2.13.3.

2.14.2 RTDC may, in its sole discretion, extend the Bid Due Date by issuing an Addendum in accordance with Clause 2.10 uniformly for all Bidders.

2.15 Late Bids

Bids received by RTDC after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily rejected.

2.16 Modifications/ substitution/ withdrawal of Bids

2.16.1 The Bidder may modify, substitute or withdraw its Bid after submission. The Bidder shall provide a written notice of the modification, substitution or withdrawal to RTDC and the same should be received by RTDC prior to the Bid Due Date. No Bid shall be modified, substituted or withdrawn by the Bidder after the Bid Due Date.

2.16.2 The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.13, with the envelopes being additionally marked “MODIFICATION”, “SUBSTITUTION” or “WITHDRAWAL”, as appropriate.

2.16.3 Any alteration/ modification in the Bid or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by RTDC, shall be disregarded.

2D. EVALUATION PROCESS

2.17 Opening and Evaluation of Bids

2.17.1 RTDC shall open the Technical Bids at HHMM hours IST on the Bid Due Date, at the place specified in Clause 2.13.3 and in the presence of the Bidders who choose to attend.

2.17.2 Bids for which a notice of withdrawal has been submitted in accordance with Clause 2.16 shall not be opened.

2.17.3 RTDC will subsequently examine and evaluate Bids in accordance with the provisions set out in Section 3.

2.17.4 Bidders are advised that qualification of Bidders will be entirely at the discretion of RTDC. Bidders will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given.

2.17.5 Any information contained in the Bid shall not in any way be construed as binding on RTDC, its agents, successors or assigns, but shall be binding against the Bidder if the Project is subsequently awarded to it on the basis of such information.

2.17.6 RTDC reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Bid(s) without assigning any reasons.

2.17.7 If any information furnished by the Bidder is found to be incomplete, or contained in formats other than those specified herein, RTDC may, in its sole discretion, exclude the relevant project from computation of the Eligible Project(s) of the Bidder.

2.17.8 In the event that a Bidder claims credit for an Eligible Project, and such claim is determined by RTDC as incorrect or erroneous, RTDC shall reject such claim and exclude the same from computation of the Eligible Project(s). Where any information is found to be patently false or amounting to a material misrepresentation, RTDC reserves the right to reject the Bid in accordance with the provisions of Clauses 2.7.2 and 2.7.3.

2.17.9 Even if only a single Bid/ Proposal is received and the same is found to be eligible and is accordingly shortlisted as pre - qualified) or a single Bid/ Proposal amongst several is shortlisted as pre - qualified, RTDC retains the right to open its Financial Proposal and award the Project.

2.18 Confidentiality

Information relating to the examination, clarification, evaluation, and recommendation for the short-listed qualified Bidders shall not be disclosed to any person who is not officially concerned

with the process or is not a retained professional advisor advising RTDC in relation to or matters arising out of, or concerning the Bidding Process. RTDC will treat all information, submitted as part of Bid, in confidence and will require all those who have access to such material to treat the same in confidence. RTDC may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or RTDC or as may be required by law or in connection with any legal process.

2.19 Tests of Responsiveness

2.19.1 Prior to evaluation of Bids, RTDC shall determine whether each Bid is responsive to the requirements of the RFP. A Bid shall be considered responsive only if:

- (a) it is received as per format at Appendix-I.
- (b) it is received by the Bid Due Date including any extension thereof pursuant to Clause 2.14.2;
- (c) it is signed, sealed, bound together in hard cover, and marked as stipulated in Clauses 2.12 and 2.13;
- (d) it is accompanied by the Power of Attorney as specified in Clause 2.2.5, and in the case of a Consortium, the Power of Attorney as specified in Clause 2.2.6 (c);
- (e) it contains all the information and documents (complete in all respects) as requested in this RFP;
- (f) it contains information in formats same as those specified in this RFP;
- (g) it contains certificates from its statutory auditors³ or the concerned client/s in the formats specified at Appendix-I of the RFP for each Eligible Project;
- (h) it is accompanied by the Demand Draft or Payment Receipt towards the cost of the Bidding Documents as specified in Clause 1.2.1;
- (i) it is accompanied by the Bid Security as specified in Clause 1.2.4;
- (j) it is accompanied by the Jt. Bidding Agreement (for Consortium), specific to the Project, as stipulated in Clause 2.2.6(g);

³ In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 2.19.1 (g). In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Bidder may provide the certificates required under this RFP.

- (k) {it contains the requisite documents/ evidences in support of the claim of the Technical Tie Up Partner of possessing the mandatory experience in respect of the projects specified in Clause 2.2.3}⁴;
- (l) it does not contain any condition or qualification;
- (m) it contains a copy of the Instruction to Bidders, Draft Concession Agreement and Schedules of the Draft Concession Agreement, Addendum (if any) with each page stamped and initialed by the person signing the Bid; and
- (n) it is not non-responsive in terms hereof.

2.19.2 RTDC reserves the right to reject any Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by RTDC in respect of such Bid.

2.20 Clarifications

2.20.1 To facilitate evaluation of Bids, RTDC may, at its sole discretion, seek clarifications from any Bidder regarding its Bid. Such clarification(s) shall be provided within the time specified by RTDC for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing.

2.20.2 If a Bidder does not provide clarifications sought under Clause 2.20.1 above within the prescribed time, its Bid shall be liable to be rejected. In case the Bid is not rejected, RTDC may proceed to evaluate the Bid by construing the particulars requiring clarification to the best of its understanding, and the Bidder shall be barred from subsequently questioning such interpretation of RTDC.

2E QUALIFICATION AND BIDDING

2.21 Short-Listing and Notification

After the evaluation of Bids in the Qualification Phase, RTDC would announce a list of short- listed qualified Bidders who will be eligible for participation in the Financial Proposal Phase. RTDC will not entertain any query or clarification from Bidders who fail to qualify.

2.22 Submission of Bids

The Bidders will be requested to submit a Bid in the form and manner to be set out in the Bidding Documents.

⁴ Applicable only in case a Bidder is applying through the High Turnover Route or under Category 2 under Clause 2.2.2.

2.23 Proprietary Data

All documents and other information supplied by RTDC or submitted by a Bidder to RTDC shall remain or become the property of RTDC. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. RTDC will not return any Bid or any information provided along therewith.

2.24 Correspondence with the Bidder

Save and except as provided in this RFP, RTDC shall not entertain any correspondence with any Bidder in relation to the acceptance or rejection of any Bid.

2.25 Validity of Bids

The Bids shall be valid for a period of not less than 120 (one hundred and twenty) days from the Bid Due Date. The validity of Bids may be extended by mutual consent of the respective Bidders and RTDC.

2F. BID SECURITY

2.26 Bid Security

- 2.26.1 The Bidder shall furnish as part of its Bid, a **Rs. 1.62 Crore (One Crore and Sixty Two Lakhs Only)**, in the shape of FDR duly pledged in the name of General manager, RTDC /Bank Guarantee with 270 days (9 Months) validity as specified in Clause 1.2.4. The Bid Security could either be in the form of a Demand Draft issued by a Scheduled Bank in India, drawn in favour of 'Ropeways and Rapid Transport System Development Corporation H.P. Limited' payable at Shimla or in form of a Bank Guarantee in accordance to Appendix-VI as specified in Clause 1.2.4. RTDC shall not be liable to pay any interest on the Bid Security deposit so made and the same shall be interest free.
- 2.26.2 In the event, the Bidder furnishes the Bid Security referred to in Clauses 1.2.4 in the form of a bank guarantee, the same shall be issued by a nationalised bank, or a Scheduled Bank in India having a net worth of at least **Rs. 1,000 crore (Rupees One Thousand Crore only)**, in favour of RTDC in the format at Appendix – II (the "Bank Guarantee") and having a validity period of not less than 180 (one hundred eighty) days from the Bid Due Date, inclusive of a claim period of 12(Twelve) months, and may be extended as may be mutually agreed between RTDC and the Bidder from time to time. For the avoidance of doubt, Scheduled Bank shall mean a bank as defined under Section 2(e) of the Reserve Bank of India Act, 1934.
- 2.26.3 Any Bid not accompanied by the Bid Security shall be summarily rejected by RTDC as non-responsive.
- 2.26.4 Save and except as provided in Clauses 1.2.6 above, the Bid Security of unsuccessful Bidders will be returned by RTDC, without any interest, as promptly as possible on acceptance of the Bid of the Selected Bidder or when the Bidding process is cancelled by RTDC, and in any case within 60 (sixty) days from the Bid Due Date.

- 2.26.5 The Selected Bidder's Bid Security will be returned, without any interest, upon the Concessionaire signing the Concession Agreement and furnishing the Performance Security in accordance with the provisions thereof. RTDC may, at the Selected Bidder's option, adjust the amount of Bid Security in the amount of Performance Security to be provided by him in accordance with the provisions of the Concession Agreement.
- 2.26.6 RTDC shall be entitled to forfeit and appropriate the Bid Security as Damages inter alia in any of the events specified in Clause 2.26.7 herein below. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that RTDC will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid validity as specified in this RFP. No relaxation of any kind on Bid Security shall be given to any Bidder.
- 2.26.7 The Bid Security shall be forfeited as Damages without prejudice to any other right or remedy that may be available to RTDC under the Bidding Documents and/ or under the Concession Agreement, or otherwise, under the following conditions:
- a) If a Bidder submits a non-responsive Bid;
 - b) If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Section 4 of this RFP;
 - c) If a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by mutual consent of the respective Bidder(s) and RTDC;
 - d) In the case of Selected Bidder, if it fails within the specified time limit:
 - (i) to sign and return the duplicate copy of LOA;
 - (ii) to pay the Project Development Fee to RTDC as specified in Clause 2.27;
 - (iii) to sign the Concession Agreement within stipulated time limit or extended time limit which may be granted by RTDC at its sole discretion; or
 - (iv) to furnish the Performance Security within the period prescribed therefor in the Concession Agreement; or
 - e) In case the Selected Bidder, having signed the Concession Agreement, commits any breach thereof prior to furnishing the Performance Security.

2G. PROJECT DEVELOPMENT FEE (Non - Refundable)

2.27 Project Development Fee (Non - Refundable)

The Selected Bidder, within 21 (twenty one) days of issuance of the Letter of Award (LOA), shall make a payment of 30% of **Project Development Fee of Rs. 1.62 Crore (One Crore and Sixty**

Two Lakhs Only), i.e. Rs. 0.49 Crores (Rupees Forty Nine Lakhs Only), net of any taxes, in the shape of Demand Draft in favour of "Ropeways and Rapid Transport System Development Corporation H.P. Limited", payable at Shimla, against expenses incurred ("Project Development Fee") in respect of the Project towards the following:

- (a) Engagement of various consultants
- (b) Project promotions including issuance of advertisement in print media, developmental expenditure related to project conducting pre-bid meeting(s) etc. by RTDC

The Concessionaire shall pay balance 70% of **Project Development Fee Rs. 1.62 Crore (One Crore and Sixty Two Lakhs Only). i.e. Rs. 1.13 Crores (Rupees One Crore and Thirteen Lakhs Only),** net of any taxes, in the shape of Demand Draft of Conditions Precedent.

The Selected Bidder shall make payment of all taxes, levies etc. as may be applicable at the time of payment. This Project Development Fee shall be irrevocable & non-refundable.

3 CRITERIA FOR EVALUATION

3A. QUALIFICATION PHASE

3.1 Evaluation Parameters

3.1.1 Bidders have to meet the eligibility criteria specified in Clause 2.2.2 above and the evaluation would be as per this Section 3. Bids of firms/ consortia who do not meet these criteria shall be rejected.

3.1.2 The Bidder's competence and capability is proposed to be established by the following parameters:

- (a) Technical Capacity; and
- (b) Financial Capacity

3.2 Technical Capacity for purposes of Evaluation

3.2.1 The experience of having undertaken Projects (Ropeway or otherwise) as specified in Clause 2.2.2 (A) would qualify as eligible projects (the "Eligible Projects") for the purpose of evaluating Technical Capacity and eligible experience (the "Eligible Experience").

3.2.2 For evaluating Technical Capacity under this Clause, Eligible Experience shall be measured only for Eligible Projects undertaken by the Bidder/ Members of the Consortium. However, in case the Bidder is applying through the High Net-Worth Route or under **Category 2**, it is required to enter into a MoU/ Agreement for technical support with an entity having mandatory experience of Ropeway project/s as specified in Clause 2.2.3 of this RFP.

3.2.3 In the event, any Eligible Project has been undertaken by the Bidder as a part of a Joint Venture/ Consortium, then the Bidder claiming experience in respect of such Project should have held, in the company owing the Eligible Project, a minimum of 26% (twenty-six per cent) equity during the period for which Eligible Experience is being claimed;

3.2.4 Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a Consortium in respect of the same experience shall be permitted in any manner whatsoever.

3.3 Details of Experience

3.3.1 The Bidder should furnish the details of Eligible Experience for the last 5 (five) financial years immediately preceding the Bid Due Date. In the event, the Bidder fails to provide the information in the requisite formats and certificates as mentioned in this RFP Document, the information so provided would be considered as inadequate and could lead to exclusion of such a project in computation of Eligible Experience of the Bidder.

- 3.3.2 The Bidders must provide the necessary information relating to Technical Capacity as per format at Annex-II of Appendix-I.
- 3.3.3 The Bidder should furnish the required Project-specific information and evidence in support of its claim of Technical Capacity, as per format at Annex-IV of Appendix-I.
- 3.3.4 In the event, a Bidder is applying through the High Turnover Route or Category 2, such Bidder should also attach as a part of its Bid, the requisite documents/ evidences in support of the claim of its Technical Tie Up Partner of possessing the mandatory experience in respect of the projects specified in Clause 2.2.3 and the same shall be counter-signed by the authorized signatory of the Bidder at the time of submitting the Bid.

3.4 Financial Information for purposes of Evaluation

- 3.4.1 The Bid must be accompanied by the Audited Annual Reports of the Bidder (of each Member in case of a Consortium) for the last 5 (five) financial years, preceding the year in which the Bid is made.
- 3.4.2 In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make it available, the Bidder shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Bidder shall provide the Audited Annual Reports for 5 (five) years preceding the year for which the Audited Annual Report is not being provided.
- 3.4.3 The Bidder must establish the minimum Networth specified in Clause 2.2.2 (B), and provide details as per format at Annex-III of Appendix-I.
- 3.4.4 The Bidder applying through the High Networth Route must establish that it has the Networth of 60% of the Total Estimated Project Cost in the preceding financial year in terms of Clause 2.2.2(C), and accordingly provide details as per format at Annex-III of Appendix-I duly certified by its statutory auditor.

3.5 Qualification and Short-listing of Bidders

- 3.5.1 Only those Bids, which are found to be substantively responsive to the requirements of this RFP document after verifying the Bid Security submitted, will be evaluated. In the Qualification Phase, the information, documents and credentials submitted by the Bidder as a part of its Bid shall be evaluated and measured in terms of its project experience {and that of the Technical Tie Up Partner in case of Bidder applying through the High Turnover Route or under Category2} to determine the technical and financial competency/ capability of the Bidder/s vis-à-vis the requirements of Clauses 2.2.2 & 2.2.3 of this RFP. It is clarified here that in the event, after evaluation of the information, documents and credentials submitted by the Bidder in respect of its Technical Tie Up Partner are not found to be sufficient or the Technical Tie Up Partner does not

possess the mandatory experience of Ropeway project/s as specified in Clause 2.2.3 of this RFP Document, the Bid of such a Bidder shall be disqualified.

- 3.5.2 The Bidders who meet the eligibility criteria set forth in Clauses 2.2.2 & 2.2.3* and possess the requisite Eligible Experience in respect of Eligible Projects in terms of this RFP, will be shortlisted and eligible for the Financial Proposal Phase.

*applicable only for Bidders applying through the High Turnover Route or under Category 2.

3B. FINANCIAL PROPOSAL PHASE

3.6 Opening and Evaluation of Financial Proposal

- 3.6.1 The Bidders who are shortlisted as per Clause 3.5 will be informed about the opening date of the Financial Proposal on the following websites i.e. www.himachal.nic.in/transport; and the Financial Offer shall be opened in the presence of the shortlisted Bidders who choose to attend.
- 3.6.2 To facilitate evaluation of Bids, RTDC may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid.

3.7 Selection of Bidder

- 3.7.1 Subject to the provisions of Clause 3.5, the Bidder whose Bid is adjudged as responsive in terms of Clause 2.19.1 and who gets the Highest Total Weighted Financial Score shall be declared as the Selected Bidder (the “Selected Bidder”). In the event that RTDC rejects or annuls all the Bids, it may, in its discretion, initiate re-bidding process by inviting fresh Bids.
- 3.7.2 In the event that two or more Bidders gets the same Total Weighted Financial Score, (the “Tie Bidders”), RTDC shall identify the Selected Bidder by draw of lots, which shall be conducted, with prior notice, in the presence of the Tie Bidders who choose to attend.
- 3.7.3 In the event that the Highest Bidder withdraws or is not selected for any reason in the first instance (the “first round of bidding”), RTDC may invite all the remaining Bidders to revalidate or extend their respective Bid Security, as necessary, and match the Bid of the aforesaid Highest Bidder (the “second round of bidding”). If in the second round of bidding, only one Bidder matches the Highest Bidder, it shall be the Selected Bidder. If two or more Bidders match the said Highest Bidder in the second round of bidding, then the Bidder whose Bid was higher as compared to other Bidder(s) in the first round of bidding shall be the Selected Bidder. For example, if the third and fifth highest Bidders in the first round of bidding offer to match the said Highest Bidder in the second round of bidding, the said third highest Bidder shall be the Selected Bidder.
- 3.7.4 In the event that no Bidder offers to match the Highest Bidder in the second round of bidding as specified in Clause 3.7.3, RTDC may, in its discretion, invite fresh Bids (the “third round of

bidding”) from all Bidders except the Highest Bidder of the first round of bidding, or annul the Bidding Process, as the case may be. In case the Bidders are invited in the third round of bidding to revalidate or extend their Bid Security, as necessary, and offer fresh Bids, they shall be eligible for submission of fresh Bids provided, however, that in such third round of bidding only such Bids shall be eligible for consideration which are higher than the Bid of the second highest Bidder in the first round of bidding.

- 3.7.5 After selection, a Letter of Award (the “LOA”) shall be issued, in duplicate, by RTDC to the Selected Bidder and the Selected Bidder shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, RTDC may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOA, and the next eligible Bidder may be considered.
- 3.7.6 After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall cause the Concessionaire to execute the Concession Agreement within the period prescribed in Clause 1.3. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the Concession Agreement.

3.8 Contacts during Bid Evaluation

Bids shall be deemed to be under consideration immediately after they are opened and until such time RTDC makes official intimation of award/ rejection to the Bidders. While the Bids are under consideration, Bidders and/ or their representatives or other interested parties are advised to refrain, save and except as required under the Bidding Documents, from contacting by any means, RTDC and/ or their employees/ representatives on matters related to the Bids under consideration.

4 FRAUD AND CORRUPT PRACTICES

- 4.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Concession Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Concession Agreement, RTDC may reject a Bid, withdraw the LOA, or terminate the Concession Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder or Concessionaire, as the case may be, if it determines that the Bidder or Concessionaire, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, RTDC shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to RTDC under the Bidding Documents and/ or the Concession Agreement, or otherwise.
- 4.2 Without prejudice to the rights of RTDC under Clause 4.1 hereinabove and the rights and remedies which the Concessioneing Authority may have under the LOA or the Concession Agreement, or otherwise if a Bidder or Concessionaire, as the case may be, is found by Concessioneing Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOA or the execution of the Concession Agreement, such Bidder or Concessionaire shall not be eligible to participate in any tender or RFP issued by RTDC during a period of 2 (two) years from the date such Bidder or Concessionaire, as the case may be, is found by the Concessioneing Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.
- 4.3 For the purposes of this Section 4, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) "corrupt practice" means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of RTDC or the Confirming Party who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the Concession Agreement or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of RTDC or the Concessioneing Authority or

the Confirming Party, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under sub clause (d) of Clause 2.2.1, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Concession Agreement and till the period of 1 (one) years from the date of signing of the Concession Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Concession Agreement, who at any time has been or is a legal, financial or technical adviser of RTDC or the Confirming Party in relation to any matter concerning the Project;

- b. “fraudulent practice” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process ;
- c. “coercive practice” means impairing or harming or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;
- d. “undesirable practice” means (i) establishing contact with any person connected with or employed or engaged by RTDC or the Confirming Party with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
- e. “restrictive practice” means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

5 PRE-BID CONFERENCE

- 5.1 A Pre-Bid conference of the interested parties shall be convened at the designated date & time in the office of Chief General Manager RTDC at US Club, Shimla-1. Bidders are encouraged to participate and maximum of 2 (two) representatives of each Bidder shall be allowed to participate on production of authority letter from the Bidder.
- 5.2 During the course of Pre-Bid conference, the Bidders will be free to seek clarifications and make suggestions for consideration of RTDC. RTDC shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

6 MISCELLANEOUS

- 6.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Shimla shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 6.2 RTDC, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- (a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
 - (b) consult with any Bidder in order to receive clarification or further information;
 - (c) pre-qualify or not to pre-qualify any Bidder and/ or to consult with any Bidder in order to receive clarification or further information;
 - (d) retain any information and/ or evidence submitted to RTDC by, on behalf of, and/ or in relation to any Bidder; and/ or
 - (e) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.
- 6.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases RTDC, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder and the Bidding Documents, pursuant hereto, and/ or in connection with the Bidding Process, to the fullest extent permitted by applicable law, and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.
- 6.4 The consultant hired by RTDC has studied the project and Aerial Tramway System has been proposed. It is intended to adopt Aerial Tramway on CEN standards, which is in practice in the all around the world in modern and latest ropeway system as well. CEN Standards and Specifications are secure, safe, feasible and flexible for meeting the increased traffic demand for future.

Appendices

Appendix 1

Letter Comprising the Bid (Refer Clause 2.13.2A & 2.13.6)

Dated : _____

To,
Chief General Manager
Ropeways and Rapid Transport System Development Corporation H.P. Limited
US Club, Shimla-171001, India
Phone: +91-9418481177

Sub: Bid for “Development of Ropeways System between Khalincha and Lambadug in Manali, Himachal Pradesh on PPP Mode”

Dear Sir,

1. With reference to your RFP document dated _____⁵, I/we, having examined the RFP document and understood its contents, hereby submit my/our Bid for the aforesaid project. The Bid is unconditional and unqualified.
2. I/ We acknowledge that RTDC will be relying on the information provided in the Bid and the documents accompanying such Bid for selection of the Concessionaire for the aforesaid project, and we certify that all information provided in the Bid and in Annexes I to IV is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals.
3. This statement is made for the express purpose of our selection as Selected Bidder for the development, construction, operation and maintenance of the aforesaid Project.
4. I/ We shall make available to RTDC any additional information it may find necessary or require to supplement or authenticate the Bid.
5. I/ We acknowledge the right of RTDC to reject our Bid without assigning any reason or otherwise and hereby waive to the fullest extent permitted by applicable law our right to challenge the same on any account whatsoever.
6. I/ We certify that in the last three years, we/ any of the Consortium Members or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been

expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.

7. I/ We declare that:
 - a) I/ We have examined and have no reservations to the Bidding Documents, including any Addendum issued by RTDC;
 - b) I/ We do not have any conflict of interest in accordance with Clauses 2.2.1(b) and 2.2.1(c) of the RFP document;
 - c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with the Concessioneing Authority or any other public sector enterprise or any government, Central or State; and
 - d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.17.6 of the RFP document.
9. I/ We believe that we/ our Consortium/ proposed Consortium satisfy(s) the Turnover criteria and meet(s) all the requirements as specified in the RFP document and are/ is qualified to submit a Bid
10. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of associate of any other Bidder/ any other Consortium submitting a Bid for the project.
11. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge- sheeted by any agency of the Government or convicted by a Court of Law.
13. I/ We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Consortium or against our/ their Associates or against our CEO or any of our Directors/ Managers/ employees.
14. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this RFP, we shall intimate RTDC of the same immediately.

15. The Statement of Legal Capacity as per format provided at Annex-V in Appendix-I of the RFP document, and duly signed, is enclosed. The power of attorney for signing of Bid and the power of attorney for Lead Member of consortium, as per format provided at Appendix II and III respectively of the RFP, are also enclosed.
16. I/ We understand that the Selected Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956/2013, or shall incorporate as such prior to execution of the Concession Agreement.
17. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by RTDC in connection with the selection of the Bidder, or in connection with the selection/ Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof
18. I/ We agree and undertake to abide by all the terms and conditions of the RFP document.
19. I/ We certify that in terms of the RFP, my/our Turnover is Rs.(Rs. in words).
20. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into a Concession Agreement in accordance with the Draft Concession Agreement that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
21. I/ We have studied all the Bidding Documents carefully and also surveyed the Project sites. We understand that except to the extent as expressly set forth in the Concession Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by RTDC or in respect of any matter arising out of or relating to the Bidding Process including the award of Concession.
22. I/ We offer a Bid Security of _____ to RTDC in accordance with Clause 1.2.4 of the RFP Document.
23. The Bid Security in accordance with Clause 1.2.4 of the RFP Document in the form of a Demand Draft or Bank Guarantee is attached.
24. The Demand Draft or Payment Receipt towards the cost of Biding Documents as specified in Clause 1.2.1 is attached.
25. I/ We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/we shall have any claim or right of whatsoever nature if the Project / Concession is not awarded to me/us or our Bid is not opened or rejected.
26. The Annual Concession Fee which will be paid as per the provisions of the Draft Concession Agreement, has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, Draft Concession Agreement, our own estimates of costs and after a careful assessment of the site and all the conditions that may affect the project cost and implementation of the project.
27. I/We agree to pay the all applicable taxes to the Central Government for undertaking the aforesaid Project in accordance with the Bidding Documents and the Concession Agreement. Further I/We

undertake that any taxes, levies etc. that may be payable to any State Government or Local Authorities of the State Himachal Pradesh for undertaking this Project, shall be paid by us.

28. I/ We shall keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the RFP.

29. I/ We hereby agree to pay the Project Development Fee (Non – refundable) of **Rs. 1.62 Crore (One Crore and Sixty Two Lakhs Only)** and the applicable GST to RTDC in accordance to Clause 2.27, within 21 (twenty one) days of issuance of the Letter of Award (LOA) or at the time of completion of Conditions Precedent, as the case may be.

30. We agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement in accordance with the Concession Agreement.} ⁶

In witness thereof, I/ we submit this Bid under and in accordance with the terms of the RFP document.

Date:

Place:

Yours faithfully,

(Signature, name and designation of the Authorised Signatory)

Name and seal of the Bidder/ Lead Member

Note: Paragraphs in curly parenthesis may be omitted by the Bidder, if not applicable to it, or modified as necessary to reflect Bidder-specific particulars.

⁶ Omit if the Bidder is not a Consortium

Annex 1**Details of Bidder**

1.
 - (a) Name:
 - (b) Country of incorporation:
 - (c) Address of the corporate headquarters and its branch office(s), if any, in India:
 - (d) Date of incorporation and/ or commencement of business:
2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project:
3. Details of individual(s) who will serve as the point of contact/ communication for RTDC:
 - (a) Name:
 - (b) Designation:
 - (c) Company:
 - (d) Address:
 - (e) Telephone Number:
 - (f) E-Mail Address:
 - (g) Fax Number:
4. Particulars of the Authorised Signatory of the Bidder:
 - (a) Name:
 - (b) Designation:
 - (c) Address:
 - (d) Phone Number:
 - (e) Fax Number:
5. In case of a Consortium:
 - (a) The information above (1-4) should be provided for all the Members of the Consortium.
 - (b) A copy of the Jt. Bidding Agreement, as envisaged in Clause 2.2.6(g) should be attached to the Bid.
 - (c) Information regarding the role of each Member should be provided as per table below

Sl. No.	Name of Member	Role* {Refer Clause 2.2.6(d)} ^{\$}	Percentage of equity in the Consortium {Refer Clauses 2.2.6(a), (c) & (g)}
1.			
2.			
3.			
4.			

*The role of each Member, as may be determined by the Bidder, should be indicated in accordance with instruction 4 at Annex-IV.

- (d) The following information shall also be provided for each Member of the Consortium:

Name of Bidder/ member of Consortium:

No.	Criteria	Yes	No
1.	Has the Bidder/ constituent of the Consortium been barred by the Central/ State Government, or any entity controlled by it, from participating in any project (BOT or otherwise).		
2.	If the answer to 1 is yes, does the bar subsist as on the date of Bid.		
3.	Has the Bidder/ constituent of the Consortium paid liquidated damages of more than 5% of the contract value in a contract due to delay or has been penalised due to any other reason in relation to execution of a contract, in the last three years?		

6. A statement by the Bidder and each of the Members of its Consortium (where applicable) or any of their Associates disclosing material non-performance or contractual non-compliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary):

Annex 2**Technical Capacity of the Bidder @**

(Refer to Clauses 2.2.2(A), 3.2 and 3.3 of the RFP)

Bidder type \$	Number of Projects	Experience*						
		Name of Project	Project Cost	Revenue Year 1	Revenue Year 2	Revenue Year 3	Revenue Year 4	Revenue Year 5
Single entity Bidder								
Consortium Member 1								
Consortium Member 2								
Consortium Member 3								

\$ A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidder and ignore the rows titled Consortium Members. In case of a Consortium, row titled Single entity Bidder may be ignored.

@Provide details of only those projects that have been undertaken by the Bidder under its own name and/ or by an Associate specified in Clause 2.2.9 and/ or by a project company eligible under Clause 3.2.3 (b). In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.2.12.

@Provide supporting documents / work order / agreements, etc. to substantiate the claim of experience

Certificate from the Statutory Auditor

This is to certify that the information contained above is correct as per the Books of Accounts of the Bidder/ Member of the Consortium/ Associate.

Name of the Authorised Signatory:

Designation:

Name of the Audit firm:

(Signature for the Authorised Signatory of the Statutory Auditor)

Seal of the Firm

Annex 3**Financial Capacity of the Bidder**

(Refer to Clauses 2.2.2(B), 2.2.4 (ii) and 3.4 of the RFP)

(In Rs. crore\$\$)

Bidder type \$	Member Code£	Net Profit					Turnover€
		Year 1 (3)	Year 2 (4)	Year 3 (5)	Year 4 (6)	Year 5 (7)	Year 1 (8)
Single entity Bidder							
Bidder applying through High Turnover Route							
Consortium Member 1							
Consortium Member 2							
Consortium Member 3							
TOTAL							

Name & address of Bidder's Bankers:

\$ A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidder and ignore the rows titled Consortium Members. In case of a Consortium, row titled Single entity Bidder may be ignored.

£ For Member Code, see instruction 4 at Annex-IV of this Appendix-I.

€ The Bidder should provide details of its own Financial Capability or of an Associate specified in Clause 2.2.9.

\$\$ For conversion of other currencies into rupees, see note below Annex-II of Appendix-I

Certificate from the Statutory Auditor

This is to certify that the information contained above is correct as per the Books of Accounts of the Bidder whose Turnover in F.Y 2018-19 is Rs. _____(Rupees in words).

Name of the Authorised Signatory:

Designation:

Name of the Audit firm:

(Signature for the Authorised Signatory of the Statutory Auditor) Seal of the Firm

Instructions:

1. The Bidder/ its constituent Consortium Members shall attach copies of the balance sheets, financial statements and Annual Reports for 5 (five) years preceding the Bid Due Date. The financial statements shall:
 - (a) reflect the financial situation of the Bidder or Consortium Members and its/ their Associates where the Bidder is relying on its Associate's financials;
 - (b) be audited by a statutory auditor;
 - (c) be complete, including all notes to the financial statements; and
 - (d) Correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
2. Deleted
3. Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on. In case the Application Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.2.12.
4. In the case of a Consortium, a copy of the Jt. Bidding Agreement shall be submitted in accordance with the RFP document.
5. The Bidder shall also provide the name and address of the Bankers to the Bidder.

Annex 4**Details of Eligible Projects**

(Refer to Clauses 2.2.2(A), 3.2 and 3.3 of the RFP)

Name of Bidder / Consortium Member

Item (1)	Particulars of the Project (3)
Title & nature of the project (Give a brief description for better understanding)	
Entity for which the project was constructed / developed	
Location	
Capital Cost of Project (Excluding land cost)	
Revenue from Project for last five financial years	
Date of commencement of project/ contract	
Date of completion/ commissioning	
Equity shareholding (with period during which equity was held)	
Whether credit is being taken for the Eligible Project of an Associate (Yes/ No)	
Mode (BOT, EPC, etc.)	

Certificate from the Statutory Auditor

This is to certify that the information contained above is correct as per the Books of Accounts of the Bidder.

Name of the Authorised Signatory:

Designation:

Name of the Audit firm:

(Signature for the Authorised Signatory of the Statutory Auditor)

Seal of the Firm

Instructions:

1. Bidders are expected to provide information in respect of each Eligible Projects in this Annex. The projects cited must comply with the eligibility criteria specified in the RFP. Information provided in this section is intended to serve as a backup for information provided in the Bid. Bidders should also refer to the Instructions below.
2. A separate sheet should be filled for each Eligible Project.
3. In case the Eligible Project relates to an Associate of the Bidder or its Member, write “Associate” along with Member.
4. Name, address and contact details of owner/ Authority/ Agency (i.e. concession grantor, counter party to PPA, etc.) may be provided.
5. The date of commissioning of the project, upon completion, should be indicated. In case of construction, completion of construction should be indicated.
6. The equity shareholding of the Bidder, in the company owning the Eligible Project, held continuously during the period for which Eligible Experience is claimed, needs to be given. (Refer Clause 3.2.3).
7. Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a consortium in respect of the same experience shall be permitted in any manner whatsoever.
8. Certificate from the Bidder’s statutory auditor⁷ or its respective clients must be furnished as per formats below for each Eligible Project. In jurisdictions that do not have statutory auditors, the auditors who audit the annual accounts of the Bidder/ Member/Associate may provide the requisite certification.
9. In the event that credit is being taken for the Eligible Experience of an Associate, as defined in Clause 2.2.9, the Bidder should also provide a certificate in the format below

⁷ In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary

Certificate from Statutory Auditor/ Company Secretary regarding Associate^{\$}

Based on the authenticated record of the company, this is to certify that more than 50% (fifty per cent) of the subscribed and paid up voting equity of.....(name of the Bidder/Consortium Member/ Associate) is held, directly or indirectly[£], by(name of Associate/ Bidder/ Consortium Member). By virtue of the aforesaid share- holding, the latter exercises control over the former, who is an Associate in terms of Clause 2.2.9 of the RFP.

A brief description of the said equity held, directly or indirectly, is given below:

{Describe the share-holding of the Bidder/ Consortium Member and the Associate. In the event the Associate is under common control with the Bidder/ Consortium Member, the relationship may be suitably described and similarly certified herein.}

Name of the audit firm:

Seal of the audit firm: (Signature, name and designation of the authorised signatory).

Date:

10. It may be noted that in the absence of any detail in the above certificates, the information would be considered inadequate and could lead to exclusion of the relevant project in computation of Eligible Experience⁸.

^{\$} In the event that the Bidder/ Consortium Member exercises control over an Associate by operation of law, this certificate may be suitably modified and copies of the relevant law may be enclosed and referred to.

[£] In the case of indirect share-holding, the intervening companies in the chain of ownership should also be Associates i.e., the share-holding in each such company should be more than 50% (fifty percent) in order to establish that the chain of “control” is not broken.

⁸ Refer Clause 3.3.1 of the RFP

Annex 5

Statement of Legal Capacity

(To be forwarded on the letterhead of the Bidder/ Lead Member of Consortium)

Ref...

Date:

The Chief General Manager

Ropeways and Rapid Transport System Development Corporation H.P. Limited

US Club, Shimla-171001, India

Phone: +91-9418481177

Bid for “Development of Ropeways System between Khalincha and Lambadug in Manali, Himachal Pradesh on PPP Mode”.

Dear Sir,

We hereby confirm that we/ our members in the Consortium (constitution of which has been described in the Bid) satisfy the terms and conditions laid out in the RFP document.

We have agreed that _____ (insert member’s name) will act as the Lead Member of our consortium.*

We have agreed that (insert individual’s name) will act as our representative/ will act as the representative of the consortium on its behalf* and has been duly authorized to submit the RFP. Further, the authorised signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of.....

*Please strike out whichever is not applicable

Appendix 2

Power of Attorney for signing of Bid

(Refer Clause 2.2.5)

Know all men by these presents, We..... (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr/ Ms (name), son/daughter/wife of and presently residing at....., who is presently employed with us/ the Lead Member of our Consortium and holding the position of , as our true and lawful attorney (hereinafter referred to as the “Attorney”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Bid for the_“**Development of Ropeways System between Khalincha and Lambadug in Manali, Himachal Pradesh on PPP Mode**” to the Ropeways and Rapid Transport System Development Corporation H.P. Limited (the “RTDC”) including but not limited to signing and submission of all bids and other documents and writings, participate in pre-bids and other conferences and providing information/ responses to RTDC, presenting us in all matters before RTDC, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the Concessioning Authority in all matters in connection with or relating to or arising out of our bid for the said Project and/ or upon award thereof to us and/or till the entering into of the Concession Agreement with the Concessioning Authority.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE,, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF 2....

For.....

(Signature, name, designation and address) Witnesses:

1.

(Notarised)

2.

Accepted

.....

(Signature)

(Name, Title and Address of the Attorney)

Notes:

- The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
- Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.
- For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.

Appendix 3

Power of Attorney for Lead Member of Consortium

(Refer Clause 2.2.5)

Whereas the Ropeways and Rapid Transport System Development Corporation H.P. Limited (“RTDC”) has invited Bids from interested parties for the **“Development of Ropeways System between Khalincha and Lambadug in Manali, Himachal Pradesh on PPP Mode” (the “Project”)** and

Whereas,,, and (collectively the “Consortium”) being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal document (RFP) and other connected documents in respect of the Project, and

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’s bid for the Project and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, having our registered office at, M/s. having our registered office at, M/s. having our registered office at, and having our registered office at, (hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorise M/s..... having its registered office at, being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the “Attorney”). We hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the concession/contract, during the execution of the Project and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the qualification of the Consortium and submission of its bid for the Project, including but not limited to signing and submission of all , bids and other documents and writings, participate in bidders and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with RTDC and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium’s bid for the Project and/ or upon award thereof till the Concession Agreement is entered into with the Concessions Authority.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Consortium

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY

ON THIS DAY OF 2....

For

(Signature)

.....

(Name & Title)

For

(Signature)

.....

(Name & Title)

For

(Signature)

.....

(Name & Title)

Witnesses:

1.

2.

.....

(Executants)

(To be executed by all the Members of the Consortium)

Notes:

- The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
- Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.
- For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.

Appendix 4

Joint Bidding Agreement

(Refer Clause 2.13.2A)

(To be executed on Stamp paper of appropriate value)

THIS JOINT BIDDING AGREEMENT is entered into on this the day of..... 20...

AMONGST

1. {..... Limited, a company incorporated under the Companies Act, 1956/2013} and having its registered office at.....(hereinafter referred to as the **"First Part"** which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

2. {..... Limited, a company incorporated under the Companies Act, 1956/2013} and having its registered office at.....(hereinafter referred to as the **"Second Part"** which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

3. {..... Limited, a company incorporated under the Companies Act, 1956/2013 and having its registered office at..... (hereinafter referred to as the **"Third Part"** which expression shall, unless repugnant to the context include its successors and permitted assigns)}⁹

The above mentioned parties of the FIRST, SECOND, and THIRD PART are collectively referred to as the **"Parties"** and each is individually referred to as a **"Party"**

WHEREAS,

- (A) Ropeways and Rapid Transport System Development Corporation H.P. Limited, represented by its Chief General Manager having its principal office US Club, Shimla-171001 India (hereinafter referred to as the **"RTDC"** which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has been appointed as Nodal Agency by Government of Himachal Pradesh for undertaking Project Development Activities on behalf of the Himachal Pradesh Public Works Department for **"Development of Ropeways System between Khalincha and Lambadug in Manali, Himachal Pradesh on PPP Mode"** (the **"Project"**). RTDC has invited Bids (the **"Bids"**) by its Request for Proposal No..... dated.....the **"RFP"**) for development and operation/ maintenance of the **Project** through public private partnership.

⁹ The number of Parties will be shown here, as applicable, subject however to a maximum of 3 (three).

- (B) Ropeways and Rapid Transport System Development Corporation H.P. Limited (RTDC) (the **“Concessioneing Authority”**) will sign the Concession Agreement with the Concessionaire.
- (C) The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the RFP document and other bid documents in respect of the Project, and
- (D) It is a necessary condition under the RFP document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Bid.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

In this Agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the RFP.

2. Consortium

- 2.1 The Parties do hereby irrevocably constitute a consortium (the **“Consortium”**) for the purposes of jointly participating in the Bidding Process for the Project.
- 2.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

3. Covenants

The Parties hereby undertake that in the event the Consortium is declared the Selected Bidder and awarded the Project, it shall incorporate a special purpose vehicle (the **“SPV”**) under the Companies Act 2013 for entering into a Concession Agreement with the Concessioneing Authority and for performing all its obligations as the Concessionaire in terms of the Concession Agreement for the Project.

4. Role of the Parties

The Parties hereby undertake to perform the roles and responsibilities as described below:

- (a) Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding process and until the Agreement Date under the Concession Agreement when all the obligations of the SPV shall become effective;
- (b) Party of the Second Part shall be {the Technical Member of the Consortium;}
- (c) Party of the Third Part shall be the Financial Member or Operation and Maintenance Member of the Consortium; and}

5. Joint and Several Liability

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the RFP and the Concession Agreement in accordance with the Concession Agreement.

6. Shareholding in the SPV

- 6.1 The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows:
First Party:
Second Party:
{Third Party:}

- 6.2 The Parties undertake that a minimum of 26% (twenty six per cent) of the subscribed and

paid up equity share capital of the SPV shall, at all times till the second anniversary of the date of full commercial operation of the Project, be held by the Parties of the First, {Second and Third} Part whose experience and turnover have been reckoned for the purposes of qualification and short- listing of Bidders for the Project in terms of the RFP.

- 6.3 The Parties undertake that each of the Parties specified in Clause 6.2 above shall, at all times between the full commercial operation date of the Project and the second anniversary thereof, hold subscribed and paid up equity share capital of SPV equivalent to (i) 26% (twenty six per cent) of the subscribed and paid up equity of the SPV; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement.
- 6.4 The Parties undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity share capital of the SPV at all times until the second anniversary of the full commercial operation date of the Project.
- 6.5 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the Concession Agreement.

7. Representation of the Parties

Each Party represents to the other Parties as of the date of this Agreement that:

- (a) Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- (b) The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:
 - (i) require any consent or approval not already obtained;
 - (ii) violate any Applicable Law presently in effect and having applicability to it;
 - (iii) violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;
 - (iv) violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
 - (v) create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would

have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.

8. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the Financial Close of the Project is achieved under and in accordance with the Concession Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium is either not qualified for the Project or does not get Selected for award of the Project, the Agreement will stand terminated in case the Bidder is not qualified or upon return of the Bid Security by RTDC to the Bidder, as the case may be.

9. Miscellaneous

9.1 This Joint Bidding Agreement shall be governed by laws of India.

9.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of RTDC.

IN WITNESS WHEREOF THE PARTIES ABOVE NAMED HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN

SIGNED, SEALED AND DELIVERED

For and on behalf of

LEAD MEMBER by:

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

SECOND PART

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on
behalf of THIRD
PART

(Signature)

(Name)

(Designation)

(Address)

In the presence of:

- 1.
- 2.

Notes:

1. The mode of the execution of the Joint Bidding Agreement should be in accordance with

the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.

2. Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member.
3. For a Joint Bidding Agreement executed and issued overseas, the document shall be legalised by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.

Appendix 5

Letter Comprising the Financial Offer

(Refer Clause 2.13.2B)

Dated: _____

To,
The Chief General Manager
Ropeways and Rapid Transport System Development Corporation H.P. Limited
US Club, Shimla-171001 India
Phone: +91-9418481177

Sub: Bid for “Development of Ropeways System between Khalincha and Lambadug in Manali, Himachal Pradesh on PPP Mode”

Dear Sir,

With reference to your RFP document dated _____, I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our Financial proposal for the aforesaid Project. The Financial Proposal is unconditional and unqualified.

1. I/ We hereby submit our Bid and offer to pay **Annual Concession Fee of Rs.....(Rupees in words)** which shall be paid yearly throughout the Concession Period by way of bi-annual installments from the 1st anniversary of Commercial Operation Date. The Annual Concession Fee shall be increased by 5% yearly over the previous year's Annual Concession Fee.
2. I/We agree to pay the GST and all other applicable taxes to the Central Government, any State Government and/or Local Authorities or the State of Himachal Pradesh for undertaking the aforesaid Project in accordance with the Bidding Documents and the Concession Agreement.
3. I/ We hereby declare to undertake the aforesaid Project in accordance with the terms & conditions of the Concession Agreement and the Bidding documents.

In witness thereof, I/we submit this Financial Proposal under and in accordance with the terms of the RFP and the Bidding documents.

Yours faithfully,

(Signature, name and designation of the Authorised signatory)

Date:

Place:

Name and seal of Bidder/Lead Member

Appendix 6

Bank Guarantee for Bid Security

(refer clauses 1.2.4 and 2.26)

B.G. No..... Dated:.....

1. In consideration of you, Ropeways and Rapid Transport System Development Corporation H.P. Limited, having its office at US Club, Shimla – 171001 (hereinafter referred to as the “RTDC”, which expression shall unless it be repugnant to the subject or context thereof include its successors and assigns) having agreed to receive the Bid of (a.....registered under the relevant laws of India) and having its registered office at{and acting on behalf of its Joint Venture/Consortium**} (hereinafter referred to as the “Bidder” which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for the RFP for **“Development of Ropeways System between Khalincha and Lambadug in Manali, Himachal Pradesh on PPP Mode”** on Design, Build, Finance, Operate And Transfer (DBFOT) Project (hereinafter referred to as “the Project”) pursuant to the RFP Document dated issued in respect of the Project and other related documents including without limitation the draft concession agreement (hereinafter collectively referred to as “Bidding Documents”), we (Name of the Bank) having our registered office at..... and one of its branches at (hereinafter referred to as the “Bank”), at the request of the Bidder, do hereby in terms of of the RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfillment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to RTDC an amount of (hereinafter referred to as the “Guarantee”) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfill or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by RTDC stating that the Bidder is in default of the due and faithful fulfillment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of RTDC is disputed by the Bidder or not, merely on the first demand from RTDC stating that the amount claimed is due to RTDC by reason of failure of the Bidder to fulfill and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set-forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding.....
4. This Guarantee shall be irrevocable and remain in full force for a period of 180 (one hundred and eighty) days from the Bid Due Date inclusive of a claim period of 60 (sixty) days or for such extended period as may be mutually agreed between RTDC and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have

been paid.

5. We, the Bank, further agree that RTDC shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfillment and compliance with the terms and conditions contained in the Bidding Documents including, inter alia, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Bidding Documents, and the decision of RTDC that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between RTDC and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other Authority.
6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
7. In order to give full effect to this Guarantee, RTDC shall be entitled to treat the Bank as the principal debtor. RTDC shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfillment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to RTDC, and the Bank shall not be released from its liability under these presents by any exercise by RTDC of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of RTDC or any indulgence by RTDC to the said Bidder or by any change in the constitution of RTDC or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.
8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch which shall be deemed to have been duly authorised to receive the said notice of claim.
10. It shall not be necessary for RTDC to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which RTDC may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealised.
11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of RTDC in writing.
12. The Bank declares that it has power to issue this Guarantee and discharge the obligations

contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.

13. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to **Rs.....** The Bank shall be liable to pay the said amount or any part thereof only if RTDC serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before [*** (indicate date falling 180 days after the Bid Due Date)].

Signed and Delivered by.....Bank

By the hand of Mr./Ms., its.....and authorised official.

(Signature of the Authorised Signatory)

(Official Seal)

DRAFT CONCESSION AGREEMENT FOR

**Development of Ropeways System between Khalincha
and Lambadug in Manali, Himachal Pradesh on PPP
Mode**

Volume II

BETWEEN

**Ropeways and Rapid Transport System Development
Corporation H.P. Limited**

AND

(Name of the Prospective Bidder)

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CONCESSION AGREEMENT

THIS AGREEMENT is entered into on this the day of, 20....

BETWEEN

1. **The Ropeways and Rapid Transport System Development Corporation H.P. Limited, Government of Himachal Pradesh**, with its office located at U.S. Club, Shimla (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;

AND

2. {..... LIMITED}¹, a company incorporated under the provisions of the [Companies Act, 1956] [Companies Act, 2013] and having its registered office at, (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part.

WHEREAS:

- (A) The Government of Himachal Pradesh has decided to construct a ropeway from Khalincha to Lambadug, (hereinafter referred to as **Lambadug Ropeway**) on PPP basis.
- (B) The Authority had accordingly invited proposals by its [Notice/ Request for Proposal No.*** dated ***] (the “**Request for Prioposal**” or “**RFP**”) for short listing of bidders for construction, operation and maintenance of the **Lambadug Ropeway** on DBFOT basis and had shortlisted certain bidders including, *inter alia*, the {the selected bidder/ consortium comprising, and (collectively the “**Consortium**”) with as its lead member (the “**Lead Member**”)}.
(C) The Authority had prescribed the technical and commercial terms and conditions, and invited bids (the “**Request for Proposals**” or “**RFP**”) from the bidders.
- (D) After evaluation of the bids received, the Authority had accepted the bid of the {selected bidder/ Consortium} and issued its Letter of Award No. dated (hereinafter called the “**LOA**”) to the {selected bidder/ Consortium} requiring, *inter alia*, the execution of this Concession Agreement within 45 (forty-five) days of the date of issue thereof.
- (E) {The selected bidder/ Consortium has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 2013, and has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder/ Consortium under the LOA,} including the obligation to enter into this Concession Agreement pursuant to the LOA for executing the Project.
- (F) By its letter dated, the Concessionaire has also joined in the said request of the selected bidder/ Consortium to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder/ Consortium including the obligation to enter into this Concession
- (G) Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the selected bidder/ Consortium for the purposes hereof. }

¹ The provisions in curly parenthesis and the blank spaces shall be retained in the draft Concession Agreement and shall be suitably modified/ filled after completion of the bid process to reflect the particulars relating to the selected bidder.

- (H) The Authority has agreed to the said request of the {selected bidder/Consortium and the} Concessionaire, and has accordingly agreed to enter into this Concession Agreement with the Concessionaire for execution of the Project on DBFOT basis, subject to and on the terms and conditions set forth hereinafter.
- (I) That the Concessionaire has paid the 25% of Project Development Fee of Rs. 1.62 Crore (Rupees Three Crore and Eighty Lakhs only) i.e. Rs. 0.49 Crore (Rupees Forty Nine Lakhs only) as a pre-condition for the signing of this Concession Agreement.
- (J) That the Concessionaire represents and warrants that they have duly fulfilled all other terms and conditions necessary for the execution of this Agreement as per the terms contained in the Bidding documents and are in a position to execute this Agreement and implement the Project as envisaged in the Bid and this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Concession Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

PART I: PRELIMINARY

ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 48) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “**include**” and “**including**” are to be construed without limitation and shall be deemed to be followed by “**without limitation**” or “**but not limited to**” whether or not they are followed by such phrases;
- (f) references to “**construction**” or “**building**” include, unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “**construct**” or “**build**” shall be construed accordingly;
- (g) references to “**development**” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and “**develop**” shall be construed accordingly;
- (h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (i) any reference to day shall mean a reference to a calendar day;
- (j) references to a “**business day**” shall be construed as a reference to a day (other than a Sunday) on which banks in Delhi are generally open for business;

- (k) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (l) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (m) any reference to any period commencing “**from**” a specified day or date and “**till**” or “**until**” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (n) the words importing singular shall include plural and vice versa;
- (o) references to any gender shall include the other and the neutral gender;
- (p) “**lakh**” means a hundred thousand (100,000) and “**crore**” means ten million (10,000,000);
- (q) “**indebtedness**” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (r) references to the “**winding-up**”, “**dissolution**”, “**insolvency**”, or “**reorganisation**” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
- (s) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
- (t) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Independent Engineer, as the case may be, in this behalf and not otherwise;
- (u) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (v) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;
- (w) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on *per diem* basis or otherwise, are mutually agreed genuine pre-estimated loss

and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”); and

- (x) time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to the Authority and/or the Independent Engineer shall be provided free of cost and in three copies, and if the Authority and/or the Independent Engineer is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act, 1897 shall not apply.

1.3 Measurements and arithmetic conventions

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down.

1.4 Priority of agreements, clauses and schedules

1.4.1 This Agreement, and all other agreements and documents forming part of or referred to in this agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

- (a) this Agreement; and
- (b) all other agreements and documents forming part hereof or referred to herein;

i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) above.

1.4.2 Subject to the provisions of Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- (c) between any two Schedules, the Schedule relevant to the issue shall prevail;

- (d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- (e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- (f) between any value written in numerals and that in words, the latter shall prevail.

PART II: THE CONCESSION

ARTICLE 2: SCOPE OF THE PROJECT

2.1 Scope of the Project

The scope of the Project (the “**Scope of the Project**”) shall mean and include, during the Concession Period:

- (a) construction and procurement of the Lambadug Ropeway and [Real Estate Development] on the Site set forth in Schedule-A and as specified in Schedule-B together with provision of Project Facilities as specified in Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D;
- (b) operation and maintenance of the Lambadug Ropeway in accordance with the provisions of this Agreement; and
- (c) performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

2.2 The “Scope of the Project” shall mean and include:

- (i) Designing, financing, construction, commissioning, management, operation and maintenance of a passenger Ropeway between Khalincha to Lambadug in Manali with approx. length of approx. 5.84 km during the Concession Period under this Agreement on Design, Build, Finance, Operate and Transfer (DBFOT) basis as per the Project details set out in this Agreement and its Schedules.
- (ii) Development, construction, installation & operation of aerial ropeway (and other commercial facilities, if any) and arrangements for connectivity between Upper Terminal Point (UTP) at and Lower Terminal Point (LTP) as per the requirements and CEN standards as mentioned in this Agreement.

2.1.1 The Scope of Project shall mean and include during the concession period:

The intended work is to provide connectivity through Aerial Ropeway Transit System. The Scope of work is as follows:

- i) The concessionaire shall develop the areal ropeway system on Monocable Detachable Gondola System/ Any other Ropeways System as per CEN (European) Standards. The system should be duly audited and checked by the authorised auditor of the Concessionaire as specified in the CEN Standards.
- ii) The Construction work includes the development of terminal station at Khalincha and Lambadug on the area allotted by RTDC as per the concept approved by RTDC and as per the development permitted by RTDC/GoHP in that area.
- iii) The Concessionaire shall develop all the necessary infrastructure, required for the effective operation of the ropeway, dispersal of traffic, parking, cloak room, evacuation of people, etc.

- iv) The Concessionaire shall have the freedom to exploit the commercial area in the terminal station at Khalincha and Lambadug.
- v) The Concessionaire shall design the aerial ropeway system to connect between the two terminal stations by fixing the span between two columns, number of columns and height of columns at all point as per its own design but as per the concept of RTDC. However, the Concessionaire shall have to submit the design and specifications of the same to RTDC for its approval.
- vi) The minimum clearance of ropeways above tree line and buildings shall be as per the Letter of Ministry of Environment, Forest and Climate Change, Govt. of India F. No. 5-2/2017-FC dated 5th Aug 2019.
- vii) The concessionaire shall design the entire ropeway system including civil design of terminal, columns, any other structure required as per the concept and alignment on its own cost. However, the same shall be duly approved by RTDC before implementation and execution.
- viii) The Concessionaire shall get final approval from RTDC for the entire ropeway system after its development before the operation. The operation of the ropeway system shall be carried out as per the CEN standards and safety standards rules approved by the government from time to time till the termination or cessation of the concession period, whichever is earlier.
- ix) The concessionaire shall maintain the terminal station development at Khalincha and Lambadug to meet the need of tourist as per the prevailing laws and regulation of the Government.
- x) The concessionaire shall maintain the entire ropeways system that shall be carried out as per the CEN Standards and the prevailing rules for safety and security as laid down by the government from time to time for entire concession period.
- xi) The Concessionaire shall provide safety mechanism (as per CEN Standards) in the entire ropeway system to prevent any accident and mishaps during operation for entire the concession period. Accordingly, the Concessionaire shall submit the safety mechanism plan to RTDC in advance prior to the start of operation.
- xii) The Concessionaire shall provide necessary security system (as per CEN Standards) from the terminal at Khalincha to the terminal at Lambadug to prevent any breach in the security. In order to achieve the same, the Concessionaire shall plan security mechanisms such as, deployment of specialised personal at vantage points, CCTV security system, PA system, alarm system or any other system which it seems suitable at its own cost.
- xiii) The Concessionaire shall provide evacuation system in case of stoppage of ropeway in midway, breaking of wire rope, any failure in the column, failure in machinery, any problems in the cable car, etc. during the operation of ropeway.
- xiv) The Concessionaire shall develop the entire ropeway system considering earthquake factor, so that any mishaps and public accident are prevented during the operations.
- xv) As the ropeway system is being developed in the area under the snow during the winter season, hence the concessionaire shall adopt the design considering such factors and accordingly the operation and maintenance shall be carried out considering the same.
- xvi) The Concessionaire shall provide medical aid system at both the terminal stations by deploying ambulances, first aid, etc.
- xvii) The Concessionaire shall provide efficient firefighting system for the entire ropeway including terminals.
- xviii) The Concessionaire shall submit operational manual, standard operating procedure, maintenance manual, overhauling system of the ropeway, traffic dispersal system, evacuation plan of people for both the terminal, firefighting system, medical aid system, security system, etc. for the approval of RTDC before the operation.
- xix) All the necessary statutory approvals needed for construction and operation shall be taken by the Concessionaire prior to the sanction of plan, during the construction period and operation of services,

etc.

- xx) The concessionaire shall take the power connection directly from the source (Electricity Department) as required for the entire ropeway system.
- xxi) The Concessionaire shall provide alternate power source for existing system in case of emergency, with adequate numbers of generators at both the stations.
- xxii) The concessionaire shall implement and execute any other works related to the smooth operation, run and maintenance of entire ropeway system during the concession period as and when directed by RTDC on its own cost.
- xxiii) The Concessionaire shall arrange at its own cost- Information Network system, including telephone line, OFC cables, etc. as per its requirement.
- xxiv) The Concessionaire shall arrange and develop a system to monitor weather (wind speed, rainfall, etc.) by liasioning with Meteorological Department to ensure safe services.

The ropeway system should be mounted with modern cabins. Further Concessionaire shall introduce cargo car in the system, if required.

ARTICLE 3: GRANT OF CONCESSION

3.1 The Concession

- 3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Authority hereby grants to the Concessionaire the concession set forth herein including the exclusive right, licence and authority to construct, operate and maintain the Project (the “**Concession**”) for a period of [40 (Forty)] years commencing from the Appointed Date, and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein:

Provided that, in the event the Concessionaire shall have discharged its obligations without any material breach for a period of 25 (twenty-five) years from the Appointed Date, it may, by notice to be given no later than the 26th (twenty-sixth) anniversary of the Appointed Date, seek extension of the Concession Period and in such an event, it shall be entitled to additional Concession Period of 20 (twenty) years beyond the 40 (Forty) year period in accordance with the Concession Agreement or on terms and conditions to be mutually agreed upon. For the avoidance of doubt, material breach shall for the purpose thereof mean inter-alia suspension of Concessionaire and/or levy of damages in aggregate exceeding a sum equivalent to 50% (fifty percent) of the Performance Security, over the Concession Period.

- 3.1.2 Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire to:
- (a) Right of Way, access and licence to the Site for the purpose of and to the extent conferred by the provisions of this Agreement;
 - (b) finance and construct the Lambadug Ropeway;
 - (c) manage, operate and maintain the Lambadug Ropeway and regulate the use thereof by third parties;
 - (d) demand, collect and appropriate Fee from users for using the Lambadug Ropeway and refuse usage if the Fee due is not paid;
 - (e) perform and fulfil all of the Concessionaire’s obligations under and in accordance with this Agreement;
 - (f) save as otherwise expressly provided in this Agreement, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement; and
 - (g) neither assign, transfer or sublet or create any lien or encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Lambadug Ropeway nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement.
- 3.1.3 Subject to and in accordance with the provisions of this Agreement and Applicable Laws, the Concession hereby granted shall, without prejudice to the provisions of Clause 3.1.2, entitle the Concessionaire to undertake development, operation and maintenance of the real estate

specified in Schedule-A, [subject to the conditions stipulated in Schedule-B and Schedule-D,] and to exploit such development for commercial purposes (the “**Real Estate Development**”) with the right to sub-license any or all parts thereof by means of Project Agreements.

ARTICLE 4: CONDITIONS PRECEDENT

4.1 Conditions Precedent

- 4.1.1 Save and except as expressly provided in Articles 4, 9, 10, 24, 34, 44 and 47, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the “**Conditions Precedent**”).
- 4.1.2 The Concessionaire may, upon providing the Performance Security to the Authority in accordance with Article 9, at any time after [90 (ninety)] days from the date of this Agreement or on an earlier day acceptable to the Authority, by notice require the Authority to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 30 (thirty) days of the notice, or such longer period not exceeding 60 (sixty) days as may be specified therein, and the Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:
- (a) procured for the Concessionaire the Right of Way to the Site in accordance with the provisions of Clause 10.3.1;
 - (b) issued the Fee Notification;
 - (c) procured for the Concessionaire the Right of Way to *****;²
 - (d) procured all Applicable Permits relating to environmental protection and conservation of the Site;
- 4.1.3 The Conditions Precedent required to be satisfied by the Concessionaire prior to the Appointed Date shall be deemed to have been fulfilled when the Concessionaire shall have:
- (a) provided Performance Security to the Authority;
 - (b) executed and procured execution of the Escrow Agreement;
 - (c) executed and procured execution of the Substitution Agreement;
 - (d) procured all the Applicable Permits specified in Schedule-E unconditionally or if subject to conditions, then all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full and such Applicable Permits are in full force and effect;
 - (e) executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;
 - (f) delivered to the Authority 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders;

² If completion of construction on any part of the Site is considered critical for issue of Provisional/ Completion Certificate, such part shall be specified in this Sub-clause so that it does not form part of the Appendix referred to in Clause 10.3.1, on or after the Appointed Date.

- (g) delivered to the Authority from {the Consortium Members, their respective} confirmation, in original, of the correctness of their representations and warranties set forth in Sub clauses (k), (l) and (m) of clause 7.1 of this Agreement; and
- (h) delivered to the Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof:

Provided that upon request in writing by the Concessionaire, the Authority may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.3. For the avoidance of doubt, the Authority may, in its sole discretion, grant any waiver hereunder with such conditions as it may deem fit.

- 4.1.4 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.
- 4.1.5 The Parties shall notify each other in writing at least once a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

4.2 Damages for delay by the Authority

In the event that (i) the Authority does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Authority shall pay to the Concessionaire Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 100% (hundred percent) of the Performance Security.

4.3 Damages for delay by the Concessionaire

In the event that (i) the Concessionaire does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.3 within a period of 180 (one hundred and eighty) days from the date of this Agreement, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.2 or other breach of this Agreement by the Authority, or due to Force Majeure, the Concessionaire shall pay to the Authority, Damages in an amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 100% (hundred percent) of the Performance Security.

ARTICLE 5: OBLIGATIONS OF THE CONCESSIONAIRE

5.1 Obligations of the Concessionaire

- 5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Lambadug Ropeway and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2 The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.3 Subject to the provisions of Clauses 5.1.1 and 5.1.2, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 5.1.4 The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
 - (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits (other than those set forth in Clause 4.1.2), and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
 - (b) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used or incorporated into the Lambadug Ropeway;
 - (c) perform and fulfil its obligations under the Financing Agreements;
 - (d) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
 - (e) make reasonable efforts for acquisition of land required for the purposes of the Agreement;
 - (f) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
 - (g) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
 - (h) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
 - (i) transfer the Lambadug Ropeway to the Authority upon Termination of this Agreement, in accordance with the provisions thereof.

5.2 Obligations relating to Project Agreements

- 5.2.1 It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Concessionaire from its obligations or liability hereunder.
- 5.2.2 The Concessionaire shall submit to the Authority the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that no review and/or observation of the Authority and/or its failure to review and/or convey its observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.
- 5.2.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire.
- 5.2.4 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire shall not sub-licence, assign or in any manner create an Encumbrance on any Project Asset forming part of Real Estate Development without prior written approval of the Authority, which approval the Authority may, in its discretion, deny if such sub-licence, assignment or Encumbrance has or may have a material adverse effect on the rights and obligations of the Authority under this Agreement or Applicable Laws; provided that the provisions of this Clause 5.2.4 shall not apply where the Concessionaire grants a sub-licence for a cumulative period, including any renewals thereof, not exceeding 11 (eleven) months. For the avoidance of doubt, it is agreed that if the Authority does not deny the approval required under this Clause 5.2.4 within a period of 60 (sixty) days from the date of receiving a notice along with full particulars and documents from the Concessionaire, the approval shall be deemed to have been granted to the extent such sub-licence, assignment or Encumbrance, as the case may be, is in accordance with the provisions of this Agreement.
- 5.2.5 Notwithstanding anything to the contrary contained in Clause 5.2.4, the Concessionaire shall not sub-licence, assign or in any manner create an Encumbrance on any Project Asset forming part of Real Estate Development at any time prior to the [3rd (third) anniversary] of the Appointed Date. For the avoidance of doubt, the restriction imposed herein shall not apply to assignment under the Substitution Agreement.

- 5.2.6 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the “**Covenant**”). For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party(ies) of each of the Project Agreements, whereunder such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.

5.3 Obligations relating to Change in Ownership

- 5.3.1 The Concessionaire shall not undertake or permit any Change in Ownership, wholly or partly, except with the prior approval of the Authority.
- 5.3.2 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that:
- (i) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of not less than 25% (twenty five per cent) of the total Equity of the Concessionaire; or
 - (ii) acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him;

shall constitute a Change in Ownership requiring prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Concessionaire without such prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

For the purposes of this Clause 5.3.2:

- (a) the expression “acquirer”, “control” and “person acting in concert” shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Concessionaire;

- (b) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and
- (c) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company, holding directly or through one or more companies (whether situated in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of not less than 25% (twenty five per cent) of the Equity of the Concessionaire, shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.

5.4 Employment of foreign nationals

The Concessionaire acknowledges, agrees and undertakes that employment of foreign personnel by the Concessionaire and/or its contractors and their sub-contractors shall be subject to grant of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Concessionaire and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Concessionaire or any of its contractors or sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Concessionaire from the performance and discharge of its obligations and liabilities under this Agreement.

5.5 Employment of trained personnel

The Concessionaire shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective functions.

5.6 Obligations relating to medical aid

For providing medical aid to the Users, the Concessionaire shall, set up and operate a medical aid post at the Project Site equipped to render first aid and to assist in accessing emergency medical aid from hospitals/ clinics in the vicinity.

5.7 Obligations relating to basic amenities

- 5.7.1** The Concessionaire shall, during the entire term of the Concession Period, in addition to the infrastructure required to be developed, operated and maintained by it under this Agreement, provide and maintain amenities, in adequate numbers in accordance with Good Industry Practice for non-discriminatory use by the Users of the Project. These shall include drinking water facilities, sanitation facilities, toilets, telephone and communication facilities.
- 5.7.2** The Concessionaire shall, during the entire term of the Concession Period, provide and procure hygienic and safe low-cost eateries and canteens, , in adequate numbers and in accordance with Good Industry Practice.

5.8 Obligations relating to noise control

The Concessionaire shall take all such measures as may be necessary in accordance with Applicable Laws and Good Industry Practice to control and mitigate the noise arising from the Project and its impact on Users and the neighbourhood.

5.9 Sole purpose of the Concessionaire

The Concessionaire having been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the Concessionaire or any of its subsidiaries shall not, except with the previous written consent of the Authority, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

5.10 Branding of Lambadug Ropeway

The Lambadug Ropeway or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Concessionaire or its shareholders. The Concessionaire undertakes that it shall not, in any manner, use the name or entity of Lambadug Ropeway to advertise or display its own identity, brand equity or business interests, including those of its shareholders, save and except as may be necessary in the normal course of business. For the avoidance of doubt, it is agreed that the Concessionaire may display its own name at a spot where other public notices are displayed for the Users. It is further agreed that the Lambadug Ropeway shall be known, promoted, displayed and advertised by the name of *****.

5.11 Facilities for physically challenged and elderly persons

The Concessionaire shall, in conformity with the guidelines issued from time to time by the Ministry of Social Justice and Empowerment, or a substitute thereof, procure a barrier free environment for the physically or visually challenged and for elderly persons using the Lambadug Ropeway.

5.12 Obligations relating to maintenance of the Ropeway

The Concessionaire agrees that it shall enter into a maintenance agreement with the original equipment or technical supplier of the equipment for a term of 5 (five) years following COD. The Concessionaire shall furnish an undertaking to certify that it is in compliance with this obligation under Clause 5.12 no later than [60] days prior to COD.

5.13 Obligations relating to Procurement under “Make in India”

The concessionaire agrees that the entire work of manufacturing of Ropeways and associated support structures shall be done in India. “Make in India” is a mandate for all Ropeways Project as per the Order No. 11014/18/2019-S&T dated 09/10/2020.

The revision of Public Procurement (Preference to Make in India) order 2017 of Department of promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Govt. of India dated 04th June 2020 and amendment in GFR 2017 for global tender enquiry as notified by Department of Expenditure, Ministry of Finance, Govt of India dated 15th May 2020 shall be followed in this project.

ARTICLE 6: OBLIGATIONS OF THE AUTHORITY

6.1 Obligations of the Authority

- 6.1.1 The Authority shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 6.1.2 The Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:
- (a) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project;
 - (b) upon written request from the Concessionaire, provide reasonable assistance to the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;
 - (c) procure that no barriers are erected or placed on or about the Lambadug Ropeway by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency, national security, law and order or collection of inter-state taxes;
 - (d) make best endeavours to procure that no local Tax, or charge is levied or imposed on the use of whole or any part of the Lambadug Ropeway;
 - (e) subject to and in accordance with the Applicable Laws, grant to the Concessionaire the authority to regulate traffic on the Lambadug Ropeway;
 - (f) assist the Concessionaire in procuring police assistance for regulation of traffic, removal of trespassers and security on or at the Lambadug Ropeway;
 - (g) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
 - (h) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
 - (i) upon written request from the Concessionaire and subject to the provisions of Clause 5.4, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for the purposes of discharge by the Concessionaire or its Contractors their obligations under this Agreement and the Project Agreements.

ARTICLE 7: REPRESENTATIONS AND WARRANTIES

7.1 Representations and warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

- (a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (f) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association {or those of any member of the Consortium} or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which

in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;

- (k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3 and that the {selected bidder/ Consortium Members}, together with {its/ their} Associates, hold not less than 51% (fifty-one percent) of its issued and paid up Equity as on the date of this Agreement; and that no member of the Consortium whose technical and financial capacity was evaluated for the purposes of pre-qualification and short-listing in response to the Request for Qualification shall hold less than 26% (twenty six per cent) of such Equity during the Construction Period;
- (l) {the selected bidder/ Consortium Members and its/their} Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- (m) {the selected bidder/ each Consortium Member} is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Authority to enter into this Agreement with the Concessionaire pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (n) all its rights and interests in the Lambadug Ropeway shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;
- (o) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (p) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith; and
- (q) all information provided by the {selected bidder/ Consortium Members} in response to the Request for Qualification and Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects.

7.2 Representations and warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;

- (b) it has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under this Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Authority's ability to perform its obligations under this Agreement;
- (f) it has complied with Applicable Laws in all material respects;
- (g) it has the right, power and authority to manage and operate the Lambadug Ropeway up to the Appointed Date; and
- (h) it has good and valid right to the Site and has power and authority to grant a licence in respect thereto to the Concessionaire.

7.3 Disclosure

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of either Party under this Agreement.

ARTICLE 8: DISCLAIMER

8.1 Disclaimer

- 8.1.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Qualification, Request for Proposals, Scope of the Project, Specifications and Standards, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, traffic volumes and all information provided by the Authority or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Authority in this regard.
- 8.1.2 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, {the Consortium Members and their} Associates or any person claiming through or under any of them.
- 8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement or render it voidable.
- 8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the Authority contained in Clause 8.1.1 and shall not in any manner shift to the Authority any risks assumed by the Concessionaire pursuant to this Agreement.
- 8.1.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Authority shall not be liable in any manner for such risks or the consequences thereof.

PART III: DEVELOPMENT AND OPERATIONS

ARTICLE 9: PERFORMANCE SECURITY

9.1 Performance Security

- 9.1.1 The Concessionaire shall, for the performance of its obligations hereunder during the Construction Period, provide to the Authority no later than 180 (one hundred and eighty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs. 3.24 crore in the form set forth in Schedule-F (the “**Performance Security**”). Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Concessionaire.
- 9.1.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Concessionaire within a period of 180 (one hundred and eighty) days from the date of this Agreement, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

9.2 Appropriation of Performance Security

Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such Concessionaire Default or failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Concessionaire shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid, failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 37. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Concessionaire shall be entitled to an additional Cure Period of 90 (ninety) days for remedying the Concessionaire Default or to meet any Condition Precedent, and in the event of the Concessionaire not curing its default or meeting such Condition Precedent within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 37.

9.3 Release of Performance Security

The Performance Security shall remain in force and effect for a period of one year from the Appointed Date, but shall be released earlier upon the Concessionaire expending on Project construction an aggregate sum that is not less than 20% (twenty per cent) of the Total Project Cost; provided, however, that the Performance Security shall not be released if the Concessionaire is in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars which establish satisfaction of

the requirements specified under this Clause 9.3, the Authority shall release the Performance Security forthwith.

ARTICLE 10: RIGHT OF WAY

10.1 The Site

The site of the Lambadug Ropeway shall comprise of the real estate described in Schedule-A and in respect of which the Right of Way shall be provided and granted by the Authority to the Concessionaire as a licensee under and in accordance with this Agreement (the “**Site**”). For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the real estate required for the Lambadug Ropeway as set forth in Schedule-A and includes Real Estate Development.

10.2 Licence, Access and Right of Way

- 10.2.1 The Authority hereby grants to the Concessionaire access to the Site for carrying out any surveys, investigations and soil tests that the Concessionaire may deem necessary during the Development Period, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Concessionaire on or about the Site pursuant hereto in the event of Termination or otherwise.
- 10.2.2 In consideration of the Concession Fee, this Agreement and the covenants and warranties on the part of the Concessionaire herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from the Appointed Date, leave and licence rights in respect of all the land (along with any buildings, constructions or immovable assets, if any, thereon) comprising the Site which is described, delineated and shown in Schedule-A hereto (the “**Licensed Premises**”), on an “as is where is” basis, free of any Encumbrances, to develop, operate and maintain the said Licensed Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Licensed Premises, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.
- 10.2.3 It is expressly agreed that the licence granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the licence, upon the Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Site by the Concessionaire or its sub-licensees, the licence in respect of the Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.
- 10.2.5 The Concessionaire hereby irrevocably appoints the Authority (acting directly or through a nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the licence granted hereunder at any time after the Concession Period has expired or has been terminated earlier in terms hereof, a sufficient proof of which will be the declaration of any duly authorised officer of the Authority, and the Concessionaire consents to it being registered for this purpose.
- 10.2.6 It is expressly agreed that trees on the Site are property of the Authority except that the Concessionaire shall be entitled to exercise usufructory rights thereon during the Concession Period.

10.3 Procurement of the Site

- 10.3.1 Pursuant to the notice specified in Clause 4.1.2, the Authority Representative and the Concessionaire shall, on a mutually agreed date and time, inspect the Site and prepare a memorandum containing an inventory of the Site including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Site. Such memorandum shall have appended thereto an appendix (the “**Appendix**”) specifying in reasonable detail those parts of the Site to which vacant access and Right of Way has not been granted to the Concessionaire. Signing of the memorandum, in two counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall, subject to the provisions of Clause 10.2.2, be deemed to constitute a valid licence and Right of Way to the Concessionaire for free and unrestricted use and development of the vacant and unencumbered Site during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For the avoidance of doubt, it is agreed that valid licence and Right of Way with respect to the parts of the Site as set forth in the Appendix shall be deemed to have been granted to the Concessionaire upon vacant access thereto being provided by the Authority to the Concessionaire.
- 10.3.2 Without prejudice to the provisions of Clause 10.3.1, the Parties hereto agree that on or prior to the Appointed Date, the Authority shall have granted vacant access and Right of Way such that the Appendix shall not include more than 20% (twenty per cent) of the total area of the Site required and necessary for the Lambadug Ropeway, and in the event Financial Close is delayed solely on account of delay in grant of such vacant access and Right of Way, the Authority shall be liable to payment of Damages under and in accordance with the provisions of Clause 4.2.
- 10.3.3 On and after signing the memorandum referred to in Clause 10.3.1, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.
- 10.3.4 The Authority shall make best efforts to procure and grant, no later than 90 (ninety) days from the Appointed Date, the Right of Way to the Concessionaire in respect of all land included in the Appendix, and in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Concessionaire, it shall pay to the Concessionaire Damages in a sum calculated at the rate of Rs. 50 (Rupees fifty) per day for every 1,000 (one thousand) square metres or part thereof, commencing from the 91st (ninety first) day of the Appointed Date and until such Right of Way is procured.
- 10.3.5 Upon receiving Right of Way in respect of any land included in the Appendix, the Concessionaire shall complete the Construction Works thereon within a reasonable period, to be determined by the Independent Engineer, in accordance with Good Industry Practice; provided that the issue of Provisional Certificate shall not be affected or delayed on account of vacant access to any part of the Site not being granted to the Concessionaire or any construction on such part of the Site remaining incomplete on the date of Tests on account of the delay or denial of such access thereto. For the avoidance of doubt, it is expressly agreed that Construction Works on all lands, for which Right of Way is granted within 90 (ninety) days of the Appointed Date, shall be completed before the Project Completion Date. It is further agreed that the obligation of the Concessionaire to complete the affected Construction Works shall subsist so long as the Authority continues to pay the Damages specified herein, and upon the

Authority ceasing to pay such Damages after giving 60 (sixty) days' notice thereof to the Concessionaire, the obligation of the Concessionaire to complete such works on such part of the Site shall cease forthwith. It is also expressly agreed that completion of the respective Construction Works, within the time determined by the Independent Engineer hereunder, shall be deemed to be Project Milestones for the purposes of levy and recovery of Damages under and in accordance with the provisions of Clause 12.3.2.

- 10.3.6 [The Concessionaire may procure at its cost and expense and on its own, the land that may be required by it for additional facilities and the Authority shall have no obligation or liability in respect thereof. For the avoidance of doubt, the Concessionaire shall seek prior consent of the Authority to connect any Additional Facility to the Project Facilities and such consent shall not be unreasonably withheld. For avoidance of doubt, the land procured by the Concessionaire for Additional Facilities shall not form part of the Site and the ownership of such land shall remain with the Concessionaire in the event of Termination or otherwise.]

10.4 Site to be free from Encumbrances

Subject to the provisions of Clause 10.3, the Site shall be made available by the Authority to the Concessionaire pursuant hereto free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Concession Period, except insofar as otherwise expressly provided in this Agreement. For the avoidance of doubt, it is agreed that existing rights of way, easements, privileges, liberties and appurtenances to the Licensed Premises shall not be deemed to be Encumbrances. It is further agreed that the Concessionaire accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Site.

10.5 Protection of Site from encroachments

During the Concession Period, the Concessionaire shall protect the Site from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Contractor or other person claiming through or under the Concessionaire to place or create any Encumbrance or security interest over all or any part of the Site or the Project Assets, or on any rights of the Concessionaire therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

10.6 Special/temporary right of way

The Concessionaire shall bear all costs and charges for any special or temporary right of way required by it in connection with access to the Site. The Concessionaire shall obtain at its cost such facilities on or outside the Site as may be required by it for the purposes of the Lambadug Ropeway and the performance of its obligations under this Agreement.

10.7 Access to the Authority

- 10.7.1 The licence, right of way and right to the Site granted to the Concessionaire hereunder shall always be subject to the right of access of the Authority and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

- 10.7.2 The Concessionaire shall allow free access to the Site at all times for the authorised representatives of the Authority, lenders, Independent Engineer, and for the persons duly authorised by any Government Instrumentality to inspect the Project or Project Facilities or to investigate any matter within their authority, and upon reasonable notice, the Concessionaire shall provide to such persons, reasonable assistance necessary to carry out their respective duties and functions.
- 10.7.3 The Concessionaire shall, for the purpose of operation and maintenance of any utility specified in Article 11, allow free access to the Site at all times for the authorised persons of the controlling body of such utility.

10.8 Geological and archaeological finds

It is expressly agreed that mining, geological or archaeological rights do not form part of the license granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Site shall vest in and belong to the Authority or the concerned Government Instrumentality. The Concessionaire shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Authority forthwith of the discovery thereof and comply with such instructions as the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Concessionaire hereunder shall be reimbursed by the Authority. It is also agreed that the Authority shall ensure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period.

ARTICLE 11: UTILITIES, ASSOCIATED ROADS AND TREES

11.1 Existing utilities and roads

Notwithstanding anything to the contrary contained herein, the Concessionaire shall ensure that the respective entities owning the existing roads, right of way or utilities on, under or above the Site are enabled by it to keep such utilities in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the authority of the controlling body of that road, right of way or utility, and the Authority shall, upon written request from the Concessionaire, initiate and undertake at the Concessionaire's cost, legal proceedings for acquisition of any right of way necessary for such diversion.

11.2 Shifting of obstructing utilities

The Concessionaire shall, subject to Applicable Laws and with assistance of the Authority, undertake shifting of any utility including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Site if and only if such utility causes or shall cause a material adverse effect on the construction, operation or maintenance of the Lambadug Ropeway. The cost of such shifting shall be borne by the Authority or by the entity owning such utility, if the Authority so directs, and in the event of any delay in shifting thereof, the Concessionaire shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay on the part of the entity owning such electric lines, water pipes or telephone cables, as the case may be.

11.3 New utilities and roads

- 11.3.1 The Concessionaire shall allow, subject to such conditions as the Authority may specify, access to, and use of the Site for laying telephone lines, water pipes, electric cables or other public utilities. Where such access or use causes any financial loss to the Concessionaire, it may require the user of the Site to pay compensation or damages as per Applicable Laws. For the avoidance of doubt, it is agreed that use of the Site under this Clause shall not in any manner relieve the Concessionaire of its obligation to maintain the Lambadug Ropeway in accordance with this Agreement and any damage caused by such use shall be restored forthwith.

11.4 Felling of trees

The Authority shall assist the Concessionaire in obtaining the Applicable Permits for felling of trees to be identified by the Authority for this purpose if and only if such trees cause a material adverse effect on the construction, operation or maintenance of the Lambadug Ropeway. The cost of such felling shall be borne by the Authority, and in the event of any delay in felling thereof for reasons beyond the control of the Concessionaire, it shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay in the felling of trees. For the avoidance of doubt, the Parties hereto agree that the felled trees shall be deemed to be owned by the Authority and shall be disposed in such manner and subject to such conditions as the Authority may in its sole discretion deem appropriate.

ARTICLE 12: CONSTRUCTION OF THE LAMBADUG ROPEWAY

12.1 Obligations prior to commencement of construction

Prior to commencement of Construction Works, the Concessionaire shall:

- (a) submit to the Authority and the Independent Engineer its detailed design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in Schedule-G;
- (b) appoint its representative duly authorised to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement;
- (c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, the Applicable Laws and Applicable Permits and Specifications and Standards; and
- (d) make its own arrangements for quarrying of materials needed for the Lambadug Ropeway under and in accordance with the Applicable Laws and Applicable Permits.

12.212.2 Drawings

In respect of the Concessionaire's obligations relating to the Drawings of the Lambadug Ropeway as set forth in Schedule-H, the following shall apply:

- (a) The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, 3 (three) copies each of all Drawings to the Independent Engineer for review.
- (b) By submitting the Drawings for review to the Independent Engineer, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering, including field construction criteria related thereto, are in conformity with the Scope of the Project and Specifications and Standards.
- (c) Within 15 (fifteen) days of the receipt of the Drawings, the Independent Engineer shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and Specifications and Standards. The Concessionaire shall not be obliged to await the observations of the Independent Engineer on the Drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin or continue Construction Works at its own discretion and risk.
- (d) If the aforesaid observations of the Independent Engineer indicate that the Drawings are not in conformity with the Scope of the Project or Specifications and Standards, such Drawings shall be revised by the Concessionaire and resubmitted to the Independent Engineer for review. The Independent Engineer shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings.

- (e) No review and/or observation of the Independent Engineer and/or its failure to review and/or convey its observations on any Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Engineer or the Authority be liable for the same in any manner.
- (f) Without prejudice to the foregoing provisions of this Clause 12.2, the Concessionaire shall submit to the Authority for review and comments, its Drawings relating to alignment of the Lambadug Ropeway and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, within 30 (thirty) days of the receipt of such Drawings. The provisions of this Clause 12.2 shall apply *mutatis mutandis* to the review and comments hereunder.
- (g) Within 90 (ninety) days of the Project Completion Date, the Concessionaire shall furnish to the Authority and the Independent Engineer a complete set of as-built Drawings, in 2 (two) hard copies and in micro film form or in such other medium as may be acceptable to the Authority, reflecting the Lambadug Ropeway as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Lambadug Ropeway and setback lines, if any, of the buildings and structures forming part of Project Facilities.

12.3 Construction of the Ropeway

- 12.3.1 On or after the Appointed Date, the Concessionaire shall undertake construction of the Lambadug Ropeway as specified in Schedule-B and Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D. The [**** day] from the Appointed Date shall be the scheduled date for completion of the Lambadug Ropeway (the “**Scheduled Date**”) and the Concessionaire agrees and undertakes that construction of the Lambadug Ropeway shall be completed on or before the Scheduled Date. For the avoidance of doubt, it is agreed that the Project Completion Schedule and Scheduled Date shall not apply to Real Estate Development.
- 12.3.2 The Concessionaire shall construct the Lambadug Ropeway in accordance with the Project Completion Schedule set forth in Schedule-G. In the event that the Concessionaire fails to achieve any Project Milestone within a period of 90 (ninety) days from the date set forth for such Milestone in Schedule-G, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until such Milestone is achieved; provided that if any or all Project Milestones or the Scheduled Date are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-G shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-G has been amended as above; provided further that in the event Project Completion Date is achieved on or before the Scheduled Date, the Damages paid under this Clause 12.3.2 shall be refunded by the Authority to the Concessionaire, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.3.2 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.
- 12.3.3 In the event that the Lambadug Ropeway is not completed within [270 (two hundred and seventy)] days from the Scheduled Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.

ARTICLE 13: MONITORING OF CONSTRUCTION

13.1 Monthly progress reports

During the Construction Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority and the Independent Engineer a monthly report on progress of the Construction Works and shall promptly give such other relevant information as may be required by the Independent Engineer.

13.2 Inspection

During the Construction Period, the Independent Engineer shall inspect the Lambadug Ropeway periodically as per Specifications and Standards and submit a report of such inspection (the “**Inspection Report**”) to the Authority stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Scope of the Project and Specifications and Standards. It shall send a copy of the Inspection Report to the Authority and the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Independent Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever. The scope of work for the Independent Engineer is provided in Schedule- I.

13.3 Tests

- 13.3.1 For determining that the Construction Works conform to the Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the Independent Engineer from time to time, in accordance with Good Industry Practice for quality assurance. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the Independent Engineer and furnish the results thereof to the Independent Engineer. One half of the costs incurred on such tests, and to the extent certified by the Independent Engineer as reasonable, shall be reimbursed by the Authority to the Concessionaire. For the avoidance of doubt, the costs to be incurred on any Test which is undertaken for determining the rectification of any defect or deficiency in construction shall be borne solely by the Concessionaire.
- 13.3.2 In the event that results of any tests conducted under this Clause 13.3 establish any defects or deficiencies in the Construction Works, the Concessionaire shall carry out remedial measures and furnish a report to the Independent Engineer in this behalf. The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests to determine that such remedial measures have brought the Construction Works into compliance with Specifications and Standards, and the procedure set forth in this Clause 13.3, shall be repeated until such Construction Works conform to the Specifications and Standards. For the avoidance of doubt, it is agreed that tests pursuant to this Clause 13.3 shall be undertaken in addition to and independent of the tests that shall be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Concessionaire to the Independent Engineer forthwith.

13.4 Delays during construction

Without prejudice to the provisions of Clause 12.3.2, if the Concessionaire does not achieve any of the Project Milestones or the Independent Engineer shall have reasonably determined

that the rate of progress of Construction Works is such that commissioning of Lambadug Ropeway is not likely to be achieved by the Scheduled Date, it shall notify the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Independent Engineer in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Project Completion Date.

13.5 Suspension of unsafe Construction Works

- 13.5.1 Upon recommendation of the Independent Engineer to this effect, the Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Authority, such work threatens the safety of the Users and pedestrians.
- 13.5.2 The Concessionaire shall, pursuant to the notice under Clause 13.5.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works and the Users. The Concessionaire may, by notice, require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Independent Engineer, the Authority shall either revoke such suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this Clause 13.5 shall be repeated until the suspension hereunder is revoked.
- 13.5.3 Subject to the provisions of Clause 34.7, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (the “**Preservation Costs**”), shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the Authority, the Preservation Costs shall be borne by the Authority.
- 13.5.4 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine any extension of the dates set forth in the Project Completion Schedule to which the Concessionaire is reasonably entitled, and shall notify the Authority accordingly whereupon the Authority shall extend such Project Completion Schedule dates in accordance with the recommendations of the Independent Engineer. In the event that the Scheduled Date is extended pursuant hereto, the Concession Period shall be deemed to be extended by a period equal in length to the period of extension of the Scheduled Date.

13.6 Video recording

During the Construction Period, the Concessionaire shall provide to the Authority for every calendar quarter, a video recording, which will be compiled into a 3 (three)-hour compact disc or digital video disc, as the case may be, covering the status and progress of Construction Works in that quarter. The first such video recording shall be provided to the Authority within 7 (seven) days of the Appointed Date and thereafter, no later than 15 (fifteen) days after the close of each quarter.

ARTICLE 14: COMPLETION CERTIFICATE

14.1 Tests

- 14.1.1 At least 30 (thirty) days prior to the likely completion of the Lambadug Ropeway, the Concessionaire shall notify the Independent Engineer of its intent to subject the Lambadug Ropeway to Tests. The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Concessionaire and notified to the Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Engineer failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by giving not less than 10 (ten) day notice to the Independent Engineer. For the avoidance of doubt, it is agreed that the provisions of this Article 14 shall not apply to Real Estate Development.
- 14.1.2 All Tests shall be conducted in accordance with Schedule- J. The Independent Engineer shall observe, monitor and review the results of the Tests to determine compliance of the Lambadug Ropeway with Specifications and Standards and if it is reasonably anticipated or determined by the Independent Engineer during the course of any Test that the performance of the Lambadug Ropeway or any part thereof does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Independent Engineer shall provide to the Concessionaire and the Authority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent Engineer may require the Concessionaire to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Lambadug Ropeway with Specifications and Standards.

14.2 Completion Certificate

Upon completion of Construction Works and the Independent Engineer determining the Tests to be successful, it shall forthwith issue to the Concessionaire and the Authority a certificate substantially in the form set forth in Schedule-K (the “**Completion Certificate**”).

14.3 Provisional Certificate

- 14.3.1 The Independent Engineer may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Schedule-K (the “**Provisional Certificate**”) if the Tests are successful and the Lambadug Ropeway can be safely and reliably placed in commercial operation though certain associated works and / or facilities for users forming part thereof are outstanding and not yet complete. In such an event, the Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire (the “**Punch List**”); provided that the Independent Engineer shall not withhold the Provisional Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the Authority.

14.4 Completion of Punch List items

- 14.4.1 All items in the Punch List shall be completed by the Concessionaire within 90 (ninety) days of the date of issue of the Provisional Certificate and for any delay thereafter, other than for reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be

entitled to recover Damages from the Concessionaire to be calculated and paid for each day of delay until all items are completed, at the lower of (a) 0.1% (zero point one per cent) of the Performance Security, and (b) 0.2% (zero point two per cent) of the cost of completing such items as estimated by the Independent Engineer. Subject to payment of such Damages, the Concessionaire shall be entitled to a further period not exceeding 120 (one hundred and twenty) days for completion of the Punch List items. For the avoidance of doubt, it is agreed that if completion of any item is delayed for reasons solely attributable to the Authority or due to Force Majeure, the completion date thereof shall be determined by the Independent Engineer in accordance with Good Industry Practice, and such completion date shall be deemed to be the date of issue of the Provisional Certificate for the purposes of Damages, if any, payable for such item under this Clause 14.4.1.

- 14.4.2 Upon completion of all Punch List items, the Independent Engineer shall issue the Completion Certificate. Failure of the Concessionaire to complete all the Punch List items within the time set forth in Clause 14.4.1 for any reason, other than conditions constituting Force Majeure or for reasons solely attributable to the Authority, shall entitle the Authority to terminate this Agreement.

14.5 Rescheduling of Tests

If the Independent Engineer certifies to the Authority and the Concessionaire that it is unable to issue the Completion Certificate or Provisional Certificate, as the case may be, because of events or circumstances on account of which the Tests could not be held or had to be suspended, the Concessionaire shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable.

ARTICLE 15: ENTRY INTO COMMERCIAL SERVICE

15.1 Commercial Operation Date (COD)

Commissioning of Lambadug Ropeway shall be deemed to be complete when the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 14, and accordingly the commercial operation date of the Project shall be the date on which such Completion Certificate or the Provisional Certificate is issued]⁴ (the “COD”). The Lambadug Ropeway shall enter into commercial service on COD whereupon the Concessionaire shall be entitled to demand and collect Fee in accordance with the provisions of Article 27.

15.2 Damages for delay

Subject to the provisions of Clause 12.3, if COD does not occur prior to the 91st (ninety first) day after the Scheduled Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until COD is achieved.

ARTICLE 16: CHANGE OF SCOPE

16.1 Change of Scope

- 16.1.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the Scope of the Project as contemplated by this Agreement (the “**Change of Scope**”). Any such Change of Scope shall be made in accordance with the provisions of this Article 16 and the costs thereof shall be expended by the Concessionaire and reimbursed to it by the Authority in accordance with Clause 16.3.
- 16.1.2 If the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved services to the Users, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 60 (sixty) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefor in accordance with this Article 16 or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope.
- 16.1.3 Any works or services which are provided under and in accordance with this Article 16 shall form part of the Lambadug Ropeway and the provisions of this Agreement shall apply *mutatis mutandis* to such works or services.

16.2 Procedure for Change of Scope

- 16.2.1 In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder (the “**Change of Scope Notice**”). Any change of scope of work will also comply with requisite Specifications and Standards wherever applicable.
- 16.2.2 Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary Documentation in support of:
- (a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period; and
 - (b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Authority to its contractors, along with the proposed premium/discount on such rates; provided that the cost incurred by the Concessionaire in providing such information shall be reimbursed by the Authority to the extent such cost is certified by the Independent Engineer as reasonable.
- 16.2.3 Upon receipt of information set forth in Clause 16.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Concessionaire, and the Parties shall, with the assistance of the Independent Engineer thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Authority

shall issue an order (the “**Change of Scope Order**”) requiring the Concessionaire to proceed with the performance thereof. In the event that the Parties are unable to agree, the Authority may, by issuing a Change of Scope Order, require the Concessionaire to proceed with the performance thereof pending resolution of the Dispute, or carry out the works in accordance with Clause 16.5.

- 16.2.4 The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to the works undertaken by the Concessionaire under this Article 16.

16.3 Payment for Change of Scope

- 16.3.1 Within 30 (thirty) days of issuing a Change of Scope Order, the Authority shall make an advance payment to the Concessionaire in a sum equal to 20% (twenty per cent) of the cost of Change of Scope as agreed hereunder, and in the event of a Dispute, 20% (twenty per cent) of the cost assessed by the Independent Engineer. The Concessionaire shall, after commencement of work, present to the Authority bills for payment in respect of the works in progress or completed works, as the case may be, supported by such Documentation as is reasonably sufficient for the Authority to determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills, the Authority shall disburse to the Concessionaire such amounts after making a proportionate deduction for the advance payment made hereunder, and in the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure.

- 16.3.2 Notwithstanding anything to the contrary contained in Clause 16.3.1, all costs arising out of any Change of Scope Order issued during the Construction Period shall be borne by the Concessionaire, subject to an aggregate ceiling of 0.25% (zero point two five per cent) of the Total Project Cost. Any costs in excess of the ceiling shall be reimbursed by the Authority in accordance with Clause 16.3.1. In the event that the total cost arising out of Change of Scope Orders (if any) issued prior to the Project Completion Date is less than 0.25% (zero point two five per cent) of the Total Project Cost, the difference thereof shall be credited by the Concessionaire to the Safety Fund within a period of 180 (one hundred and eighty) days of the Project Completion Date. For the avoidance of doubt, it is agreed that the aforesaid 0.25% (zero point two five per cent) of the Total Project Cost shall, to the extent borne by the Concessionaire, be deemed to form part of the actual capital cost of the Project.

16.4 Restrictions on certain works

- 16.4.1 Notwithstanding anything to the contrary contained in this Article 16, but subject to the provisions of Clause 16.4.2, the Authority shall not require the Concessionaire to undertake any works or services if such works or services are likely to delay completion of the Lambadug Ropeway; provided that in the event that the Authority considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of or affected by such Order shall not be reckoned for purposes of determining completion of Lambadug Ropeway and issuing the Provisional Certificate.
- 16.4.2 Notwithstanding anything to the contrary contained in this Article 16, the Concessionaire shall be entitled to nullify any Change of Scope Order if it causes the cumulative costs relating to all the Change of Scope Orders to exceed 5% (five per cent) of the Total Project Cost in any continuous period of 3 (three) years immediately preceding the date of such Change of Scope Order or if such cumulative costs exceed 20% (twenty per cent) of the Total Project Cost at any time during the Concession Period.

16.5 Power of the Authority to undertake works

- 16.5.1 Notwithstanding anything to the contrary contained in Clauses 16.1.1, 16.2 and 16.3, the Authority may, after giving notice to the Concessionaire and considering its reply thereto, award any works or services, contemplated under Clause 16.1.1, to any person on the basis of open competitive bidding; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 2% (two per cent) of the bid amount to the Authority^{\$}, and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten percent) thereof. It is also agreed that the Concessionaire shall provide access, assistance and cooperation to the person who undertakes the works or services hereunder.
- 16.5.2 The works undertaken in accordance with this Clause 16.5 shall conform to the Specifications and Standards and shall be carried out in a manner that minimises the disruption in operation of the Lambadug Ropeway. The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to the works carried out under this Clause 16.5.

16.6 Reduction in Scope of the Project

- 16.6.1 If the Concessionaire shall have failed to complete any Construction Works on account of Force Majeure or for reasons solely attributable to the Authority, the Authority may, in its discretion, require the Concessionaire to pay 80% (eighty percent) of the sum saved therefrom, and upon such payment to the Authority, the obligations of the Concessionaire in respect of such works shall be deemed to have been fulfilled. For the avoidance of doubt, it is agreed that in the event such reduction in Scope of the Project causes or will cause a reduction in net after-tax return of the Concessionaire, the Parties shall meet, as soon as reasonably practical, and agree on a full or partial waiver of the aforesaid payment of 80% (eighty per cent) so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no reduction in Scope of the Project. It is further agreed that the liability of the Authority under this Clause 16.6 shall not extend beyond waiver of the aforesaid 80% (eighty per cent). It is also agreed that in the event of a dispute, the Dispute Resolution Procedure shall apply.
- 16.6.2 For determining the obligations of the Concessionaire under this Clause 16.6, the provisions of Clauses 16.1, 16.2 and 16.4 shall apply *mutatis mutandis*, and upon issue of Change of Scope Order by the Authority hereunder, the Concessionaire shall pay forthwith the sum specified therein.

^{\$} The Authority shall transfer 75% (seventy five percent) of the amount so received to the first ranked bidder whose bid shall have been matched by the Concessionaire.

ARTICLE 17: OPERATION AND MAINTENANCE

17.1 O&M obligations of the Concessionaire

17.1.1 During the Operation Period, the Concessionaire shall operate and maintain the Lambadug Ropeway in accordance with this Agreement either by itself, or through the O&M Contractor and if required, modify, repair or otherwise make improvements to the Lambadug Ropeway to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. The obligations of the Concessionaire hereunder shall include:

- (a) permitting safe, smooth and uninterrupted flow of passengers on the Lambadug Ropeway during normal operating conditions;
- (b) collecting and appropriating the Fee;
- (c) minimising disruption to traffic in the event of accidents or other incidents affecting the safety and use of the Lambadug Ropeway by providing a rapid and effective response and maintaining liaison with emergency services of the State;
- (d) carrying out periodic preventive maintenance of the Lambadug Ropeway;
- (e) undertaking routine maintenance of the Lambadug Ropeway;
- (f) undertaking major maintenance of the Lambadug Ropeway;
- (g) preventing, with the assistance of concerned law enforcement agencies, any unauthorised use of the Lambadug Ropeway;
- (h) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on the Lambadug Ropeway;
- (i) protection of the environment and provision of equipment and materials therefore;
- (j) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Lambadug Ropeway;
- (k) maintaining a public relations unit to interface with and attend to suggestions from the Users, government agencies, media and other agencies; and
- (l) complying with Safety Requirements in accordance with Article 18.

17.1.2 The Concessionaire shall remove, promptly from the Project Site, all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keep the Project Site in a clean, tidy and orderly condition, and in conformity with the Applicable Laws, Applicable Permits and Good Industry Practice. [For the avoidance of doubt, it is agreed that the debris and material excavated shall be carried to and deposited at ****]

17.2 Maintenance Requirements

The Concessionaire shall procure that at all times during the Operation Period, the Lambadug Ropeway conforms to the maintenance requirements set forth in Schedule-L (the “**Maintenance Requirements**”).

17.3 Maintenance Manual

17.3.1 No later than 180 (one hundred and eighty) days prior to the Scheduled Date, the Concessionaire shall submit the authorised repair and maintenance manual (the “**Maintenance Manual**”) of the technology and equipment supplier which shall be in compliance with Specifications and Standards for the regular and preventive maintenance of the Lambadug Ropeway in conformity with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice, and shall provide 5 (five) copies thereof to the Authority and 2 (two) copies to the Independent Engineer. The Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause 17.3 shall apply, *mutatis mutandis*.

17.3.2 Without prejudice to the provision of Clause 17.3.1, the Maintenance Manual shall, in particular, include provisions for maintenance of Project Assets and shall provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Project Assets, including replacement thereof, such that their overall condition conforms to Good Industry Practice.

17.4 Maintenance Programme

17.4.1 On or before COD and no later than 45 (forty five) days prior to the beginning of each Accounting Year during the Operation Period, as the case may be, the Concessionaire shall provide to the Authority and the Independent Engineer, its proposed annual programme of preventive, urgent and other scheduled maintenance (the “**Maintenance Programme**”) to comply with the Maintenance Requirements, Maintenance Manual and Safety Requirements as per Specifications and Standards. Such Maintenance Programme shall include:

- (a) preventive maintenance schedule;
- (b) arrangements and procedures for carrying out urgent repairs;
- (c) criteria to be adopted for deciding maintenance needs;
- (d) intervals and procedures for carrying out inspection of all elements of the Lambadug Ropeway;
- (e) intervals at which the Concessionaire shall carry out periodic maintenance;
- (f) arrangements and procedures for carrying out safety related measures; and
- (g) intervals for major maintenance works and the scope thereof.

17.4.2 Within 15 (fifteen) days of receipt of the Maintenance Programme, the Independent Engineer shall review the same and convey its comments to the Concessionaire with particular reference to its conformity with the Maintenance Requirements, Maintenance Manual and Safety Requirements.

- 17.4.3 The Concessionaire may modify the Maintenance Programme as may be reasonable in the circumstances, and the procedure specified in Clauses 17.4.1 and 17.4.2 shall apply *mutatis mutandis* to such modifications.

17.5 Safety, breakdowns and accidents

- 17.5.1 The Concessionaire shall ensure safe conditions for the Users, and in the event of unsafe conditions, it shall follow the relevant operating procedures as per Specifications and Standards, and removal of obstruction and debris without delay. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.
- 17.5.2 The Concessionaire's responsibility for rescue operations on the Ladbroke Ropeway shall be limited to getting the passengers to the nearest station for disembarkation. The technology provider shall define procedure/ capability under such circumstances. Alternatively, rescue operations procedure to be followed as per Specifications and Standards with the responsibility of the Concessionaire to get people safely on the ground.

17.6 De-commissioning due to Emergency

- 17.6.1 If, in the reasonable opinion of the Concessionaire, there exists an Emergency which warrants de-commissioning and closure to traffic of the whole or any part of the Ladbroke Ropeway, the Concessionaire shall be entitled to de-commission and close the whole or any part of the Ladbroke Ropeway to traffic for so long as such Emergency and the consequences thereof warrant; provided that such decommissioning and particulars thereof shall be notified by the Concessionaire to the Authority without any delay, and the Concessionaire shall diligently carry out and abide by any reasonable directions that the Authority may give for dealing with such Emergency.
- 17.6.2 The Concessionaire shall re-commission the Ladbroke Ropeway or the affected part thereof as quickly as practicable after the circumstances leading to its decommissioning and closure have ceased to exist or have so abated as to enable the Concessionaire to re-commission the Ladbroke Ropeway and shall notify the Authority of the same without any delay.
- 17.6.3 Any decommissioning or closure of any part of the Ladbroke Ropeway and the re-commissioning thereof shall, as soon as practicable, be brought to the notice of affected persons by means of public announcements/notice.

17.7 Damages for breach of maintenance obligations

- 17.7.1 In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the higher of (a) 0.5% (zero point five per cent) of Average Daily Fee, and (b) 0.1% (zero point one per cent) of the cost of such repair or rectification as estimated by the Independent Engineer. Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.
- 17.7.2 The Damages set forth in Clause 17.7.1 may be assessed and specified forthwith by the Independent Engineer; provided that the Authority may, in its discretion, demand a smaller sum

as Damages, if in its opinion, the breach has been cured promptly and the Concessionaire is otherwise in compliance with its obligations hereunder. The Concessionaire shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution Procedure shall apply.

17.8 Authority's right to take remedial measures

- 17.8.1 In the event the Concessionaire does not maintain and/or repair the Lambadug Ropeway or any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual or the Maintenance Programme, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from the Authority or the Independent Engineer, as the case may be, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Concessionaire to the Authority as Damages. For the avoidance of doubt, the right of the Authority under this Clause 17.8.1 shall be without prejudice to its rights and remedies provided under Clause 17.7.
- 17.8.2 The Authority shall have the right, and the Concessionaire hereby expressly grants to the Authority the right, to recover the costs and Damages specified in Clause 17.8.1 directly from the Escrow Account as if such costs and Damages were O&M Expenses, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Authority under this Clause 17.8.2 and debit the same to O&M Expenses.

17.9 Overriding powers of the Authority

- 17.9.1 If in the reasonable opinion of the Authority, the Concessionaire is in material breach of its obligations under this Agreement and, in particular, the Maintenance Requirements, and such breach is causing or likely to cause material hardship or danger to the Users, the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.
- 17.9.2 In the event that the Concessionaire, upon notice under Clause 17.9.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Clause 17.9.2 and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Authority shall be entitled to recover them from the Concessionaire in accordance with the provisions of Clause 17.8 along with the Damages specified therein.
- 17.9.3 In the event of a national emergency, civil commotion or any other act specified in Clause 34.3, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it or as directed by the Government, and exercise such control over the Lambadug Ropeway or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no

greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 34. It is also agreed that the Concessionaire shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause 17.9, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

17.10 Restoration of loss or damage to Lambadug Ropeway

Save and except as otherwise expressly provided in this Agreement, in the event that the Lambadug Ropeway or any part thereof suffers any loss or damage during the Concession Period from any cause whatsoever, the Concessionaire shall, at its cost and expense, rectify and remedy such loss or damage forthwith so that the Lambadug Ropeway conforms to the provisions of this Agreement.

17.11 Modifications to the Lambadug Ropeway

The Concessionaire shall not carry out any material modifications to the Lambadug Ropeway save and except where such modifications are necessary for the Lambadug Ropeway to operate in conformity with the Specifications and Standards, Maintenance Requirements, Good Industry Practice and Applicable Laws; provided that the Concessionaire shall notify the Independent Engineer of the proposed modifications along with particulars thereof at least 15 (fifteen) days before commencing work on such modifications and shall reasonably consider any suggestions that the Independent Engineer may make within 15 (fifteen) days of receiving the Concessionaire's proposal. For the avoidance of doubt, all modifications made hereunder shall comply with Specifications and Standards, Applicable Laws and the provisions of this Agreement.

17.12 Excuse from performance of obligations

The Concessionaire shall not be considered in breach of its obligations under this Agreement if any part of the Lambadug Ropeway is not available to traffic on account of any of the following for the duration thereof:

- (a) an event of Force Majeure;
- (b) measures taken to ensure the safe use of the Lambadug Ropeway except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or
- (c) compliance with a request from the Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Lambadug Ropeway.

Notwithstanding the above, the Concessionaire shall keep all unaffected parts of the Lambadug Ropeway open to traffic provided they can be operated safely.

17.13 Barriers and diversions

The Authority shall procure that during the Operation Period, no barriers are erected or placed by any Government Instrumentality on the Lambadug Ropeway except for reasons of Emergency,

national security, law and order or collection of inter-state taxes. The Authority shall also make best endeavours to procure that no Government Instrumentality shall undertake or cause to be undertaken, except for reasons of Emergency, national security or law and order, any diversions of traffic from, or closing down of approach roads to the Lambadug Ropeway that may cause a material adverse effect on the flow of traffic to and from the Lambadug Ropeway.

17.14 Advertising on the Site

The Concessionaire shall be permitted commercial advertising, display or hoarding at specific places on the Site. All advertising on the Lambadug Ropeway shall also conform to Good Industry Practice. For the avoidance of doubt, it is agreed that the rights of the Concessionaire hereunder shall be subject to Applicable Laws, as in force and effect from time to time, and no compensation shall be claimed on account thereof.

ARTICLE 18: SAFETY REQUIREMENTS

18.1 Safety Requirements

- 18.1.1 The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Users. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Lambadug Ropeway, and shall comply with the safety requirements set forth in Schedule-M (the “**Safety Requirements**”).
- 18.1.2 The Authority shall appoint an experienced and qualified firm or organisation (“**Safety Consultant**”) for carrying out safety audit of the Lambadug Ropeway in accordance with the Safety Requirements, and shall take all other actions necessary for securing compliance with the Safety Requirements.

18.2 Expenditure on Safety Requirements

All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire to the extent such costs and expenses form part of the works and services included in the Scope of the Project, and works and services, if any, not forming part of the Scope of the Project shall be undertaken in accordance with the provisions of Article 16. Costs and expenses on works and services not covered hitherto before and arising out of Safety Requirements shall, subject to the provisions of Clause 16.3.2, be borne from out of a dedicated safety fund (the “**Safety Fund**”) to be funded, owned and operated by the Authority or a substitute thereof.

ARTICLE 19: MONITORING OF OPERATION AND MAINTENANCE

19.1 Monthly status reports

During Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority and the Independent Engineer a monthly report stating in reasonable detail the condition of the Lambadug Ropeway including its compliance or otherwise with the Maintenance Requirements, Maintenance Manual, Maintenance Programme and Safety Requirements, and shall promptly give such other relevant information as may be required by the Independent Engineer. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

19.2 Inspection

The Independent Engineer shall inspect the Lambadug Ropeway at least once a month. It shall make a report of such inspection (the “**O&M Inspection Report**”) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Requirements, Maintenance Manual, the Maintenance Programme and Safety Requirements, and send a copy thereof to the Authority and the Concessionaire within 7 (seven) days of such inspection.

19.3 Tests

Any tests warranted by maintenance requirements have to comply with applicable Specifications and Standards which will be carried out by the Concessionaire and furnish results of such tests to the Independent Engineer.

One half of the costs incurred on such tests, and to the extent certified by the Independent Engineer as reasonable, shall be reimbursed by the Authority to the Concessionaire.

19.4 Remedial measures

19.4.1 The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Clause 19.3 and furnish a report in respect thereof to the Independent Engineer and the Authority within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.

19.4.2 The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Lambadug Ropeway into compliance with the Maintenance Requirements and the procedure set forth in this Clause 19.4 shall be repeated until the Lambadug Ropeway conforms to the Maintenance Requirements. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Damages from the Concessionaire under and in accordance with the provisions of Clause 17.8.

19.5 Monthly Fee Statement

During the Operation Period, the Concessionaire shall furnish to the Authority, within 7 (seven) days of completion of each month, a statement of Fee substantially in the form set forth in

Schedule-Q (the “**Monthly Fee Statement**”). The Concessionaire shall also furnish to the Authority such other information as the Authority may reasonably require, at specified intervals, in discharge of its statutory functions.

19.6 Reports of unusual occurrence

The Concessionaire shall, prior to the close of each day, send to the Authority and the Independent Engineer, by facsimile or e-mail, a report stating accidents and unusual occurrences on the Lambadug Ropeway relating to the safety and security of the Users and Lambadug Ropeway. A weekly and monthly summary of such reports shall also be sent within 3 (three) days of the closing of each week and month, as the case may be. For the purposes of this Clause 19.6, accidents and unusual occurrences on the Lambadug Ropeway shall include:

- (a) death or injury to any person;
- (b) damaged or dislodged fixed equipment;
- (c) any obstruction on the Lambadug Ropeway, which results in slow down of the services being provided by the Concessionaire;
- (d) disablement of any equipment during operation;
- (e) communication failure affecting the operation of Lambadug Ropeway; (f) smoke or fire; and
- (g) such other relevant information as may be required by the Authority or the Independent Engineer.

ARTICLE 20: KEY PERFORMANCE INDICATORS

20.1 Key Performance Indicators

Without prejudice to the obligations specified in this Agreement, the Concessionaire shall operate the Lambadug Ropeways such that it achieves or exceeds the performance indicators specified in this Article 20 (the “**Key Performance Indicators**”)

20.2 Operation of Ropeway Cabins

20.2.1 The Lambadug Ropeways shall be operated such that the service shall operate between [0800 hours] and [0400 hours] at the service levels specified in this Clause 20.2; provided that the duration of services may be customized as per the requirements specified in RFP.

20.2.2 The rope speed is variable and can be adjusted to meet the traffic requirements subject to a maximum of 6 (six) meters/second for monocable systems, 8 (eight) meters/second for tricable systems, 12 (twelve) meters/second for aerial tramway systems and 14 (fourteen) meters/second for cable liners (automated people mover) systems.

20.2.3 The Concessionaire shall at all times ensure that:

- (a) the ropeway cabins are clean, hygienic and free of odour; and
- (b) there is adequate lighting within the cabin and station in conformity with the Specifications and Standards.

20.3 Provisions of Cabins

The number of passengers shall not exceed the design capacity of the cabin.

20.4 Operation of Terminal Stations

20.4.1 The Parties hereto agree that the primary purpose of the station is to provide space for the Users who normally stay at a station for a period of time no longer than necessary, to wait for and enter the cabin or to exit the station or after exiting from the cabin.

20.4.2 The design, construction, operation and maintenance of the stations shall be such that:

- (a) a User alighting at the platform should be able to reach a point outside the station in not more than [3 (three)] minutes of brisk walking and a User crossing the fee collection point should be able to reach the platform in not more than [2 (two)] minutes of brisk walking; and
- (b) in case of emergency, evacuation from any point on the platform to a point of safety in an open space within or outside the station shall not exceed [100 (one hundred)] meters.

20.4.3 The entry and exit gates, including the automatic ticket verification machines, shall be so designed and operated that the waiting time for the Users shall not exceed [2 (two)] minutes.

20.4.4 The Concessionaire shall provide adequate number of ticket vending machines and ticket

counters such that waiting time for the Users shall not exceed [2 (two)] minutes.

20.4.5 The Concessionaire shall at all times ensure that:

- (a) the stations and its toilets are clean, hygienic and free of odour;
- (b) there is adequate lighting within the stations in conformity with the Specifications and Standards;
- (c) the temperature in common areas within the station is maintained in accordance with Maintenance Requirements;
- (d) all entry and exit points, passages, circulation areas and vehicular traffic are so managed that they do not have a queue with a waiting time exceeding 5 (five) minutes;
- (e) all lifts, escalators, walkalators, train information systems, public address systems and lighting systems function efficiently and their availability is no less than 98% (ninety eight per cent) in a month; and
- (f) 50% (fifty) percent of all phone calls relating to the Lambadug Ropeway are answered within 30 (thirty) seconds.

20.5 Monthly status report

During Operation Period, the Concessionaire shall, no later than 7 (Seven) days after the close of each month, furnish a monthly report stating in detail the compliance with all the Key Performance Indicators specified in this Article 20 along with an analysis of the reasons for failures, if any, and the strategies for addressing the same and for otherwise improving the operational performance of the Lambadug Ropeway.

20.6 Penalty for shortfall in performance

The Concessionaire shall ensure and procure compliance of each of the Key Performance Indicators specified in this Article 20 and for any shortfall in average performance during a quarter, it shall pay Damages within 30 (thirty) days of the quarter in which the shortfall occurred. The Damages due and payable under this Clause 20.6 shall be determined at the rate of [1% (one per cent) of the total revenue from fee in the respective quarter for every shortfall of 10% (ten per cent)] in any single performance indicator specified in this Article 20; provided, however, that the Authority may waive the Damages, in part or full, if it is satisfied that the Concessionaire has been carrying out its obligations diligently and efficiently and that the shortfall to be waived was on account of reasons beyond the control of the Concessionaire.

20.7 CEN Certification

The Concessionaire shall construct the ropeway after the issue of certificate of completion for compliance as per CEN Standards from the Independent Engineer in accordance with Specifications and Standards.

20.8 Passenger Charter

The Concessionaire shall publish and implement a charter articulating the rights and expectations of Users (the “**Passenger Charter**”) substantially in the form specified in Schedule-U. The Concessionaire shall at all times be accountable and liable to Users in accordance with the provisions of the Passenger Charter and Applicable Laws.

ARTICLE 21: EMERGENCY MEDICAL AID

21.1 Medical Aid Posts

The Concessionaire shall have requisite first aid kits at each station as well as the basic first aid training to the ropeway operators (similar to first aid kits and training of air hostesses in airlines).

For providing emergency medical aid during the Operation Period, as set forth in this Agreement, the Concessionaire shall assist the State Government [or a substitute thereof to be designated by the Authority] in setting up and operating a medical aid post (the “**Medical Aid Post**”) at [each of the terminals with round-the-clock ambulance services for victims of accidents on the Lambadug Ropeway.]

ARTICLE 22: DELETED

ARTICLE 23: INDEPENDENT ENGINEER

23.1 Appointment of Independent Engineer

The Concessioneing Authority have already appointed M/s **WAPCOS Limited**, A Govt of India Undertaking Firm a consulting engineering firm the Independent Engineer under this Agreement (the “**Independent Engineer**”). WAPCOS has been appointed as Project Management Consultant (PMC) for development of innovative urban transport solution for Shimla, Manali and Dharamshala cities as per the MoA signed between Govt. of H.P and WAPCOS. The appointment shall be extending upto the commencement of COD.

23.2 Duties and functions

- 23.2.1 The Independent Engineer shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule- I. For the avoidance of doubt, the Parties expressly agree that the functions of the Independent Engineer under this Article 23 shall not include Real Estate Development.
- 23.2.2 The Independent Engineer shall submit regular periodic reports (at least once every month) to the Authority in respect of its duties and functions set forth in Schedule-I.
- 23.2.3 True copy of all communications sent by the Authority to the Independent Engineer and by the Independent Engineer to the Authority, shall be sent forthwith by the Independent Engineer to the Concessionaire.
- 23.2.4 True copy of all communications sent by the Independent Engineer to the Concessionaire and by the Concessionaire to the Independent Engineer shall be sent forthwith by the Independent Engineer to the Authority.
- 23.2.5 Independent Engineer shall periodically submit data on the progress / status of construction works, financial progress and other requisite details at such interval, as mentioned in the TOR, which shall enable the Authority for updating the project specific website.

23.3 Remuneration

The remuneration, cost and expenses of the Independent Engineer shall be paid by the Authority. One-half of such remuneration, cost and expenses shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receiving a statement of expenditure from the Authority.

23.4 Termination of appointment

- 23.4.1 The Authority may, in its discretion, terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer in accordance with Clause 23.1.
- 23.4.2 If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Authority and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event

that the appointment of the Independent Engineer is terminated hereunder, the Authority shall appoint forthwith another Independent Engineer in accordance with Clause 23.1.

23.5 Authorised signatories

The Authority shall require the Independent Engineer to designate and notify to the Authority and the Concessionaire up to 2 (two) persons employed in its firm to sign for and on behalf of the Independent Engineer, and any communication or document required to be signed by the Independent Engineer shall be valid and effective only if signed by any of the designated persons; provided that the Independent Engineer may, by notice in writing, substitute any of the designated persons by any of its employees.

23.6 Dispute resolution

If either Party disputes any advice, instruction, decision, direction or award of the Independent Engineer, or, as the case may be, the assertion or failure to assert jurisdiction, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

PART IV: FINANCIAL COVENANTS

ARTICLE 24: FINANCIAL CLOSE

24.1 Financial Close

- 24.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 180 (one hundred and eighty) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding [120 (one hundred and twenty)] days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day of delay, and for a further period not exceeding [80 (eighty)] days, subject to payment of Damages at the rate specified in Clause 4.3; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 180 (one hundred and eighty) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred solely as a result of any default or delay by the Authority in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Concessionaire shall be in addition to the Damages, if any, due and payable under the provisions of Clause 4.3.
- 24.1.2 The Concessionaire shall, upon occurrence of Financial Close, notify the Authority forthwith, and shall have provided to the Authority, at least 2 (two) days prior to Financial Close, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders.

24.2 Termination due to failure to achieve Financial Close

- 24.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 34.6.1, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 24.1.1 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. For the avoidance of doubt, it is agreed that in the event the Parties hereto have, by mutual consent, determined the Appointed Date to precede the Financial Close, the provisions of this Clause 24.2.1 shall not apply.
- 24.2.2 Upon Termination under Clause 24.2.1, the Authority shall be entitled to encash the Bid Security and appropriate the proceeds thereof as Damages; provided, however, that if Financial Close has not occurred solely as a result of the Authority being in default of any of its obligations under Clause 4.2, it shall, upon Termination, return the Bid Security forthwith along with the Damages due and payable under Clause 4.2. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by Performance Security, the Authority shall be entitled to encash therefrom an amount equal to Bid Security.

ARTICLE 25: GRANT- NOT APPLICABLE

25.1 Grant

- 25.1.1 The Authority agrees to provide to the Concessionaire cash support by way of an outright grant equal to the sum set forth in the Bid, namely, Rs. (Rupees in words), in accordance with the provisions of this Article 25 (the “**Grant**”).
- 25.1.2 The Grant shall be disbursed to the Concessionaire by way of Equity Support in accordance with the provisions of Clause 25.2.

25.2 Equity Support

- 25.2.1 Subject to the conditions specified in this Clause 25.2, the Grant shall be credited to the Escrow Account and shall be applied by the Concessionaire for meeting the Total Project Cost (the “**Equity Support**”).
- 25.2.2 The Equity Support shall not exceed the sum specified in the Bid and as accepted by the Authority but shall in no case be greater than twice the Equity and shall be further restricted to a sum not exceeding 40% (forty per cent) of the Total Project Cost. Provided, however that in the event Equity Support shall exceed 20% (twenty per cent) of the Total Project Cost, the amount in excess of such 20% (twenty per cent) shall be released against an irrevocable bank guarantee for 2 (two) years which may be invoked if the Concessionaire commits any breach of the obligations specified in this Agreement. For the avoidance of doubt, the Total Project Cost to be reckoned for the purposes of this Clause 25.2.2 shall include Equity Support.
- 25.2.3 Equity Support shall be due and payable to the Concessionaire after it has expended the Equity and shall be disbursed proportionately along with the loan funds thereafter remaining to be disbursed by the Senior Lenders under the Financing Agreements. The Authority shall disburse each tranche of the Equity Support as and when due, but no later than 15 (fifteen) days of receiving a request from the Concessionaire along with necessary particulars.
- 25.2.4 In the event of occurrence of a Concessionaire Default, disbursement of Equity Support shall be suspended till such Concessionaire Default has been cured by the Concessionaire.

25.3 Deleted

25.4 Premium^{\$}

The Concessionaire acknowledges and agrees that as set forth in the Bid, it shall pay to the Authority for each year of the Concession Period, but commencing from the day falling after (.....) days from the COD, a premium (the “**Premium**”) in the form of an additional Concession Fee, as set forth in Clause 26.2.1, and in the manner set forth in Clause 26.4. }

^{\$} In the event that the Concessionaire does not seek any Grant from the Government and offers to pay a Premium instead, the provisions of Clauses 25.1, 25.2 and 25.3 relating to Grant shall be substituted by the provisions of Clause 25.4 relating to Premium, which Clause shall be renumbered.

ARTICLE 26: CONCESSION FEE

26.1 Concession Fee

In consideration of the grant of Concession, the Concessionaire shall pay to the Authority by way of concession fee (the “**Concession Fee**”) a sum of Re. _____ (Rupee _____) per annum {and the Premium specified in Clause 26.2}.

26.2 Additional Concession Fee\$

26.2.1 Without prejudice to the provisions of Clause 26.1, the Concessionaire agrees to pay to the Authority on 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 on a pro rata basis, for the period remaining in that year; and for each subsequent year throughout the Concession Period, the Premium shall be determined by increasing the amount of Premium in the respective year by an additional 5% (five per cent) as compared to the immediately preceding year.

For the avoidance of doubt, it is clarified 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 are due and payable. For the purpose of assessing the amount due for payment on such payment of Premium, part of the 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 annual escalation, shall commence on 1st April of the immediately succeeding financial year.

26.2.2 The Premium payable under Clause 26.2.1 shall be deemed to be part of the Concession Fee for the purposes of this Agreement.

26.3 Project Development Fee

The Concessionaire shall pay 25% of Project Development Fee of Rs. 1.62 Crore (One Crore and Sixty Two Lakhs Only), i.e. Rs. 0.49 Crores (Rupees Forty Nine Lakhs Only), prior to or at the time of signing of this Agreement. The Concessionaire has paid this amount vide Pay Order/Cheque/Draft No..... dated..... drawn on.....

The Concessionaire shall pay balance 75% of Project Development Fee of Rs. 1.62 Crore (One Crore and Sixty Two Lakhs Only). i.e. Rs. 1.13 Crores (Rupees One Crore and Thirteen Lakhs Only),, at the time of completion of Conditions Precedent.

26.4 Payment of Concession Fee

The Concession Fee payable under the provisions of this Article 26 shall be due and payable in half yearly instalments within 7 (seven) days from 30 September and 31 March of each year.

ARTICLE 27: USER FEE

27.1 Collection and appropriation of Fee

- 27.1.1 On and from the COD till the Transfer Date, the Concessionaire shall have the sole and exclusive right to demand, collect and appropriate Fee from the Users subject to and in accordance with the Fee Notification as issued by the Authority.
- 27.1.2 The Concessionaire acknowledges and agrees that upon payment of Fee, any User shall be entitled to use the Lambadug Ropeway and the Concessionaire shall not place, or cause to be placed, any restriction on such use, except to the extent specified in any Applicable Law, Applicable Permit or the provisions of this Agreement.

27.2 Revision of Fee

- 27.2.1 The Parties hereto acknowledge and agree that the Fee shall be revised annually on April 1 subject to and in accordance with the provisions of the Fee Notification.

27.3 Display of Fee Rates

- 27.3.1 The Concessionaire shall conspicuously display the Fee structure at each of the terminal stations of the Project at least in English, Hindi and local language.
- 27.3.2 The Concessionaire shall, from time to time, inform the Authority of the applicable Fee. Such information shall be communicated at least 60 days prior to the revision of Fee under and in accordance with this Agreement.
- 27.3.3 The Concessionaire shall not revise, display or collect any amounts in excess of the rates of Fee payable under this Agreement. In the event any excess amounts are collected by or on behalf of the Concessionaire, it shall, upon receiving a notice to this effect from the Authority, refund such excess amounts to the Authority along with Damages equal to 1% percent thereof.

ARTICLE 28: DELETED

ARTICLE 29: DELETED

ARTICLE 30: DELETED

ARTICLE 31: ESCROW ACCOUNT

31.1 Escrow Account

- 31.1.1 The Concessionaire shall, prior to the Appointed Date, open and establish an Escrow Account with a Bank (the “**Escrow Bank**”) in accordance with this Agreement read with the Escrow Agreement.
- 31.1.2 The nature and scope of the Escrow Account are fully described in the agreement (the “**Escrow Agreement**”) to be entered into amongst the Concessionaire, the Authority, the Escrow Bank and the Senior Lenders through the Lenders’ Representative, which shall be substantially in the form set forth in Schedule -S.

31.2 Deposits into Escrow Account

The Concessionaire shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:

- (a) all funds constituting the Financial Package;
- (b) all Fee and any other revenues from or in respect of the Lambadug Ropeway, including the proceeds of any rentals, deposits, capital receipts or insurance claims; and
- (c) all payments by the Authority, after deduction of any outstanding Concession Fee:

Provided that the Senior Lenders may make direct disbursements to the EPC Contractor in accordance with the express provisions contained in this behalf in the Financing Agreements.

31.3 Withdrawals during Concession Period

- 31.3.1 The Concessionaire shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, *inter alia*, that the deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due:

- (a) all taxes due and payable by the Concessionaire for and in respect of the Lambadug Ropeway;
- (b) all payments relating to construction of the Lambadug Ropeway, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- (d) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;
- (e) Concession Fee due and payable to the Authority;
- (f) monthly proportionate provision of Debt Service due in an Accounting Year;

- (g) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- (h) any reserve requirements set forth in the Financing Agreements; and
- (i) balance, if any, in accordance with the instructions of the Concessionaire.

31.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Clause 31.3.1, except with the prior written approval of the Authority.

31.4 Withdrawals upon Termination

31.4.1 Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon Termination, be appropriated in the following order:

- (a) all taxes due and payable by the Concessionaire for and in respect of the Lambadug Ropeway; (b) 90% (ninety per cent) of Debt Due;
- (c) outstanding Concession Fee;
- (d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire, including {Premium};
- (e) retention and payments relating to the liability for defects and deficiencies set forth in Article 39;
- (f) outstanding Debt Service including the balance of Debt Due;
- (g) incurred or accrued O&M Expenses;
- (h) any other payments required to be made under this Agreement; and
- (i) balance, if any, in accordance with the instructions of the Concessionaire:

Provided that no appropriations shall be made under Sub-clause (j) of this Clause 31.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of Article 38.

31.4.2 The provisions of this Article 31 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 31.4.1 have been discharged.

ARTICLE 32: INSURANCE

32.1 Insurance during Concession Period

32.1.1 The Concessionaire shall effect and maintain at its own cost, during the Construction Period and the Operation Period, such insurances for such maximum sums as may be required under the Financing Agreements, and the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Concessionaire during the Construction Period. The Concessionaire shall procure that in each insurance policy, the Authority shall be a co-insured and that the insurer shall pay the proceeds of insurance into the Escrow Account. For the avoidance of doubt, the level of insurance to be maintained by the Concessionaire after repayment of Senior Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Senior Lenders' dues.

32.1.2 The Concessionaire shall, procure and maintain insurance cover including but not limited to the following:

- a) Standard fire and special perils policy with earthquake cover to insure loss, damage or destruction of the Project Assets;
- b) Machinery break-down insurance policy for insuring critical plant & equipment against any damage;
- c) comprehensive third party liability insurance including injury to or death of personnel of the Authority or others who may enter the Project;
- d) the Concessionaire's general liability arising out of the Concession;
- e) workmen's compensation insurance, personal accident insurance and medical insurance;
- f) passenger accident insurance for the passengers on-board the ropeway project having a valid ticket; and
- g) any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (a) to (f) above.

32.2 Notice to the Authority

No later than 45 (forty-five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 32. Within 30 (thirty) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

32.3 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 32 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Authority.

32.4 Remedy for failure to insure

If the Concessionaire shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Authority shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Concessionaire, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Concessionaire.

32.5 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 32 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, *inter alia*, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

32.6 Concessionaire's waiver

The Concessionaire hereby further releases, assigns and waives any and all rights of subrogation or recovery against, *inter alia*, the Authority and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Concessionaire pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

32.7 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire by credit to the Escrow Account and it shall, notwithstanding anything to the contrary contained in Clause 31.3, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Lambadug Ropeway, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

ARTICLE 33: ACCOUNTS AND AUDIT

33.1 Audited accounts

- 33.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including all fees and other revenues derived/collected by it from or on account of the Lambadug Ropeway and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.
- 33.1.2 The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.
- 33.1.3 On or before the 31st (thirty-first) day of May each Year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on (a) the number of passengers using the Lambadug Ropeway and liable for payment of Fee therefor, (b) Fee charged and received and other revenues derived from the Lambadug Ropeway, and (c) such other information as the Authority may reasonably require.

33.2 Appointment of auditors

- 33.2.1 The Concessionaire shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from the mutually agreed list of 10 (ten) reputable firms of chartered accountants (the “**Panel of Chartered Accountants**”), such list to be prepared substantially in accordance with the criteria set forth in Schedule -T. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.
- 33.2.2 The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of 45 (forty five) days to the Authority, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.
- 33.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at anytime, another firm (the “**Additional Auditors**”) from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

33.2.4 In the event that the Grant exceeds 20% (twenty per cent) of the Total Project Cost, the Authority shall have the right, but not the obligation, to appoint at its cost, for the duration of the Construction Period, another firm (the “**Concurrent Auditors**”) from the Panel of Chartered Accountants to undertake concurrent audit of the Concessionaire’s accounts.

33.3 Certification of claims by Statutory Auditors

Any claim or document provided by the Concessionaire to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business including the submission of Monthly Fee Statements under Clause 19.5.

33.4 Set-off

In the event any amount is due and payable by the Authority to the Concessionaire, it may set-off any sums payable to it by the Concessionaire and pay the balance remaining. Any exercise by the Authority of its rights under this Clause shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

33.5 Dispute resolution

In the event of there being any difference between the findings of the Additional Auditors or the Concurrent Auditors, as the case may be, and the certification provided by the Statutory Auditors, such Auditors shall meet to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by the Authority by recourse to the Dispute Resolution Procedure.

PART V: FORCE MAJEURE AND TERMINATION

ARTICLE 34: FORCE MAJEURE

34.1 Force Majeure

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 34.2, 34.3 and 34.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

34.2 Non-Political Event

A Non-Political Event shall mean one or more of the following acts or events:

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Lambadug Ropeway for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 34.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (d) any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;
- (e) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

34.3 Indirect Political Event

An Indirect Political Event shall mean one or more of the following acts or events:

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (c) any civil commotion, boycott or political agitation which prevents collection of Fee by the Concessionaire for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (d) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (e) any Indirect Political Event that causes a Non-Political Event; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

34.4 Political Event

A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 41 and its effect, in financial terms, exceeds the sum specified in Clause 41.1;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;
- (d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.

34.5 Duty to report Force Majeure Event

34.5.1 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such

occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 34 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

34.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

34.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 34.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

34.6 Effect of Force Majeure Event on the Concession

34.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 24.1.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

34.6.2 At any time after the Appointed Date, if any Force Majeure Event occurs:

- (a) before COD, the Concession Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
- (b) after COD, whereupon the Concessionaire is unable to collect Fee despite making best efforts or it is directed by the Authority to suspend the collection thereof during the subsistence of such Force Majeure Event, the Concession Period shall be extended by a period, equal in length to the period during which the Concessionaire was prevented from collection of Fee on account thereof; provided that in the event of partial collection of Fee where the daily collection is less than 90% (ninety per cent) of the Average Daily Fee, the Authority shall extend the Concession Period in proportion to the loss of Fee on a daily basis. For the avoidance of doubt, loss of 25% (twenty-five per cent) in collection of Fee as compared to the Average Daily Fee for four days shall entitle the Concessionaire to extension of one day in the Concession Period.

34.7 Allocation of costs arising out of Force Majeure

- 34.7.1 Upon occurrence of any Force Majeure Event prior to the Appointed Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.
- 34.7.2 Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Project (the “**Force Majeure Costs**”) shall be allocated and paid as follows:
- (a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;
 - (b) upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Concessionaire; and
 - (c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Concessionaire.

For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses, any increase in the cost of Construction Works on account of inflation and all other costs directly attributable to the Force Majeure Event but shall not include loss of Fee revenues or debt repayment obligations and for determining such costs information contained in the Financial Package may be relied upon to the extent that such information is relevant.

- 34.7.3 Save and except as expressly provided in this Article 34, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

34.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 34, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

34.9 Termination Payment for Force Majeure Event

- 34.9.1 If Termination is on account of a Non-Political Event, the Authority shall make a Termination

Payment to the Concessionaire in an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover.

34.9.2 If Termination is on account of an Indirect Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to:

- (a) Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due; and
- (b) 110% (one hundred and ten per cent) of the Adjusted Equity.

34.9.3 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 37.3.2 as if it were an Authority Default.

34.10 Dispute resolution

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

34.11 Excuse from performance of obligations

If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that:

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- (c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

ARTICLE 35: COMPENSATION FOR BREACH OF AGREEMENT

35.1 Compensation for default by the Concessionaire

In the event of the Concessionaire being in material breach or default of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material breach or default, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 35.1 for any material breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Authority.

35.2 Compensation for default by the Authority

In the event of the Authority being in material breach or default of this Agreement at any time after the Appointed Date, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material breach or default within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses, any increase in capital costs on account of inflation and all other costs directly attributable to such material breach or default but shall not include loss of Fee revenues, debt repayment obligations or other consequential losses, and for determining such compensation, information contained in the Financial Package and the Financial Model may be relied upon to the extent it is relevant.

35.3 Extension of Concession Period

In the event that a material breach or default of this Agreement set forth in Clause 35.2 causes delay in achieving COD or leads to suspension of or reduction in collection of Fee, as the case may be, the Authority shall, in addition to payment of compensation under Clause 35.2, extend the Concession Period, such extension being equal in duration to the period by which COD was delayed or the collection of Fee remained suspended on account thereof, as the case may be; and in the event of reduction in collection of Fee where the daily collection is less than 90% (ninety per cent) of the Average Daily Fee, the Authority shall, in addition to payment of compensation under Clause 35.2, extend the Concession Period in proportion to the loss of Fee on a daily basis. For the avoidance of doubt, loss of 25% (twenty five per cent) in collection of Fee as compared to the Average Daily Fee for four days shall entitle the Concessionaire to extension of one day in the Concession Period.

ARTICLE 36: SUSPENSION OF CONCESSIONAIRE’S RIGHTS

36.1 Suspension upon Concessionaire Default

Upon occurrence of a Concessionaire Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the Concessionaire under this Agreement including the Concessionaire’s right to collect Fee, and other revenues pursuant hereto, and (ii) exercise such rights itself and perform the obligations hereunder or authorise any other person to exercise or perform the same on its behalf during such suspension (the “**Suspension**”). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Concessionaire and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lenders’ Representative, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

36.2 Authority to act on behalf of Concessionaire

- 36.2.1 During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect all Fee and revenues under and in accordance with this Agreement and deposit the same in the Escrow Account. The Authority shall be entitled to make withdrawals from the Escrow Account for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses specified in Clause 31.3.
- 36.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period. The Concessionaire hereby licences and sub-licences respectively, the Authority or any other person authorised by it under Clause 36.1 to use during Suspension, all Intellectual Property belonging to or licenced to the Concessionaire with respect to the Lambadug Ropeway and its design, engineering, construction, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

36.3 Revocation of Suspension

- 36.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.
- 36.3.2 Upon the Concessionaire having cured the Concessionaire Default within a period not exceeding 90 (ninety) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

36.4 Substitution of Concessionaire

At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice thereunder from the Lenders' Representative, the Authority shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 36.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

36.5 Termination

- 36.5.1 At any time during the period of Suspension under this Article 36, the Concessionaire may by notice require the Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Clause 36.4, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 37.
- 36.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 36.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, mutatis mutandis, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Concessionaire Default.

ARTICLE 37: TERMINATION

37.1 Termination for Concessionaire Default

37.1.1 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Concessionaire fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, the Concessionaire shall be deemed to be in default of this Agreement (the “**Concessionaire Default**”), unless the default has occurred solely as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include:

- (a) the Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Concessionaire fails to cure, within a Cure Period of 90 (ninety) days, the Concessionaire Default for which whole or part of the Performance Security was appropriated;
- (c) the Concessionaire does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule- G and continues to be in default for 120 (one hundred and twenty) days;
- (d) the Concessionaire abandons or manifests intention to abandon the construction or operation of the Lambadug Ropeway without the prior written consent of the Authority;
- (e) Project Completion Date does not occur within the period specified in Clause 12.3.3;
- (f) the Punch List items have not been completed within the period set forth in Clause 14.4.1;
- (g) the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;
- (h) the Concessionaire has failed to make any payment to the Authority within the period specified in this Agreement;
- (i) an Escrow Default has occurred and the Concessionaire fails to cure the default within a Cure Period of 15 (fifteen) days;
- (j) upon occurrence of a Financial Default, the Lenders’ Representative has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;
- (k) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;

- (l) the Concessionaire creates any Encumbrance in breach of this Agreement;
- (m) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (n) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- (o) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;
- (p) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- (q) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;
- (r) the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
- (s) a resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:
 - (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and
 - (iii) each of the Project Agreements remains in full force and effect;
- (t) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;
- (u) the Concessionaire submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;

- (v) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement; or
- (w) the Concessionaire commits a default in complying with any other provision of this Agreement if such a default causes a Material Adverse Effect on the Authority.

37.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of clause 37.1.3.

37.1.3 The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 37.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement:

Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the Authority shall withdraw its notice referred to above and restore all the rights of the Concessionaire:

Provided further that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as the Authority may deem appropriate.

37.2 Termination for Authority Default

37.2.1 In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the "**Authority Default**") unless the default has occurred as a result of any breach of this Agreement by the Concessionaire or due to Force Majeure. The defaults referred to herein shall include:

- (a) The Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;
- (b) the Authority has failed to make any payment to the Concessionaire within the period specified in this Agreement; and

- (c) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

37.2.2 Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon occurrence of an Authority Default, the Concessionaire shall, subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Concessionaire shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Authority to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

37.3 Termination Payment

37.3.1 Upon Termination on account of a Concessionaire Default during the Operation Period, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:

- (a) 90% (ninety per cent) of the Debt Due less Insurance Cover; and
- (b) 70% (seventy per cent) of the amount representing the Additional Termination Payment:

Provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due.

For the avoidance of doubt, the Concessionaire hereby acknowledges that no Termination Payment shall be due or payable on account of a Concessionaire Default occurring prior to COD.

37.3.2 Upon Termination on account of an Authority Default, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:

- (a) Debt Due;
- (b) 150% (one hundred and fifty per cent) of the Adjusted Equity; and
- (c) 115% (one hundred and fifteen per cent) of the amount representing the Additional Termination Payment .

37.3.3 Termination Payment shall become due and payable to the Concessionaire within 15 (fifteen) days of a demand being made by the Concessionaire to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to 3% (three per cent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

37.3.4 The Concessionaire expressly agrees that Termination Payment under this Article 37 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

37.4 Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

- (a) be deemed to have taken possession and control of the Lambadug Ropeway forthwith;
- (b) take possession and control of all materials, stores, implements, construction plants and equipment on or about the Site;
- (c) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Site or any part of the Project;
- (d) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 38.1; and
- (e) succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

37.5 Certain limitations on Termination Payment

37.5.1 Termination Payment, not being Additional Termination Payment, due and payable under this Agreement shall be limited to the Debt Due and Adjusted Equity, as the case may be, which form part of the Total Project Cost in accordance with the provisions of this Agreement; provided that the amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Payment. For the avoidance of doubt, it is agreed that within a period of 60 (sixty) days from COD, the Concessionaire shall notify to the Authority, the Total Project Cost as on COD and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing Termination Payment, and it is further agreed that in the event such disaggregation is not notified to the Authority, Equity shall be deemed to be the amount arrived at by subtracting Debt Due from Total Project Cost.

37.5.2 Additional Termination Payment due and payable in respect of Real Estate Development forming part of Specified Assets shall be limited to the lowest of:

- (a) Adjusted Depreciated Value thereof;
- (b) the replacement value thereof, as assessed by an Approved Valuer, who shall be selected and appointed by the Authority, within 15 (fifteen) days of Termination, for submitting his assessment within 30 (thirty) days of his appointment hereunder; and
- (c) [40% (forty per cent)] of the sum of Total Project Cost and Equity Support, if any.

37.6 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 37.3, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 38: DIVESTMENT OF RIGHTS AND INTEREST

38.1 Divestment Requirements

38.1.1 Upon Termination, the Concessionaire shall comply with and conform to the following Divestment Requirements:

- (a) notify to the Authority forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith the actual or constructive possession of the Lambadug Ropeway, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;
- (c) cure all Project Assets, including the road, bridges, structures and equipment, of all defects and deficiencies so that the Lambadug Ropeway is compliant with the Maintenance Requirements; provided that in the event of Termination during the Construction Period, all Project Assets shall be handed over on 'as is where is' basis after bringing them to a safe condition;
- (d) deliver and transfer relevant records, reports, Intellectual Property and other licences pertaining to the Lambadug Ropeway and its design, engineering, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Lambadug Ropeway and shall be assigned to the Authority free of any encumbrance;
- (e) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- (f) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Lambadug Ropeway, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and
- (g) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Lambadug Ropeway, free from all Encumbrances, absolutely unto the Authority or to its nominee.

38.1.2 Subject to the exercise by the Authority of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Concessionaire, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the giving of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

38.2 Inspection and cure

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Independent Engineer shall verify, after giving due notice to the Concessionaire of the time, date and venue of such verification, compliance by the Concessionaire with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 39 shall apply, mutatis mutandis, in relation to curing of defects or deficiencies under this Article 38.

38.3 Cooperation and assistance on transfer of Project

- 38.3.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Users, other members of the public or the lawful occupiers of any part of the Site.
- 38.3.2 The Parties shall provide to each other, 9 (nine) months prior to the Transfer Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the Authority, its concessionaire or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.
- 38.3.3 The Authority shall have the option to purchase or hire from the Concessionaire at a fair market value and free from any encumbrance all or any part of the plant and machinery used in connection with the Project, but which does not form part of the assets specified in Clause 38.1.1 and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.

38.4 Vesting Certificate

The divestment of all rights, title and interest in the Lambadug Ropeway shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule-N (the "**Vesting Certificate**"), which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Lambadug Ropeway, and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on, or in respect of, the Lambadug Ropeway on the footing that all Divestment Requirements have been complied with by the Concessionaire.

38.5 Additional Facilities

Notwithstanding anything to the contrary contained in this Agreement, all Additional Facilities

shall continue to vest in the Concessionaire upon and after Termination.

38.6 Divestment costs etc.

- 38.6.1 The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Lambadug Ropeway in favour of the Authority upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such divestment shall be borne by the Authority.
- 38.6.2 In the event of any dispute relating to matters covered by and under this Article 38, the Dispute Resolution Procedure shall apply.

ARTICLE 39: DEFECTS LIABILITY AFTER TERMINATION

39.1 Liability for defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Lambadug Ropeway for a period of 120 (One hundred and twenty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Engineer in the Lambadug Ropeway during the aforesaid period. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) 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 the Concessionaire's risk and cost so as to make the Lambadug Ropeway conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire 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 the same from the Escrow Account.

39.2 Retention in Escrow Account

- 39.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 39.2.3, a sum equal to 5% (five per cent) of the total revenues for the year immediately preceding the Transfer Date shall be retained in the Escrow Account for a period of 120 (one hundred and twenty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 39.1.
- 39.2.2 Without prejudice to the provisions of Clause 39.2.1, the Independent Engineer shall carry out an inspection of the Lambadug Ropeway at any time between 210 (two hundred and ten) and 180 (one hundred and eighty) days prior to the Termination and if it recommends that the status of the Lambadug Ropeway is such that a sum larger than the amount stipulated in Clause 39.2.1 should be retained in the Escrow Account and for a period longer than the aforesaid 120 (one hundred and twenty) days, the amount recommended by the Independent Engineer shall be retained in the Escrow Account for the period specified by it.
- 39.2.3 The Concessionaire may, for the performance of its obligations under this Article 39, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under Clause 39.2.1 or 39.2.2, as the case may be, and for the period specified therein, substantially in the form set forth in Schedule-F(the "**Performance Guarantee**"), to be modified, mutatis mutandis, for this purpose, and the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at the Concessionaire's risk and cost in accordance with the provisions of this Article 39. Upon furnishing of a Performance Guarantee under this Clause 39.2.3, the retention of funds in the Escrow Account in terms of Clause 39.2.1 or 39.2.2, as the case may be, shall be dispensed with.

PART VI: OTHER PROVISIONS

ARTICLE 40: ASSIGNMENT AND CHARGES

40.1 Restrictions on assignment and charges

- 40.1.1 Subject to Clauses 40.2 and 40.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.
- 40.1.2 Subject to the provisions of Clause 40.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

40.2 Permitted assignment and charges

The restraints set forth in Clause 40.1 shall not apply to:

- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Lambadug Ropeway;
- (b) mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title, arising or created in the ordinary course of business of the Lambadug Ropeway, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Lambadug Ropeway;
- (c) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and
- (d) liens or encumbrances required by any Applicable Law.

40.3 Substitution Agreement

- 40.3.1 The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire pursuant to the agreement for substitution of the Concessionaire (the "**Substitution Agreement**") to be entered into amongst the Concessionaire, the Authority and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Schedule-O.
- 40.3.2 Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire; provided that where the Concessionaire is in breach of this Agreement on the date of such substitution, the Authority shall by notice grant a Cure Period of 120 (one hundred and twenty) days to the Concessionaire for curing such breach.

40.4 Assignment by the Authority

Notwithstanding anything to the contrary contained in this Agreement, the Authority may, after giving 60 (sixty) days' notice to the Concessionaire, assign and/ or transfer any of its rights and benefits and/or obligations under this Agreement to an assignee who is, in the reasonable opinion of the Authority, capable of fulfilling all of the Authority's then outstanding obligations under this Agreement.

ARTICLE 41: CHANGE IN LAW

41.1 Increase in costs

If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of Rs. 1 crore (Rupees one crore)⁸ and 0.5% (zero point five percent) of the revenues in any Accounting Year, the Concessionaire may so notify the Authority and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, 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 such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Authority shall pay the amount specified therein; provided that if the Authority shall dispute such claim of the Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 41.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

41.2 Reduction in costs

If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds the higher of Rs. 1 crore (Rupees one crore) and 0.5% (zero point five percent) of the revenues in any Accounting Year, the Authority may so notify the Concessionaire and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Authority may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Concessionaire shall pay the amount specified therein to the Authority; provided that if the Concessionaire shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 41.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

⁸ This amount may, in the discretion of the Authority, be suitably increased, but in no case exceeding a ratio of Rs. 1 cr. for every Rs. 500 cr. of Total Project Cost.

41.3 Protection of NPV

Pursuant to the provisions of Clauses 41.1 and 41.2 and for the purposes of placing the Concessionaire in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall rely on the Financial Model to establish a net present value (the “NPV”) of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred.

41.4 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 41 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.

41.5 No claim in the event of recovery from Users

Notwithstanding anything to the contrary contained in this Agreement, the Authority shall not in any manner be liable to reimburse to the Concessionaire any sums on account of a Change in Law if the same are recoverable from the Users.

ARTICLE 42: LIABILITY AND INDEMNITY

42.1 General indemnity

- 42.1.1 The Concessionaire will indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and Government owned and/or controlled entities/enterprises, (the “**Authority Indemnified Persons**”) against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the Concessionaire to any User or from any negligence of the Concessionaire under contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Authority Indemnified Persons.
- 42.1.2 The Authority will indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (i) defect in title and/or the rights of the Authority in the land comprised in the Site, and/or (ii) breach by the Authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Concessionaire of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Concessionaire, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Concessionaire.

42.2 Indemnity by the Concessionaire

- 42.2.1 Without limiting the generality of Clause 42.1, the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:
- (a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;
 - (b) payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire’s contractors, suppliers and representatives; or
 - (c) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its contractors which are payable by the Concessionaire or any of its contractors.
- 42.2.2 Without limiting the generality of the provisions of this Article 42, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with

respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Lambadug Ropeway, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a licence, at no cost to the Authority, authorising continued use of the infringing work. If the Concessionaire is unable to secure such licence within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process or modify the same so that it becomes non-infringing.

42.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 42 (the “**Indemnified Party**”) it shall notify the other Party (the “**Indemnifying Party**”) within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

42.4 Defence of claims

- 42.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 42, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.
- 42.4.2 If the Indemnifying Party has exercised its rights under Clause 42.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

42.4.3 If the Indemnifying Party exercises its rights under Clause 42.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

- (a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
- (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or
- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
- (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
 - (i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
 - (ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 42.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

42.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 42, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

42.6 Survival on Termination

The provisions of this Article 42 shall survive Termination.

ARTICLE 43: RIGHTS AND TITLE OVER THE SITE

43.1 Licensee rights

For the purpose of this Agreement, the Concessionaire shall have rights to the use of the Site as sole licensee subject to and in accordance with this Agreement, and to this end, it may regulate the entry and use of the Lambadug Ropeway by third parties in accordance with and subject to the provisions of this Agreement.

43.2 Access rights of the Authority and others

- 43.2.1 The Concessionaire shall allow free access to the Site at all times for the authorised representatives and vehicles of the Authority, Senior Lenders, and the Independent Engineer, and for the persons and vehicles duly authorised by any Government Instrumentality to inspect the Lambadug Ropeway or to investigate any matter within their authority, and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

43.3 Property taxes

All property taxes on the Site shall be payable by the Authority as owner of the Site; provided, however, that any such taxes payable by the Concessionaire under Applicable Laws for use of the Site shall not be reimbursed or payable by the Authority.

43.4 Restriction on sub-letting

The Concessionaire shall not sublicense or sublet the whole or any part of the Site, save and except as may be expressly set forth in this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint Contractors for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Lambadug Ropeway.

ARTICLE 44: DISPUTE RESOLUTION

44.1 Dispute resolution

- 44.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 44.2.
- 44.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

44.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer or without the intervention of the Independent Engineer, either Party may require such Dispute to be referred to the Chairman of the Authority and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 44.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 44.3.

44.3 Arbitration

- 44.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 44.2, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 44.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”), or such other rules as may be mutually agreed by the Parties and shall be subject to the provisions of the Arbitration Act. The venue of such arbitration shall be Delhi, and the language of arbitration proceedings shall be English.
- 44.3.2 There shall be a Board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.
- 44.3.3 The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 44 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.

44.3.4 The Concessionaire and the Authority agree that an Award may be enforced against the Concessionaire and/or the Authority, as the case may be, and their respective assets wherever situated.

44.3.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

44.4 Adjudication by Regulatory Authority or Commission

In the event of constitution of a statutory Regulatory Authority or Commission with powers to adjudicate upon disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 44.3, be adjudicated upon by such Regulatory Authority or Commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or High Court, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

ARTICLE 45: DISCLOSURE

45.1 Disclosure of Specified Documents

The Concessionaire shall make available for inspection by any person, copies of this Concession Agreement, the Maintenance Manual, the Maintenance Programme and the Maintenance Requirements (hereinafter collectively referred to as the “**Specified Documents**”), free of charge, during normal business hours on all working days at the Concessionaire’s Registered Office. The Concessionaire shall provide copies of the same to any person upon payment of copying charges on a ‘no profit no loss’ basis.

45.2 Disclosure of Documents relating to safety

The Concessionaire shall make available for inspection by any person copies of all Documents and data relating to safety of the Lambadug Ropeway, free of charge, during normal business hours on all working days, at the Concessionaire’s Registered Office. The Concessionaire shall make copies of the same available to any person upon payment of copying charges on a ‘no profit no loss’ basis.

Notwithstanding the provisions of Clauses 45.1 and 45.2, the Authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined hereinbelow) to any person in pursuance of the aforesaid Clauses.

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 45.1 and 45.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

ARTICLE 46: REDRESSAL OF PUBLIC GRIEVANCES

46.1 Complaints Register

- 46.1.1 The Concessionaire shall maintain a public relations office at each of the terminals where it shall keep a register (the “**Complaint Register**”) open to public access at all times for recording of complaints by any person (the “**Complainant**”). Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Concessionaire at each terminal so as to bring it to the attention of all Users.
- 46.1.2 The Complaint Register shall be securely bound and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Concessionaire. Immediately after a complaint is registered, the Concessionaire shall give a receipt to the Complainant stating the date and complaint number.
- 46.1.3 Without prejudice to the provisions of Clauses 46.1.1 and 46.1.2, the Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

46.2 Redressal of complaints

- 46.2.1 The Concessionaire shall inspect the Complaint Register every day and take prompt and reasonable action for redressal of each complaint. The action taken shall be briefly noted in the Complaint Register and a reply stating the particulars thereof shall be sent by the Concessionaire to the Complainant under a certificate of posting.
- 46.2.2 Within 7 (seven) days of the close of each month, the Concessionaire shall send to the Authority and to the Independent Engineer a true photocopy each of all the pages of the Complaint Register on which any entry has been recorded during the course of such month, and upon perusal thereof, the Authority may, in its discretion, advise the Concessionaire to take such further action as the Authority may deem appropriate for a fair and just redressal of any grievance. The Concessionaire shall consider such advice and inform the Authority of its decision thereon, and if the Authority is of the opinion that the Complainant is entitled to further relief, it may refer the matter to the competent forum for its disposal under the Consumer Protection Act, 1986, and advise the Complainant to pursue the complaint at his own risk and cost.

ARTICLE 47: MISCELLANEOUS

47.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts at Delhi shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

47.2 Waiver of immunity

Each Party unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

47.3 Deleted

47.4 Depreciation and Interest

47.4.1 For the purposes of depreciation under the Applicable Laws, the property representing the capital investment made by the Concessionaire in the Project shall be deemed to be acquired and owned by the Concessionaire. For the avoidance of doubt, the Authority shall not in any manner be liable in respect of any claims for depreciation to be made by the Concessionaire under the Applicable Laws.

47.4.2 Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis and shall be compounded on the basis of quarterly rests.

47.5 Delayed payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for

the period of delay calculated at a rate equal to 5% (five per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

47.6 Waiver

47.6.1 Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement :-

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

47.6.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

47.7 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by the Authority or the Independent Engineer of any Project Agreement, Document or Drawing submitted by the Concessionaire nor any observation or inspection of the construction, operation or maintenance of the Lambadug Ropeway nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- (b) the Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

47.8 Exclusion of implied warranties etc.

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

47.9 Survival

47.9.1 Termination shall:

- (a) not relieve the Concessionaire or the Authority, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and

- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

47.9.2 All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination.

47.10 Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Concessionaire arising from the Request for Qualification or Request for Proposals, as the case may be, shall be deemed to form part of this Agreement and treated as such.

47.11 Severability

If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

47.12 No partnership

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

47.13 Third parties

This Agreement is intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

47.14 Successors and assigns

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

47.15 Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- (a) in the case of the Concessionaire, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Concessionaire may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside Delhi may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Concessionaire may from time to time designate by notice to the Authority;

Attention:

Designation:

Address:

Fax No:

Email:

- (b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand at the address given below and be addressed to the Chairman of the Authority with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Concessionaire; provided that if the Concessionaire does not have an office in Delhi it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier;

Address:

Fax No:

Email:

- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

47.16 Language

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

47.17 Counterparts

This Agreement may be executed in two counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.

ARTICLE 48: DEFINITIONS

48.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

“Accounting Year” means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year;

“Additional Facilities” means the facilities such as service stations, motels, restaurants, shopping areas and amusement parks which the Concessionaire may, in its discretion and subject to Applicable Laws, provide or procure for the benefit of the Users, and which are in addition to the Project Facilities, and not situated on the Site;

“Additional Termination Payment” means the amount, if any, payable upon Termination, on account of the Adjusted Depreciated Value of Specified Assets, as further limited by the provisions of Clauses 37.5.2, 37.5.3 and 37.5.4, as the case may be;

“Adjusted Depreciated Value” means the amount arrived at after adjusting the depreciated book value of an asset (as stated in the books of account of the Concessionaire, save and except, in the case of buildings and permanent structures where the depreciated book value shall be determined by applying an annual depreciation rate of 3% based on the written down value method) to reflect the variation occurring in WPI between the date of purchase thereof and the Transfer Date;

“Adjusted Equity” means the Equity funded in Indian Rupees and adjusted on the first day of the current month (the **“Reference Date”**), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in WPI, and for any Reference Date occurring:

(a) on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and the Reference Date;

(b) from COD and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the **“Base Adjusted Equity”**) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in WPI occurring between COD and the Reference Date;

(c) after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.42% (zero point four two per cent)⁹ thereof at the commencement of each month following the 4th (fourth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date;

“Affected Party” shall have the meaning set forth in Clause 34.1;

“Agreement” or **“Concession Agreement”** means this Agreement, its Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

“Appendix” shall have the meaning set forth in Clause 10.3.1;

“Applicable Laws” means all laws, brought into force and effect by GOI or the State Government including rules, regulations and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

“Applicable Permits” means all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Lambadug Ropeway during the subsistence of this Agreement;

“Appointed Date” means the date on which Financial Close is achieved or an earlier date that the Parties may by mutual consent determine and shall be deemed to be the date of commencement of the Concession Period. For the avoidance of doubt, every Condition Precedent shall have been satisfied or waived prior to the Appointed Date and in the event all Conditions Precedent are not satisfied or waived, as the case may be, the Appointed Date shall be deemed to occur only when each and every Condition Precedent is either satisfied or waived, as the case may be;

“Approved Valuer” means a firm of valuers recognized as such by the Income Tax Department and having experience of valuing at least 5 (five) properties exceeding Rs. 100 cr. (Rupees one hundred crore) each in value;

“Arbitration Act” means the Arbitration and Conciliation Act, 1996 and shall include modifications to or any re-enactment thereof, as in force from time to time;

“Associate” or **“Affiliate”** means, in relation to either Party {and/or Consortium Members}, a person who controls, is controlled by, or is under the common control with such Party {or Consortium Member} (as used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

“Authority” shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

“Authority Default” shall have the meaning set forth in Clause 37.2.1;

“Authority Representative” means such person or persons as may be authorised in writing by the Authority to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfil any obligations of the Authority under this Agreement;

“Average Daily Fee” means the amount arrived at after dividing the total revenues of the immediately preceding Accounting Year by 365 (three hundred and sixty five), and increasing

the result thereof by 5% (five per cent); provided that the Average Daily Fee for any period prior to completion of the first Accounting Year following COD shall be a simple average of the Fee collected every day during the period between COD and the last day of the month preceding the date on which the event requiring calculation hereof occurred;

“**Bank**” means a bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore) or any other bank acceptable to Senior Lenders, but does not include a bank in which any Senior Lender has an interest;

“**Bank Rate**” means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect;

“**Bid**” means the documents in their entirety comprised in the bid submitted by the {selected bidder/Consortium} in response to the Request for Proposal in accordance with the provisions thereof;

“**Bid Security**” means the security provided by the Concessionaire to the Authority along with the Bid in a sum of Rs. 1.62 crore (Rupees One Crore and Sixty Two Lakhs Only)¹⁰, in accordance with the Request for Proposal, and which is to remain in force until substituted by the Performance Security;

“**CEN**” shall mean Comité Européen De Normalisation, European Committee for Standardization;

“**CEN Standards**” shall mean the standards put forth by Comité Européen De Normalisation, European Committee for Standardization, applicable on the date of issue of the RFQ (currently it is CEN 2015) applicable to ropeways, as set forth in Annex-II of Schedule-D, and any modifications thereof, or additions thereto,;

“**Change in Law**” means the occurrence of any of the following after the date of Bid:

- (a) the enactment of any new India law;
- (b) the repeal, modification or re-enactment of any existing Indian law;
- (c) the commencement of any Indian law which has not entered into effect until the date of Bid;
- (d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of Bid; or
- (e) any change in the rates of any of the Taxes that have a direct effect on the Project;

“**Change in Ownership**” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the {selected bidder/ Consortium Members}, together with {its/their} Associates, in the total Equity to decline below (i) 51% (fifty one per cent) thereof during Construction Period, (ii) 33% (thirty three per cent) thereof during a period of 3 (three) years following COD, and (iii) 26% (twenty six per cent) thereof, or such lower proportion as may be permitted by the Authority during the remaining Concession Period; provided that any material variation (as compared to the representations made by the Concessionaire during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or Bid, as the

case may be,) in the proportion of the equity holding of {the selected bidder/ any Consortium Member} to the total Equity, if it occurs prior to COD, shall constitute Change in Ownership;

“Change of Scope” shall have the meaning set forth in Clause 16.1;

“Company” means the company acting as the Concessionaire under this Agreement;

“Completion Certificate” shall have the meaning set forth in Clause 14.2; **“Concession”** shall have the meaning set forth in Clause 3.1.1;

“Concessionaire” shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

“Concession Fee” shall have the meaning set forth in Clause 26.1;

“Concession Period” means the period starting on and from the Appointed Date and ending on the Transfer Date;

“Concessionaire Default” shall have the meaning set forth in Clause 37.1.1;

“COD” or **“Commercial Operation Date”** shall have the meaning set forth in Clause 15.1;

“Conditions Precedent” shall have the meaning set forth in Clause 4.1.1;

{**“Consortium”** shall have the meaning set forth in Recital (B);}

{**“Consortium Member”** means a company specified in Recital (_B) as a member of the Consortium;}

“Construction Period” means the period beginning from the Appointed Date and ending on the COD;

“Construction Works” means all works and things necessary to complete the Lambadug Ropeway in accordance with this Agreement;

“Contractor” means the person or persons, as the case may be, with whom the Concessionaire has entered into any of the EPC Contract, the O&M Contract or any other material agreement or contract for construction, operation and/or maintenance of the Lambadug Ropeway or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Concessionaire;

“Cure Period” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:

- (a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and

- (c) not in any way be extended by any period of Suspension under this Agreement; provided that if the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the Authority or the Independent Engineer hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or the Independent Engineer to accord their approval;

“DBFOT” or **“Design, Build, Finance, Operate and Transfer”** shall have the meaning set forth in Recital (B);

“Damages” shall have the meaning set forth in Sub-clause (w) of Clause 1.2.1;

“Debt Due” means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:

- (a) the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the “principal”) but excluding any part of the principal that had fallen due for repayment two years prior to the Transfer Date;
- (b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-clause (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority Default; and

“Debt Service” means the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Senior Lenders under the Financing Agreements;

“Development Period” means the period from the date of this Agreement until the Appointed Date;

“Dispute” shall have the meaning set forth in Clause 44.1.1;

“Dispute Resolution Procedure” means the procedure for resolution of Disputes set forth in Article 44;

“Divestment Requirements” means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 38.1;

“Document” or **“Documentation”** means documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;

“Drawings” means all of the drawings, calculations and documents pertaining to the Lambadug Ropeway as set forth in Schedule-H, and shall include ‘as built’ drawings of the Lambadug Ropeway;

“EPC Contract” means the engineering, procurement and construction contract or contracts entered into by the Concessionaire with one or more Contractors for, inter alia, engineering and construction of the Lambadug Ropeway in accordance with the provisions of this Agreement;

“EPC Contractor” means the person with whom the Concessionaire has entered into an EPC Contract;

“Emergency” means a condition or situation that is likely to endanger the security of the individuals on or about the Lambadug Ropeway, including Users thereof, or which poses an immediate threat of material damage to any of the Project Assets;

“Encumbrances” means, in relation to the Lambadug Ropeway and Real Estate Development, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Lambadug Ropeway, where applicable herein but excluding utilities referred to in Clause 11.1;

“Equity” means the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost, and shall for the purposes of this Agreement include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest-free funds advanced by any shareholder of the Company for meeting such equity component, but does not include Equity Support;

“Equity Support” shall have the meaning set forth in Clause 25.2.1;

“Escrow Account” means an Account which the Concessionaire shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement, and includes the Sub-Accounts of such Escrow Account;

“Escrow Agreement” shall have the meaning set forth in Clause 31.1.2;

“Escrow Bank” shall have the meaning set forth in Clause 31.1.1; **“Escrow Default”** shall have the meaning set forth in Schedule -S;

“Fee” means the charge levied on and payable for using the Lambadug Ropeway or a part thereof, in accordance with the Fee Rules and this Agreement;

“Fee Notification” means the Notification No.dated..... issued by the Authority in exercise of the powers conferred by Section **** of the **** Act, 20** in respect of the levy and collection of Fee during the Concession Period and a copy of which is at Schedule P and includes any subsequent notifications issued from time to time for levy and collection of Fee contemplated by the provisions of this Agreement;

“Financial Close” means the fulfilment of all conditions precedent to the initial availability of funds under the Financing Agreements;

“Financial Default” shall have the meaning set forth in Schedule O;

“Financial Model” means the financial model adopted by Senior Lenders, setting forth the capital and operating costs of the Project and revenues therefrom on the basis of which financial

viability of the Project has been determined by the Senior Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein;

“Financial Package” means the financing package indicating the total capital cost of Lambadug Ropeway and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements;

“Financing Agreements” means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Clause 5.2.2;

“Force Majeure” or **“Force Majeure Event”** shall have the meaning ascribed to it in Clause 34.1;

“GOI” or **“Government”** means the Government of India;

“Good Industry Practice” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Concessionaire in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

“Government Instrumentality” means any department, division or sub-division of the Government or the State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body including Panchayat under the control of the Government or the State Government, as the case may be, and having jurisdiction over all or any part of the Lambadug Ropeway or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

“Grant” shall have the meaning set forth in Clause 25.1.1;

“Indemnified Party” means the Party entitled to the benefit of an indemnity pursuant to Article 42;

“Indemnifying Party” means the Party obligated to indemnify the other Party pursuant to Article 42;

“Indirect Political Event” shall have the meaning set forth in Clause 34.3;

“Insurance Cover” means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 32, and includes all insurances required to be taken out by the Concessionaire under Clause 32.1 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

“Intellectual Property” means all patents, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, semi-conductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

“LOA” or “Letter of Award” means the letter of award referred to in Recital (D);

“Lead Member” shall have the meaning set forth in Recital (B);

“Lenders’ Representative” means the person duly authorised by the Senior Lenders to act for and on behalf of the Senior Lenders with regard to matters arising out of or in relation to this Agreement, and includes his successors, assigns and substitutes;

“Local User” means a person living in the geographical area comprising the districts of Kullu.

“Maintenance Manual” shall have the meaning ascribed to it in Clause 17.3; **“Maintenance Programme”** shall have the meaning ascribed to it in Clause 17.4.1; **“Maintenance Requirements”** shall have the meaning set forth in Clause 17.2;

“Material Adverse Effect” means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;

“Nominated Company” means a company selected by the Lenders’ Representative and proposed to the Authority for substituting the Concessionaire in accordance with the provisions of the Substitution Agreement;

“Non-Political Event” shall have the meaning set forth in Clause 34.2;

“O&M” means the operation and maintenance of the Lambadug Ropeway and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities, and collection of Fee in accordance with the provisions of this Agreement;

“O&M Contract” means the operation and maintenance contract that may be entered into between the Concessionaire and the O&M Contractor for performance of all or any of the O&M obligations;

“O&M Contractor” means the person, if any, with whom the Concessionaire has entered into an O&M Contract for discharging O&M obligations for and on behalf of the Concessionaire;

“O&M Expenses” means expenses incurred by or on behalf of the Concessionaire or by the Authority, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premia for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under the O&M Contract or any other contract in connection with or incidental to O&M,

and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

“O&M Inspection Report” shall have the meaning set forth in Clause 19.2;

“Operation Period” means the period commencing from COD and ending on the Transfer Date;

“Panel of Chartered Accountants” shall have the meaning set forth in Clause 33.2.1; **“Parties”**

means the parties to this Agreement collectively and “Party” shall mean any of the parties to this Agreement individually;

“Performance Security” shall have the meaning set forth in Clause 9.1; **“Political Event”** shall have the meaning set forth in Clause 34.4;

{**“Premium”** shall have the meaning set forth in Clause 25.4;}

“Project” means the construction, operation and maintenance of the Lambadug Ropeway in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project;

“Project Agreements” means this Agreement, the Financing Agreements, EPC Contract, O&M Contract, all agreements relating to Real Estate Development and any other material agreements or contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Escrow Agreement, Substitution Agreement, or any agreement for procurement of goods and services involving a consideration of upto Rs.[5(five)] crore;

“Project Assets” means all physical and other assets relating to and forming part of the Site including (a) rights over the Site in the form of licence, Right of Way or otherwise; (b) tangible assets such as civil works and equipment; (c) Project Facilities situated on the Site; (d) all rights of the Concessionaire under the Project Agreements; (e) financial assets, such as receivables, security deposits etc.; (f) insurance proceeds; and (g) Applicable Permits and authorisations relating to or in respect of the Lambadug Ropeway, but does not include Additional Facilities;

“Project Completion Date” means the date on which the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 14;

“Project Completion Schedule” means the progressive Project Milestones set forth in Schedule- G for completion of the Lambadug Ropeway on or before the Scheduled Date;

“Project Facilities” means all the amenities and facilities situated on the Site, as described in Schedule-C;

“Lambadug Ropeway” means the [****] system built, or to be built, and operated on the Site and includes civil, mechanical and electrical works, signaling and telecommunication equipment, and all Project Assets, necessary for and associated with operation of ropeways on the Site, and shall include Real Estate Development;

“Project Milestones” means the project milestones set forth in Schedule-G; **“Provisional Certificate”** shall have the meaning set forth in Clause 14.3; **“Punch List”** shall have the meaning ascribed to it in Clause 14.3;

“RBI” means the Reserve Bank of India, as constituted and existing under the Reserve Bank of India Act, 1934, including any statutory modification or replacement thereof, and its successors;

“Re.”, “Rs.” or “Rupees” or “Indian Rupees” means the lawful currency of the Republic of India;

“Real Estate Development” shall have the meaning set forth in Clause 3.1.3;

“Reference Exchange Rate” means, in respect of any one currency that is to be converted into another currency in accordance with the provisions of this Agreement, the exchange rate as of 12.00 (twelve) noon on the relevant date quoted in Delhi by the State Bank of India, and in the absence of such rate, the average of similar rates quoted in Delhi by the Bank of India and the Bank of Baroda;

“Request for Proposals” or “RFP” shall have the meaning set forth in Recital (C);

“Request for Qualification” or “RFQ” shall have the meaning set forth in Recital (B);

“Right of Way” means the constructive possession of the Site, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction, operation and maintenance of the Lambadug Ropeway and Real Estate Development in accordance with this Agreement;

“Safety Consultant” shall have the meaning set forth in Clause 18.1.2; **“Safety Requirements”** shall have the meaning set forth in Clause 18.1.1; **“Safety Fund”** shall have the meaning set forth in Clause 18.2; **“Scheduled Date”** shall have the meaning set forth in Clause 12.3.1; **“Scope of the Project”** shall have the meaning set forth in Clause 2.1;

“Senior Lenders” means the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold pari passu charge on the assets, rights, title and interests of the Concessionaire;

“Site” shall have the meaning set forth in Clause 10.1;

“Specifications and Standards” means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Lambadug Ropeway, as set forth in Schedule-D, and any modifications thereof, or additions thereto, as included in the design and engineering for the Lambadug Ropeway submitted by the Concessionaire to, and expressly approved by, the Authority;

“Specified Assets” means and includes all buildings and immovable fixtures or structures forming part of Real Estate Development, but shall in no case include land;

“State” means the State of ***** and **“State Government”** means the government of that State;

“Statutory Auditors” means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 1956 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 33.2.1;

“Substitution Agreement” shall have the meaning set forth in Clause 40.3; **“Suspension”** shall have the meaning set forth in Clause 36.1;

“Taxes” means any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Lambadug Ropeway charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

“Termination” means the expiry or termination of this Agreement and the Concession hereunder;

“Termination Notice” means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

“Termination Payment” means the amount payable by the Authority to the Concessionaire upon Termination and may consist of payments on account of and restricted to the Debt Due and Adjusted Equity, as the case may be, which form part of the Total Project Cost in accordance with the provisions of this Agreement; provided that the amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Payment. For the avoidance of doubt, it is agreed that within a period of 60 (sixty) days from COD, the Concessionaire shall notify to the Authority, the Total Project Cost as on COD and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing Termination Payment, and it is further agreed that in the event such disaggregation is not notified to the Authority, Equity shall be deemed to be the amount arrived at by subtracting Debt Due from Total Project Cost;

“Tests” means the tests set forth in Schedule-J to determine the completion of Lambadug Ropeway

“Total Project Cost” means the capital cost incurred on construction and financing of the Project, excluding Real Estate Development, and shall be limited to lowest of:

- (a) the capital cost of the Project, {less Equity Support} as set forth in the Financial Package;
- (b) the actual capital cost of the Project upon completion of the Lambadug Ropeway {less

Equity Support}; and

(c) a sum of Rs. ***** crore (Rupees ***** crore), less Equity Support; provided that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in WPI or Reference Exchange Rate occurring in respect of Adjusted Equity and Debt Due, as the case may be, in accordance with the provisions of this Agreement; provided further that in the event WPI increases, on an average, by more than 6% (six per cent) per annum for the period between the date hereof and COD, the Parties shall meet, as soon as reasonably practicable, and agree upon revision of the amount hereinbefore specified such that the effect of increase in WPI, in excess of such 6% (six per cent), is reflected in the Total Project Cost;

“**Transfer Date**” means the date on which this Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice;

“**User**” means a person who travels or intends to travel on the Lambadug Ropeway on payment of Fee or in accordance with the provisions of this Agreement and Applicable Laws;

“**Vesting Certificate**” shall have the meaning set forth in Clause 38.4; and

“**WPI**” means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the latest monthly WPI published no later than 30 (thirty) days prior to the date of consideration hereunder.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

SIGNED, SEALED AND
DELIVERED

For and on behalf of
THE AUTHORITY by:

(Signature)

(Name)

(Designation)

THE COMMON SEAL OF
CONCESSIONAIRE has been affixed
pursuant to the resolution passed by the Board
of Directors of the Concessionaire at its meeting
held on the day of 20..... hereunto
affixed in the presence of
....., Director, who has signed
these presents in token thereof and
....., Company Secretary /
Authorised Officer who has countersigned the
same in token thereof \$:

In the presence of:

1.

2.

SCHEDULES

SCHEDULE – A

(See Clause 10.1)

SITE OF THE PROJECT

1 The Site

- 1.1 Site of the Lambadug Ropeway shall include the land, buildings, structures and road works as described in Annex-I of this Schedule-A
- 1.2 An inventory of the Site including the land, buildings, structures, road works, trees and any other immovable property on, or attached to, the Site shall be prepared jointly by the Authority Representative and the Concessionaire, and such inventory shall form part of the memorandum referred to in Clause 10.3.1 of the Agreement.

2 Real Estate Development

The land earmarked for Real Estate Development has been described in Annex-II of this Schedule-A, and such land shall form part of the Site.

[Note: Through suitable drawings and description in words, the land, buildings, structures and road works comprising the Site shall be specified briefly but precisely.]

Annex - I
(Schedule-A)

Site for the Ropeway

Total Length as per Alignment Plan Approx. 2.7 Kms

The location detail (Co-ordinates) of stations are given in **Table tables here under:**

Station Name	Tentative Co-ordinates	Elevation
Khalincha (LTP)	32°14'58.17"N 77°10'28.73"E	2106 m
Lambadug (UTP)	32°15' 53.25"N 77° 9' 5.56"E	3264 m

*It's an indicative length and not binding on Concessioneing Authority, bidders have to do their own due diligence for ascertaining the same

Annex-II
(Schedule-A)
(See Clause 3.1.3)

Site for Real Estate Development

The Contractor can develop the property under the provided land of stations only

SCHEDULE – B

(See Clause 2.1)

DEVELOPMENT OF THE ROPEWAY

1. Development of the Ropeway

1.1.1 The Development of Project shall mean, subject to the provisions of the RFP and Concession Agreement, an indicative 2.7 km long Ropeway Facility between Khalincha to Lambadug

- (i) Design of ropeway shall conform strictly to Common European Norms (CEN) and also to the satisfaction of Concessioning Authority.
- (ii) All electro mechanical components of the ropeway including Drive Gear with entire driving arrangement, Cabins, Hanger, Carriage, Tensioning system and Haulage Rope to be as per CEN standards and also to the satisfaction of Concessioning Authority. The structural elements i.e. civil construction, Tower and Station structure shall be indigenously constructed as per relevant applicable codes.
- (iii) Carrying capacity of the Ropeway system at the time of commencement of Operations shall not be less than minimum 3000 PPHPD. Ropeway shall be designed to cope up with the increased foot fall of tourists in the peak season i.e. from mid of June to September.
- (iv) the development of other tourism components as per defined use (Only Eco – Tourism activities under commercial component shall be allowed);
- (v) design, financing, construction of the Project at the Site, implementation, completion, commissioning, marketing, management, operation and maintenance and commercial use of the Project, execution of the Works and all activities incidental thereto, such as engineering, testing, commissioning and insurance etc., by the Concessionaire during the Concession Period;

1.2 The Project shall be constructed and developed in conformity with Schedule-B, Schedule- C and Schedule-D.

1.3 The operations and maintenance of the Project shall be in conformity with the Maintenance Requirements specified in Schedule-H.

2. Description of the Mandatory Project Ropeway:

- Technology: Development of ropeway with suitable and latest technology conforming to CEN standards and also to the satisfaction of Concessioning Authority.
- Drive Gear with entire driving arrangement, Cabins, Hanger, Carriage, Tension arrangement and Haulage Rope to be as per CEN standards and also to the satisfaction of Concessioning Authority.

Annex - I
(Schedule-B)

Description of Ropeways

1. Length of the Ropeways: 2.7 Km

2. Project Facilities

At LTP:

- Ropeway Station, Parking for ropeway cabins, Store, Workshop, Office, Ticket Counter, Account and staff room, Toilet, (Multiple shops/commercial, Queue Area,) Genset room.

At UTP:

- Ropeway Station, Store, Ticket Counter, Toilet, (Multiple shops/commercial,) Queue Area, Genset room.

3. Specifications and Standards

- Technology: Development of ropeway with suitable and latest technology conforming to CEN standards and also to the satisfaction of Concessioneering Authority.
- Drive Gear with entire driving arrangement, Cabins, Hanger, Carriage, Tension arrangement and Haulage Rope to be as per CEN standards and also to the satisfaction of Concessioneering Authority.

4. SYSTEM OPERATION

Development of ropeway with suitable and latest technology between Khalincha to Lambadug.

5. BASIC DESIGN CONSIDERATIONS

Engineering analysis shall include the details of technology to be adopted and number of tourist to be served, the design period, the user fee charges, other revenue source, the nature and location of facilities to be provided. Optimization may call for planning for a number of phases relating to ropeway capacity and construction of various units, working out capital cost required, interest charges, period of repayment of loan, user charges.

All the station structures and trestles shall be designed supplied and constructed to withstand the effects of wind, humidity, earthquake, temperature variations, geo technical conditions etc. likely to be prevalent at the site. In this regard the relevant Indian Codes (BIS) would be considered as guidelines. Appropriate OITAF/French regulations/DIN/B.S./ASTM specifications and other international guides will apply in case Indian Codes do not fully cover requirements required for ropeway structures, such as, critical and important welded fabrications.

The ropeway location falls in seismic Zone V as per IS 1893, 1984. Hence all the structure shall be designed as per the provisions of the corresponding IS Codes taking into account the seismic coefficient and Importance factors which should be at least 1.5. However during actual designing, Importance factors higher than 1.5 can also be considered. Further, for the design of structures, a temperature variation of approx. (+) 40 deg. Centigrade to 0 deg. Centigrade or even lower may be considered. It would also be necessary for specific geo-technical investigations to be carried out before execution to ensure proper foundation design at the location of important locations, like stations, trestles etc.

The design material and workmanship for civil, structural, sanitary, water supply fittings including safety and fire protection provisions shall conform to Central Public Works Department Specifications for Class I building works and standards given in National Building Code (NBC) as amended and/ or modified from time to time. In the absence of such specifications, other relevant Indian Standards Specifications shall be applicable. In case both are not available, relevant specifications of local PWD shall be applicable.

All building works shall be designed to meet the functional requirements and shall be compatible with the regional architecture and microclimate, particularly incorporating mitigation measures for earthquake and natural disasters. Locally available materials shall be accorded preference subject to meeting the requirement of IS codes and the quality of construction. All brick and stone masonry works shall be of first class type and as per good practices. All the open spaces around Lower & Upper terminals need to be landscaped. The design of drinking water supply and storage systems, laying of pipes, shall be as per relevant clauses of the NBC. The design, layout and construction of drains for sewerage disposal system with all ancillary works shall be in accordance with NBC. The design and location of all electrical installations, distribution system, wiring, fittings, accessories and lightning protection of buildings shall be as per relevant clauses of the NBC. Firefighting equipment including smoke detectors and audiovisual alarm system shall be planned and installed as per relevant sections of NBC.

Similarly, all mechanical and electrical equipment and supplies including safety and fire protection provisions shall comply with the relevant Indian Codes (BIS) / guidelines with latest revisions. In the absence of such Indian Codes or guidelines, appropriate Euro regulations/OITAF/French regulations/DIN/B.S./ASTM specifications and other international guides with latest revisions will apply. Any alteration must be accepted in writing by the concerned parties.

6. POWER SUPPLY REQUIREMENT

The total requirement for the motor and lighting load for the Ropeway has to assess. The power supply made available by HPSEB is usually at 415V + 10% with frequency of 50 cycles + 3%. Power line/ substation required for power availability at the ropeway terminals could be laid with from nearby HPSEB substation. The cost of the installation of the power line/ substation has to borne by the concessionaire. Necessary step down transformer shall be provided to supply LT power for ropeway electrical equipment and lighting.

Normally the ropeway system shall work on power supply arranged by HPSEB, but in case regular power supply fails, the system shall operate on standby Diesel Generator (DG) power supply. The DG set shall be of continuous rating. It shall be capable for full capacity load requirement of the passenger ropeway system and related buildings and shall be suitable to operate on required load. The DG power system shall be noise-free and air pollution free as per code of Practices. The cost of the DG set and its installation has to borne by the concessionaire.

7. OPERATION AND MAINTENANCE

The operation and maintenance for the Ropeway system shall be done as per the requirement set forth in the agreement and considering the prudent industry practices. The manpower shall be sufficient for normal and satisfactory maintenance and operation of the ropeway system including for the purpose of supervision, basic preventive maintenance and breakdown maintenance, accounting and security work. Twelve hours (one and half shift) operation in which 10 hours would the effective hours for operation and two hours would the routine maintenance (one hour before start and one hour after shut down of the plant for the day) has been envisaged. Other than this routine maintenance, the system/plant should undergo periodic maintenance for through checking, overhauling and Rope changing etc.

The operation & Maintenance of the ropeway system shall also be carried out in accordance with the manual book as recommended by manufacturer of the equipment for equipments such as Gear Box, Motors, Coupling, Control Panels, Carriage, Hangers, Cabins & ropes etc. to get the best oLTPut from various equipments and to avail the services under guarantee period, if so required.

The following minimum manpower shall be placed for the smooth running of Ropeway:

S. No.	Description	Man Power Type	Qty (Nos.)
1	Staff		
a.	Ropeway related:	Project Manager	1
		Maintenance Engineer	2
		Electric Engineer	1
		Mechanical Supervisor	1
		Supervisor	1
		Security Staff	4
		Ticket checkers	2
		Electrician	2
		Cabin Boys	10
		Support Staff	5
b	Finance & Administration:	Account Head	1
		Accountant	1
		Admin Head	1
		Billing / Ticketing Staff	4
		Store Keeper	2
		Office Assistant	2
		Gardener	1
		Office Boy	2
		Driver	1

8. PERFORMANCE STANDARDS AND MONITORING

Minimum Performance Standards for the Project are set out as follows:

- a. Carrying capacity of the Ropeway system at the time of commencement of Operations shall not be less than minimum 3000 PPHPD.
- b. Ropeway should be in daily operation throughout the year, unless otherwise instructed by Ropeway Inspector (during unfavorable conditions).
- c. Performance of the system at boarding and de boarding areas.
 - (i) The speed of ropeway system at boarding and de-boarding areas should enable safe passenger movement.
 - (ii) Queue length of passengers shall commensurate with the requirement.
 - (iii) Waiting time for the passengers shall be minimum.
- d. Performance of standby equipment. The rating of standard DG set should be equal to the main electrical power system to run at full load.
- e. Performance of Rescue systems and carrier evacuation system. The efficiency and number of rescue and evacuation system shall be measured in terms of following:
 - (i) Response time to mishap detected by automatic detection system should be minimum.
 - (ii) Evacuation/ mitigation time period up to terminal stations should be kept at minimum as per code.

Annex - II
(Schedule-B)

Description of Real Estate Development

NOT APPLICABLE

SCHEDULE – C

(See Clause 2.1)

PROJECT FACILITIES

1 Project Facilities

1. The Concessionaire shall construct the Project Facilities in accordance with the provisions of this Agreement.
2. Project Facilities means all the amenities and facilities required as basic and support infrastructure for Project, for the optimal functioning thereof more specifically described below:

The Concessionaire shall construct the **Mandatory Project Facilities** to form part of the Project Assets. The Mandatory Project Facilities shall include the Project Facilities required to adequately and efficiently support the Mandatory Project and shall include but not be limited to adequate:

- a) sewage and sanitation facilities;
- b) water supply and distribution;
- c) electricity supply and distribution electricity;
- d) paved interconnecting roads and lanes; pavements and sidewalks;
- e) toilets;
- f) tree plantation and green areas;
- g) facilities for disabled;
- h) refreshment facilities;
- i) public access telephones;
- j) administrative offices;
- k) security;
- l) landscaping and perimeter fencing;
- m) internal road network;
- n) street lighting within the perimeter;
- o) firefighting system;
- p) drains;
- q) and such other facilities as may be necessary and required to establish and operate and the Project in accordance with the Specifications and Standards.

The Mandatory Project Facilities shall be developed, constructed and commissioned in accordance with the provisions of this Agreement and shall be completed by the Scheduled Completion Date.

;

SCHEDULE – D

(See Clause 2.1)

SPECIFICATIONS AND STANDARDS

1 Ropeways

The Concessionaire shall comply with the Specifications and Standards set forth in Annex-I and Annex-II of this Schedule-D for construction of the Lambadug Ropeways.

Annex - I
(Schedule-D)

Specifications and Standards for the Ropeway

1. ROPEWAY:

The project shall mean, subject to the provisions of the RFP and Concession agreement an indicative 2.7 km long, ropeway transport system.

2. ROPEWAY SYSTEM:

The Concessionaire shall develop the ropeway system and associated facilities/ infrastructure keeping in view the slope gradients, type of terrain, tourist arrival and other considerations.

- a. The ropeway shall conform to Common European Norms (CEN) standards adhering to the utmost standards of safety standards as well as to the satisfaction of Concessioneing Authority.
- b. The proposed capacity of ropeway is minimum 3000 PPHPD. However, if concessionaire wants to install higher capacity ropeway then he may do so.
- c. All ropeway components except structural items shall be strictly as per CEN standards, procured from reputed manufacturer and also to the satisfaction of Concessioneing Authority. All necessary certificates needs to be submitted along with the design and plans submitted to the Concessioneing authority.
- d. The ropeway should be developed in such a manner that the system including the Gondolas/Cabins is above the tree line and the trees to be cut are only in places where the towers and the facilities are to be created or it is required to remove for safety of ropeway system.

- **Upper Terminal Point (UTP) / Lower Terminal Point (LTP):** The Upper Terminal Point (UTP) will be located at Anjani Mahadev and Lower Terminal Point (LTP) at Solang Valley. The terminal shall have enough space to provide for:

(a) Ropeway Terminal & Associated Facilities

- ✓ Ropeway Station- Boarding & de-boarding
- ✓ Parking for ropeway Cabins
- ✓ Ropeway Store
- ✓ Ropeway Workshop
- ✓ Office
- ✓ Account and staff room
- ✓ Generator Room
- ✓ Miscellaneous area

(b) Ticket counters

(c) Toilets - Gents / Ladies Toilet

(d) Waiting Area - Approach Road

(e) Commercial area (if any)

(f) Cloak Room

- **Towers:** The number and location of towers shall depend upon the final design approved by the Concessioneing Authority. This will also affect the number of trees to be cut for the installation of this ropeway.

3. Area Management Plan

The Concessionaire shall be responsible for general upkeep of the Project Area. The broad activities to be taken as part of area management shall include solid waste management, liquid waste management, provision of public conveniences and utilities such as washrooms, toilets, etc. Following activities shall form part of Area Management Plan, henceforth termed as Project Area Management Plan.

- Provision of utilities and public convenience facilities within the Project site;
- Provision of drainage system in the project influence area. In undertaking this activity, Concessionaire will need to ensure that the natural drainage pattern within the Project Area remains unaltered;
- Landscaping: Soft Landscaping with garden architecture shall be developed at the appropriate time at both the station areas.
- Maintain the project Site area (Lower Terminal, Right of Way, Upper Terminal)

4. Environment Management Plan (EMP):

Environment Management Plan for Project Area: The proposed project may influence the environment in the Project Area, both by positive and negative impacts. The Concessionaire shall implement the Environmental Management Plan as part of the project. The Environment Management Plan shall include impact mitigation measures to reduce the negative impacts, to be taken up by the Concessionaire in Project Area. For further details, refer this **Clause 4 and its sub clauses**.

A detailed survey of the likely impacts shall be carried out by Concessionaire. Based on the ground conditions, a necessary plan should be prepared by experts in the field and finalised in consultation with the Authority and same shall be implemented after getting the requisite clearance from the Department of Pollution Control, Government of Himachal Pradesh and/or other concerned Authority. Necessary attention shall be paid to provide the requisite drains in the slopes and other locations so that the drainage joins the natural nala with notices against littering placed at various locations, disposal of solid as well as waste water as required.

4.1 Environmental Impact Analysis:

Environmental Impact Assessment (EIA) and Environmental Clearance (EC) for developmental projects has been made mandatory by the Ministry of Environment & Forests through its Notification issued on 27.01.1994 under the provisions of Environment (Protection) Act, 1986. The Ministry of Environment and Forests (MoEF) issued revised Notification on EC process in September 2006 and amended it in December 2009.

The EIA Notification 2006 has notified 39 developmental sectors, which require prior environmental clearance. The MOEF has prepared EIA Manuals of ten Sectors including aerial ropeways. Based on the capacity, the Ropeway Projects have been categorised into Category A or B which has been further categorised as B1 or B2.

As Aerial ropeway development will have impact on the environment through activities like construction work, reclamation, excavation and other related activities, development and operation thereof shall be planned with careful consideration of their environmental impact. The preparation of EIA report and implementation of EMP is essential for effectively managing adverse effects.

The EIA report shall covers construction and operation of the development and future expansion. EIA report shall also cover technical disciplines and areas such as noise and vibration, air quality, ecology, water quality & hydrology, archaeology & cultural heritage, landscape & visual character, sustainability and socio- economics. The EIA report will describe how the project has been improved through the EIA process and what alternatives are considered.

4.2 Environmental Clearance Process

The EC process has been specified in the EIA Notification, 2006 and its amendments of Dec, 2009. The suitability of site proposed for the proposed Ropeway development shall be the primary requirement for environmental clearance to the project; the same has to be obtained by the Concessionaire.

For the projects located within 10km of the National Parks, Sanctuaries, Biosphere Reserves, Migratory corridors of wild animals, the Concessionaire shall provide the map showing these features vis-à-vis the project location to the Authority for getting them authenticated and for the recommendations or comments of the Chief Wildlife Warden thereon (at the stage of EC).

Authority shall be responsible for all correspondence with the Ministry of Environment & Forests including submission of application for Environmental Clearance, subsequent clarifications, as may be required from time to time, participation in the EAC meeting. The Concessionaire shall assist the Authority in all the above.

4.3 Terms of Reference

The terms of reference (TOR) pertinent to preparation of EIA study reports for construction of aerial ropeways will be as per TOR as given in EIA Manual of the Ministry of Environment and Forest (MoEF), Govt. of India.

In addition, the proponent is required to identify specific issues, if any, pertinent to the project and include those issues also in the TOR for preparation of EIA and EMP report upon approval of the TOR by the Expert Appraisal Committee.

5. Safety measures to be adhered to:

- a. The Gondolas/ Cabins should have door lock, which cannot be opened by the passengers.
- b. Two separate brakes are provided in each of the drives of ropeway system i.e. Emergency & Service break.
- c. In the event of main supply power failure, full capacity D.G. sets needs to be provided to supply power to run drive motors. Independent rescue arrangement to effect evacuation of stranded passenger from cabins on line.
- d. Standby Diesel Engine to be provided to run ropeway at slow speed to rescue passengers from line in case of failure of drive motor.

- f. The Ropeway Main Drive Motors will be tripped if:
 - Set rope speed exceeds by 5%
 - Wind speed exceeds the set limit
- g. All safety devices as per the ropeway system chosen must be provided. In addition, emergency stop buttons should be provided at convenient points to stop the cabin lift in the event of any emergency.
- h. Line Security Devices
 - Line safety devices (Break fork switches) are installed on each trestle, hold downs and pressure frames (PF) which immediately stop the ropeway in the unlikely event of rope derailment.
 - Rope catcher is provided on the incoming side of mount beams on line trestles, hold down, P.F. and Stations to arrest / support the hauling rope in case of deropement.
- i. There should be a programmable controlled digital variable speed drive panel. The ropeway will run smoothly by means of a powerful speed and controlled power circuits. There will be smooth controlled start and stop of the ropeway. Different sensors, safety devices feedback element, speed monitoring, failure of deceleration at a designated distance and annunciation needs to be provided.
- j. Control Panels and Distribution Boards needs to be provided at all stations for operation as well as maintenance purposes. Control relays and interlocks will be provided for rescue engine, emergency motor and brake operation.
- k. The main drive motors must be tripped automatically
 - In case of any safety fault occurred at Line and stations.
 - In case there is variation of desired speed ratio between motor shaft, drive sheave or deflection sheaves at station.
 - In case there is failure of deceleration at a predetermined distance of cabin movement.
- l. Anemometers should be provided to monitor the wind speed and to provide trip signal to main drive in case wind speeds exceeds a pre-determined set speed.
- m. Both the stations and line safety devices must be operative during running the ropeway with diesel engine. Battery back should also be provided for opening of service and emergency brakes.

6. Miscellaneous, Communication and Fire Precautions:

a. Communication System:

- (i) Communication system should be available at the terminal stations and should be interlinked.
- (ii) The Public Address system, provided as part of Communication system, shall be available at both the stations and able to operate during power failure.
- (iii) The wireless system will be provided to communicate while maintenance / rescue operation on line and for other reasons, when communication through telephone system will not be possible.

b. Fire Precautions:

- (i) Special precautions should be taken to protect any part of the ropeway from fire as per National Building Code (NBC).
- (ii) Provisions for arresting and mitigating fire hazards due to the storage of fuel for DG sets should be as per practices for such fuel storage.

7. GUIDELINES RELATING TO EXECUTION

The Concessionaire shall consider Specifications provided by Common European Norms / International Standards and other applicable statutory code of practices like Indian Electricity Act, National Building Code, Municipal Building Byelaws applicable in Himachal Pradesh, etc for design, construction, operation and maintenance of the project facilities. The Concessionaire shall adhere to the provisions of the Ropeways Act. In case of non-availability of Indian standards, suitable international standards may be followed.

- a. All building works shall conform to Central Public Works Department (CPWD) specifications for Class I building works and standards given in National Building Code (NBC) as amended and/ or modified from time to time.
- b. All building works shall be designed to meet the functional requirements and shall be compatible with the regional architecture and microclimate, particularly incorporating mitigation measures for earthquake and natural disasters.
- c. Locally available materials shall be accorded preference subject to meeting the requirement of IS codes and the quality of construction.
- d. All brick and stone masonry works shall be of first class type and as per good practices.
- e. All the open spaces around terminals need to be landscaped.
- f. The design of drinking water supply and storage systems, laying of pipes, cleaning and disinfecting of the water storage shall be as per relevant clauses of the NBC.
- g. The design, layout and construction of drains for sewerage disposal system with all ancillary works shall be in accordance with NBC.
- h. The design and location of all electrical installations, distribution system, wiring, fittings, accessories and lightning protection of buildings shall be as per relevant clauses of the NBC.
- i. Firefighting equipment including smoke detectors and audiovisual alarm system shall be planned and installed as per relevant sections of NBC.

The details of the CEN Standards to be used but nor limited to are given in Annex-II (Schedule-D)

Annex - II
(Schedule-D)

CEN Standards

(subject to change as per latest releases of CEN by European Standards Organization)

Standard Number	Standard Description	Application
EN 1709:2004	Safety requirements for cableway installations designed to carry persons - Pre-commissioning inspection, maintenance, operational inspection and checks	All types of Aerial Ropeways, Cable Liners
EN 1907:2005	Safety requirements for cableway installations designed to carry persons - Terminology	All types of Aerial Ropeways, Cable Liners
EN 1908:2015	Safety requirements of cableway installations designed to carry persons - Tensioning devices	All types of Aerial Ropeways, Cable Liners
EN 1909:2004	Safety requirements for cableway installations designed to carry persons - Recovery and evacuation	All types of Aerial Ropeways, Cable Liners
EN 12385-8:2002	Steel wire ropes - Safety - Part 8: Stranded hauling and carrying-hauling ropes for cableway installations designed to carry persons	All types of Aerial Ropeways, Cable Liners
EN 12385-9:2002	Steel wire ropes - Safety - Part 9: Locked coil carrying ropes for cableway installations designed to carry persons	All types of Aerial Ropeways, Cable Liners
EN 12397:2004	Safety requirements for cableway installations designed to carry persons - Operations	All types of Aerial Ropeways, Cable Liners
EN 12408:2004	Safety requirements for cableway installations designed to carry persons - Quality control	All types of Aerial Ropeways, Cable Liners
EN 12927-1:2004	Safety requirements for cableway installations designed to carry persons - Ropes - Part 1: Selection criteria for ropes and their end fixings	All types of Aerial Ropeways, Cable Liners
EN 12927-2:2004	Safety requirements for cableway installations designed to carry persons - Ropes - Part 2: Safety factors	All types of Aerial Ropeways, Cable Liners

EN 12927-3:2004	Safety requirements for cableway installations designed to carry persons - Ropes - Part 3: Long splicing of 6 strand hauling, carrying hauling and towing ropes	All types of Aerial Ropeways, Cable Liners
EN 12927-4:2004	Safety requirements for cableway installations designed to carry persons - Ropes - Part 4: End fixings	All types of Aerial Ropeways, Cable Liners
EN 12927-5:2004	Safety requirements for cableway installations designed to carry persons - Ropes - Part 5: Storage, transportation, installation and tensioning	All types of Aerial Ropeways, Cable Liners
EN 12927-6:2004	Safety requirements for cableway installations designed to carry persons - Ropes - Part 6: Discard criteria	All types of Aerial Ropeways, Cable Liners
EN 12927-7:2004	Safety requirements for cableway installations designed to carry persons - Ropes - Part 7. Inspection, repair and maintenance	All types of Aerial Ropeways, Cable Liners
EN 12927-8:2004	Safety requirements for cableway installations designed to carry persons - Ropes - Part 8. Magnetic rope testing (MRT)	All types of Aerial Ropeways, Cable Liners
EN 12929-1:2015	Safety requirements for cableway installations designed to carry persons - General requirements Part 1: Requirements for all installations	All types of Aerial Ropeways, Cable Liners
EN 12929-2:2015	Safety requirements for cableway installations designed to carry persons - General requirements Part 2: Additional requirements for reversible bi-cable aerial ropeways without carrier truck brakes	All types of Aerial Ropeways
EN 12930:2015	Safety requirements for cableway installations designed to carry persons - Calculations	All types of Aerial Ropeways, Cable Liners
EN 13107:2015	Safety requirements for cableway installations designed to carry persons – Civil engineering works	All types of Aerial Ropeways, Cable Liners
EN 13223:2015	Safety requirements for cableway installations designed to carry persons – Drive systems and other mechanical equipment	All types of Aerial Ropeways, Cable Liners
EN 13243:2015	Safety requirements for cableway installations designed to carry	All types of Aerial Ropeways, Cable Liners

		persons - Electrical equipment other than for drive systems	
EN 13796-1:2005 EN 13796- 1:2005/AC:2007		Safety requirements for cableway installations designed to carry persons - Carriers - Part 1: Grips, carrier trucks, on-board brakes, cabins, chairs, carriages, maintenance carriers, tow- hangers	All types of Aerial Ropeways, Cable Liners (as applicable for ropeway configuration)
EN 13796-2:2005		Safety requirements for cableway installations designed to carry persons - Carriers - Part 2: Slipping resistance test for grips	All types of Aerial Ropeways, Cable Liners
EN 13796-3:2005		Safety requirements for cableway installations designed to carry persons - Carriers - Part 3: Fatigue tests	All types of Aerial Ropeways, Cable Liners
EN 15700:2011		Safety for conveyor belts for winter sport or leisure use	
CEN/TR 14819-1		Safety recommendations for cableway installations designed to carry persons-	All types of Aerial Ropeways, Cable Liners
		Prevention and fight against fire - Part 1 Funicular railways in tunnels	
CEN/TR 14819-2		Safety recommendations for cableway installations designed to carry persons-	All types of Cable Liners
		Prevention and fight against fire - Part 2: Other funicular railways and other installations	
CEN EN 1709:2004		Safety requirements for cableway installations designed to carry persons – Pre- commissioning inspection, maintenance, operational inspection and checks	All types of Aerial Ropeways, Cable Liners
CEN EN 1908:2015		Safety requirements for cableway installations designed to carry persons – Tensioning Devices	All types of Aerial Ropeways, Cable Liners
CEN EN 1909:2004		Safety requirements for cableway installations designed to carry persons - Recovery and evacuation	All types of Aerial Ropeways, Cable Liners
CEN EN 12385-8:2002		Steel wire ropes - Safety - Part 8: Stranded hauling and carrying - hauling ropes for cableway	All types of Aerial Ropeways, Cable Liners

		installations designed to carry persons	
CEN	EN 12385-9:2002	Steel wire ropes - Safety - Part 9: Locked coil carrying ropes for cableway installations designed to carry persons	All types of Aerial Ropeways, Cable Liners
CEN	EN 12397:2004	Safety requirements for cableway installations designed to carry persons – Operation	All types of Aerial Ropeways, Cable Liners
CEN	EN 12927-1:2004	Safety requirements for cableway installations designed to carry persons - Ropes - Part 1: Selection criteria for ropes and their end fixings	All types of Aerial Ropeways, Cable Liners
CEN	EN 12927-2:2004	Safety requirements for cableway installations designed to carry persons - Ropes - Part 2: Safety factors	All types of Aerial Ropeways, Cable Liners
CEN	EN 12927-3:2004	Safety requirements for cableway installations designed to carry persons - Ropes - Part 3: Long splicing of 6 strand hauling, carrying hauling and towing ropes	All types of Aerial Ropeways, Cable Liners
CEN	EN 12927-4:2004	Safety requirements for cableway installations designed to carry persons - Ropes - Part 4: End fixings	All types of Aerial Ropeways, Cable Liners
CEN	EN 12927-5:2004	Safety requirements for cableway installations designed to carry persons - Ropes - Part 5: Storage, transportation, installation and tensioning	All types of Aerial Ropeways, Cable Liners
CEN	EN 12927-6:2004	Safety requirements for cableway installations designed to carry persons - Ropes - Part 6: Discard criteria	All types of Aerial Ropeways, Cable Liners
CEN	EN 12927-7:2004	Safety requirements for cableway installations designed to carry persons - Ropes - Part 7: Inspection, repair and maintenance	All types of Aerial Ropeways, Cable Liners

CEN	EN 12927-8:2004	Safety requirements for cableway installations designed to carry persons - Ropes - Part 8: Magnetic rope testing (MRT)	All types of Aerial Ropeways, Cable Liners
CEN	EN 12929-1:2015	Safety requirements for cableway installations designed to carry persons – General Requirements – Part 1: Requirements for All Installations	All types of Aerial Ropeways, Cable Liners
CEN	EN 12929-2:2015	Safety requirements for cableway installations designed to carry persons – General Requirements – Part 2: Additional Requirements for reversible bi-cable aerial ropeways without carrier truck brakes	All types of Aerial Ropeways
CEN	EN 12930:2015	Safety requirements for cableway installations designed to carry persons – Calculations	All types of Aerial Ropeways, Cable Liners
CEN	EN 13107:2015	Safety requirements for cableway installations designed to carry persons - Civil engineering works	All types of Aerial Ropeways, Cable Liners
CEN	EN 13223:2015	Safety requirements for cableway installations designed to carry persons - Drive systems and other mechanical equipment	All types of Aerial Ropeways, Cable Liners
CEN	EN 13243:2015	Safety requirements for cableway installations designed to carry persons - Electrical equipment other than for drive systems	All types of Aerial Ropeways, Cable Liners
CEN	EN 13796-1:2005	Safety requirements for cableway installations designed to carry persons - Carriers - Part 1: Grips, carrier trucks, on-board brakes, cabins, chairs, carriages, maintenance carriers, tow hangers	All types of Aerial Ropeways, Cable Liners (as applicable for ropeway configuration)
CEN	EN 13796-1:2005/AC:2007 EN 13796-2:2005	Safety requirements for cableway installations designed to carry persons - Carriers - Part 2: Slipping resistance test for grips	All types of Aerial Ropeways, Cable Liners
CEN	EN 13796-3:2005	Safety requirements for cableway	All types of Aerial

installations
designed to carry persons - Carriers
- Part 3:
Fatigue tests

Ropeways, Cable Liners

Standard Number	Standard Description	Application
ASCE 21 - 13	Automated People Movers (APMs)	Cable Liners
ONORM 2000/9/EG	Directive Relating to Cableway Installations Designed to Carry Persons	Cable Liners
EN ISO 12944	Paints & Varnishes: Corrosion Protection of Steel Structures by Protective Paint Systems	Cable Liners and all types of aerial systems where applicable
EN 1090	Execution of Steel and Aluminum Structures	Cable Liners and all types of aerial systems where applicable
EN 1993	Design of Steel Structures	Cable Liners and all types of aerial systems where applicable
IEEE 518	Requirements for Harmonic Control in Electric Power Systems	Cable Liners and all types of aerial systems where applicable
IEEE 802.11	Standard of Information Technology – Telecommunications and Information Exchange Between Systems – Local and Metropolitan Area Networks	Cable Liners and all types of aerial systems where applicable
IEC 61131 - 3	Programmable Controllers – Part 3: Programming Languages	Cable Liners and all types of aerial systems where applicable

SCHEDULE – E

(See Clause 4.1.3)

APPLICABLE PERMITS

1 Applicable Permits

- 1.1 The Concessionaire shall obtain, as required under the Applicable Laws, the following Applicable Permits on or before the Appointed Date, save and except to the extent of a waiver granted by the Authority in accordance with Clause 4.1.3 of the Agreement.
- 1.2 The Concessionaire shall obtain, as required under the Applicable Laws, the following Applicable Permits on or before the Commencement Date, save and except to the extent of a waiver granted by the Authority in accordance with Clause 4.2 of the Agreement:
- (a) Permission of the State Government for extraction of boulders from quarry;
 - (b) Permission of Village Panchayat and Pollution Control Board for installation of crushers;
 - (c) Licence for use of explosives, if any;
 - (d) Permission of the State Government for getting water connection;
 - (e) Permission of State Government for cutting of trees; and
 - (f) Any other permits or clearances required under Applicable Laws.
- 1.3 FOR BUILDING PERMISSIONS:
- a. Complete File containing Approved drawings and Structural Drawings signed by Registered Architect, submitted to Concessioneing Authority.
 - b. Forwarding a letter from Municipal Authority to:
 - o Town and Country Planning
 - o PWD
 - o Health
 - o Electricity/Water Supply
 - o To seek their NOC
 - c. NOC's from the above four Authorities is to be submitted to Concessioneing authority to issue construction Authorisation.
 - d. Construction Authorisation is issued for Start of Construction.
 - e. On Completion of Construction of individual structures Occupancy Certificate is to be applied to the Concessioneing Authority.

2 ALL TRADE LICENCES AS APPLICABLE

- a. Shops and Establishment.
- 3 Approval/permit from Fire Safety Authorities
- 4 Environmental Clearances/Approvals, as applicable
- 5 Applicable Permits, as required, relating to environmental protection and conservation shall have been procured by the Authority as a Condition Precedent.

Sr. No.	Description
Approvals Required.	
1.	No Objection Certificate from the State Government.
2.	Consent to Establish and Consent to Operate under the Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974 from State Pollution Control Board (State and Centre).
3.	Compliance under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.
4.	Forest clearance from Ministry of Environment and Forest.
5.	No-Objection certificate from relevant panchayat in whose territorial limits the project is located, if applicable.
6.	Clearance of fire safety standards and protection apparatus and system under the Factories Act, 1948, and standards mandated by the local fire department, if applicable from Chief Inspector of Factories or any other designated authority appointed.
7.	Compliance under Maternity Benefit Act, 1961.
8.	License for usage and storage of fuel oil storage tank, pressurized vessels, explosive and inflammable liquids, gases and chemicals under (a) Explosives Act, 1884 read with Explosives Rules, 2008 and Gas Cylinder Rules, 2004; and (b) Petroleum Act, 1934 read with Petroleum Rules, 2002, if applicable from Chief Controller of Explosives, GoI, if applicable.
9.	Approval under the Electricity Act 2003 for electrical installations and works form Chief Electrical Inspector.
10.	Other facilitation that could be obtained from the nodal agency is statutory clearances from Govt. Departments/Agencies, Evacuation approval from State Transmission Utility (STU), Connectivity to the substation of STU, clearances from State Pollution Control Board (SPCB), whenever feasible.
11.	Certificate of Registration from the labour department issued under the Inter- State Migrant Workmen (Regulations of Employment and Conditions of Services) Act, 1979 in relation to employment of migrant workmen.
12.	Registration under Section 7 of Contract Labour (Regulation and Abolition) Act, 1970.
13.	Registration under Employees Provident Fund and Miscellaneous Provisions Act, 1952.
14.	Authorization for management and handling of hazardous waste under Hazardous Waste (Management, Handling & Transboundary Movement) Rules, 2016.
15.	Registration under Employee State Insurance Act, 1948.
16.	Consent for Right of Way under applicable law.
17.	NOC for height clearance from directorate of air traffic management, Airport Authority of India when project lies within 20Kms radius of air strips/funnel.
18.	Approval under Ancient Monuments and Archaeological Sites and Remains

	Act, 1958 with subsequent amendments
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- 1.2 Applicable Permits, if any, relating to environmental protection and conservation during the development of the Lambadug Ropeway, excluding the Real Estate Development, shall have been procured by the Authority [as a Condition Precedent].

[Note 1: Every ropeway project will need specific approval/permits from the master list of permits detailed in this schedule. The government body will define the applicable permits based on specific needs of the project. Ropeway applications viz. the use of ropeway will require permits/approvals from various agencies. The applications could be urban transit, tourism, adventure, leisure, material transport etc. While some permits are common to all ropeway systems, others will have to be defined as per local conditions and laws of land of various state governments/Central Government.]

[Note 2: The above approvals are a broad list required for installation of ropeway project. The concessionaire will have to define the ropeway terms of reference, activities planned to draw out a comprehensive list of permits required for setting up the ropeway project. Standard approvals for electricity, water, sewage disposal as per local rules and regulations will apply for the ropeway project.]

SCHEDULE – F

(See Clause 9.1)

PERFORMANCE SECURITY

The value of Performance Security for the various phases of the Project shall be as set out in this Schedule:

Type of Security	Value of Security	Instrument	Duration From	Duration To
Construction Performance security	2% of the Total Estimated Project Cost	Bank Guarantee in the format as provided in Schedule-F1	Within 180 days after the date of signing of the Concession Agreement	Till completion of Construction Period and after receiving the Operation Period Performance Security
O&M Performance Security	2% of the Total Estimated Project Cost.	Bank Guarantee in the format as provided in Schedule-F2	On or before the date of issue of Completion Certificate	Six months after the issuance of Vesting Certificate.

Annex – F1
FORMAT OF CONSTRUCTION PERFORMANCE SECURITY DURING CONSTRUCTION PERIOD
(Bank Guarantee)

PERFORMANCE BANK GUARANTEE OF CONCESSIONAIRE

Bank Guarantee No.:

Dated:

Issuer of Bank Guarantee:

(Name of the Bank)

(hereinafter referred to as the “**Bank**”)

Beneficiary of Bank Guarantee:

Nature of Bank Guarantee: Unconditional and irrevocable Bank Guarantee.

Context of Bank Guarantee

Performance during Construction Period in respect of draft Concession Agreement (hereinafter referred to as the “**Agreement**”) to be executed amongst.....(hereinafter referred to

as the “**Authority**”), Ropeways and Rapid Transport System Development Corporation H.P. Limited (hereinafter referred to as the “**Government**”) and M/s.....(hereinafter referred to as the “**Concessionaire**”) for the Design, Finance, Construct, Operate and Maintain the Passenger Ropeway and facilities in the specified location (hereinafter called the ‘Project’ or ‘Ropeway Project’) on Design, Build, Finance Operate and Transfer (DBFOT) basis, provided however, such context of the Bank Guarantee or reference to the Agreement in this Bank Guarantee shall in no manner be relied upon at any stage to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee. The title of this Guarantee i.e. “**Construction Performance Security**” shall in no manner and at no stage be relied upon to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee. The Contract of Bank Guarantee is an independent Contract between the Bank and Authority and is not dependent upon execution or performance of any Agreement amongst Authority, Government and (name of the Concessionaire).

Operative part of the Bank Guarantee:

1. At the request of the Concessionaire, we.....(name and address of the bank), hereinafter referred to as the “**Bank**”), do hereby unconditionally and irrevocably affirm and undertake that we are the Guarantor and are responsible to the Authority i.e. the beneficiary on behalf of the Concessionaire, upto a total sum of Rs.Crores (Rupees.....Crores Only), such sum being payable by us to Authority immediately upon receipt of first written demand from the Authority.

2. We unconditionally and irrevocably undertake to pay to the Authority on an immediate basis, upon receipt of first written demand from the Authority and without any cavil or argument or delaying tactics or reference by us to Concessionaire and without any need for the Authority to convey to us any reasons for invocation of the Guarantee or to prove the failure to perform on the part of the Concessionaire or to show grounds or reasons for the demand or the sum specified therein, the entire sum or sums within the limits of Rs.Crores

(Rupees.....Crores Only).

3. We hereby waive the necessity of the Authority demanding the said amount from Concessionaire prior to serving the Demand Notice upon us.

4. We further agree and affirm that no change or addition to or other modification to the terms of the Agreement, shall in any way release us from any liability under this unconditional and irrevocable Guarantee and we hereby waive notice of any such change, addition or modification. We further agree with the Authority that the Authority shall be the sole and the exclusive judge to determine that whether or not any sum or sums are due and payable to him by Concessionaire, which are recoverable by the Authority by invocation of this Guarantee.

5. This Guarantee will not be discharged due to the change in constitution of the Bank or the Concessionaire. We undertake not to withdraw or revoke this Guarantee during its currency/ validity period, except with the previous written consent of the Authority.

6. We unconditionally and irrevocably undertake to pay to the Authority, any amount so demanded not exceeding Rs. Crores (Rupees.....Crores Only) notwithstanding any dispute or disputes raised by Concessionaire or anyone else in any suit or proceedings before any dispute review expert, arbitrator, court, tribunal or other authority, our liability under this Guarantee being absolute, unconditional and unequivocal. The payment so made by us under this Guarantee to the Authority, shall be a valid discharge of our liability for payment under this Guarantee and the Concessionaire shall have no claim against us for making such payment.

7. This unconditional and irrevocable Guarantee shall remain in full force and effect and shall remain valid until _____

Notwithstanding anything contained herein:

1. Our liability under this Bank Guarantee shall not exceed Indian Rs. _____ Crores (Rupees Crores Only).

2. This unconditional and irrevocable Bank Guarantee shall be valid w.e.f. to _____.

3. We are liable to pay the guaranteed amount or any part thereof under this unconditional and irrevocable Bank Guarantee only and only if the Authority serves upon us a written claim or demand on or before ____.

Authorized Signatory

For Bank NOTES:

1. The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.

2. The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

Annex – F2
FORMAT OF O&M PERFORMANCE SECURITY DURING OPERATION & MAINTENANCE PERIOD
(Bank Guarantee)
PERFORMANCE BANK GUARANTEE OF CONCESSIONAIRE

Bank Guarantee No.:

Dated:

Issuer of Bank Guarantee:

(Name of the Bank)

(hereinafter referred to as the “**Bank**”)

Beneficiary of Bank Guarantee:

Nature of Bank Guarantee: Unconditional and irrevocable Bank Guarantee.

Context of Bank Guarantee

Performance during Operation & Maintenance Period in respect of Concession Agreement dated.....
(hereinafter referred to as the “**Agreement**” amongst (“hereinafter

referred to as the “**Authority**”), Ropeways and Rapid Transport System Development Corporation

H.P. Limited (hereinafter referred to as the “**Government**”) and M/s

_____ (hereinafter referred to as the “**Concessionaire**”) for Design, Finance, Construct, Operate and Maintain the Passenger Ropeway and facilities in the specified location (hereinafter called the ‘Project’ or ‘Ropeway Project’) on Design, Build, Finance Operate and Transfer (DBFOT) basis (hereinafter referred to as the “**Project**”), provided however, such context of the Bank Guarantee or reference to the Agreement in this Bank Guarantee shall in no manner be relied upon at any stage to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee. The title of this Guarantee i.e. “**Performance Bank Guarantee**” shall in no manner and at no stage be relied upon to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee. The Contract of Bank Guarantee is an independent Contract between the Bank and Authority and is not dependent upon execution or performance of any Agreement amongst Authority, Government and _____ (name of the Concessionaire).

Operative part of the Bank Guarantee

1. At the request of the Concessionaire, we _____,
(name and address of the bank), hereinafter referred to as the “**Bank**”), do hereby unconditionally and irrevocably affirm and undertake that we are the Guarantor and are responsible to the Authority i.e. the beneficiary on behalf of the Concessionaire, upto a total sum of Rs.....Crores (Rupees _____ Crores Only), such sum being payable by us to Authority immediately upon receipt of first written demand from the Authority.
2. We unconditionally and irrevocably undertake to pay to the Authority on an immediate basis, upon receipt of first written demand from the Authority and without any cavil or argument or delaying tactics or reference by us to Concessionaire and without any need for the Authority to convey to us any reasons for invocation of the Guarantee or to prove the failure to perform on the part of the Concessionaire or to show grounds or reasons for the demand or the sum specified therein, the entire sum or sums within the limits of Rs..... Crores (Rupees _____ Crores Only).

3. We hereby waive the necessity of the Authority demanding the said amount from Concessionaire prior to serving the Demand Notice upon us.
4. We further agree and affirm that no change or addition to or other modification to the terms of the Agreement, shall in any way release us from any liability under this unconditional and irrevocable Guarantee and we hereby waive notice of any such change, addition or modification. We further agree with the Authority that the Authority shall be the sole and the exclusive judge to determine that whether or not any sum or sums are due and payable to it by Concessionaire, which are recoverable by the Authority by invocation of this Guarantee.
5. This Guarantee will not be discharged due to the change in constitution of the Bank or the Concessionaire. We undertake not to withdraw or revoke this Guarantee during its currency/ validity period, except with the previous written consent of the Authority.
6. We unconditionally and irrevocably undertake to pay to the Authority, any amount so demanded not exceeding Rs. Crores Rupees _____ Crores Only notwithstanding any dispute or disputes raised by Concessionaire or anyone else in any suit or proceedings before any dispute review expert, arbitrator, court, tribunal or other authority, our liability under this Guarantee being absolute, unconditional and unequivocal. The payment so made by us under this Guarantee to the Authority, shall be a valid discharge of our liability for payment under this Guarantee and the Concessionaire shall be a valid discharge of our liability for payment under this Guarantee and the Concessionaire shall have no claim against us for making such payment.
7. This unconditional and irrevocable Guarantee shall remain in full force and effect and shall remain valid until _____

Notwithstanding anything contained herein:

1. Our liability under this Bank Guarantee shall not exceed Indian Rs. Crores (Rupees..... Crores Only). This unconditional and irrevocable Bank Guarantee shall be valid w.e.f. to
2. We are liable to pay the guaranteed amount or any part thereof under this unconditional and irrevocable Bank Guarantee only and only if the Authority serves upon us a written claim or demand on or before _____.

Authorized

Signatory For Bank

NOTES:

1. The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
2. The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

SCHEDULE – G

(See Clause 12.1)

PROJECT COMPLETION SCHEDULE

1 Project Completion Schedule

During Construction Period, the Concessionaire shall comply with the requirements set forth in this Schedule-G for each of the Project Milestones and the Scheduled Date (the “**Project Completion Schedule**”). Within 15 (fifteen) days of the date of each Project Milestone, the Concessionaire shall notify the Authority of such compliance along with necessary particulars thereof. For the avoidance of doubt, it is agreed that the provisions of this Schedule shall not apply to Real Estate development.

2 Project Milestone-I

2.1 Project Milestone-I shall occur on the date falling on the [180th (one hundred and eightieth)] day from the Appointed Date (the “**Project Milestone-I**”).

2.2 Prior to the occurrence of Project Milestone-I, the Concessionaire shall have commenced construction of the one terminal station and expended not less than [25% (twenty five per cent)] of the Total Project Cost set forth in the Financial Package.

2.3 Project Milestone- I includes the completion of the following activities:

2.3.1 Design checking of the Lambadug Ropeway, which includes:

- Counterproof of the design and the project of the supplier
- Design and technology check of the planning documents of the supplier, including design check of all drawings according to the European ropeway directive 2000/9/EC and according to the Concession Agreement (scope of supply of the ropeway supplier)
- Check of all descriptions, safety analysis.
- Counterproof of the line calculation according to EN 12930, EN 12929-1 and EN13223 with an independent line calculation software.
- Counterproof of all static calculations of the steel parts and concrete works of the ropeway according to Eurocode 3
- Check of all safety reports (technical studies of Schedule D viz. geological report, meteorological report)
- Final detailed project report (DPR)
- One site visits to check the local situation
- Started the construction of one terminal station

At this stage the Concessionaire should have fulfilled Conditions Precedent provided under the Concession Agreement and expended amount to the Independent Engineer as per the terms and conditions set out under Schedule I.

3 Project Milestone-II

3.1 Project Milestone-II shall occur on the date falling on the [365th (three hundred and sixty fifth)] day from the Appointed Date (the “**Project Milestone-II**”).

3.2 Prior to the occurrence of Project Milestone-II, the Concessionaire shall have commenced [construction all terminal points and facilities, and expended not less than 50% (fifty per cent)] of the Total Project Cost set forth in the Financial Package.

3.3 Project Milestone- II includes the completion of the following activities:

3.3.1 Quality check during execution phase, which includes:

Check and control of the quality of the execution of the ropeway on site, monitoring of the time schedule, factory acceptance test. In detail, this phase will include following items:

- To monitor contractor's supervision of the construction activities as per predetermined Inspection test plan;
- Quality planning and quality assurance;
- Quality check and final approval of the ropeway foundations;
- Check of the correct position of all anchor frames and foundation positions;
- Quality check of the foundation reinforcement steel bars and concrete material;
- To review and approve construction schedules proposed & periodically updated by contractors;
- To review and approve contractors' method statement, erection procedures & work plans;
- To monitor quality of the work being executed through good engineering practices;
- Check of the correct assembly of all ropeway components; and
- Factory acceptance test of all ropeway components before dispatching to India.

4 Project Milestone-III

4.1 Project Milestone-III shall occur on the date falling on the [550th (five hundred and fiftieth)] day from the Appointed Date (the "**Project Milestone-III**").

4.2 Prior to the occurrence of Project Milestone-III, the Concessionaire shall have commenced [the initial testing and expended not less than 75% (seventy five per cent)] of the Total Project Cost set forth in the Financial Package.

4.3 Project Milestone- II includes the completion of the following activities:

4.3.1 System testing for commissioning of the system, whereby, after the internal tests of the supplier, the notified and accredited inspection body, will do the final safety tests on the installation which includes:

- check of the correct execution and assembly of the ropeway;
- check the final documentation of the supplier including certificates and conformity declaration of all safety parts and subsystems;
- check all safety devices of the ropeway including the correct setting;
- check the electrical safety control system;
- check the correct settings of all brakes and drives;
- check the emergency drive;
- check the smooth and safe running of the rope and cabins on the line and on the roller batteries;
- check of the operation and maintenance manual;
- check the experience and the knowledge of the service staff for the operation;
- check the correct, safe and smooth running of the garage system, the conveyor system and the coupling system; and
- check the rescue equipment and do a rescue exercise on the installation.

5. Scheduled Date

- 5.1 The Scheduled Date shall occur on the [730th (seven hundred and thirty)] day from the Appointed Date. On or before the Scheduled Date, the Concessionaire shall have completed the Lambadug Ropeway in accordance with this Agreement.
- 5.2 On or before the Scheduled Date, the Concessionaire shall have completed the Lambadug Ropeway in accordance with this Agreement.

6 Extension of period

Upon extension of any or all of the aforesaid Project Milestones or the Scheduled Date, as the case may be, under and in accordance with the provisions of this Agreement, the Project Completion Schedule shall be deemed to have been amended accordingly.

SCHEDULE – H

(See Clause 12.2)

DRAWINGS

1. Drawings

In compliance of the obligations set forth in Clause 12.2 of this Agreement, the Concessionaire shall furnish to the Independent Engineer, free of cost, all Drawings listed in Annex-I of this Schedule-H.

2. Additional drawings

If the Independent Engineer determines that for discharging its duties and functions under this Agreement, it requires any drawings other than those listed in Annex-I, it may by notice require the Concessionaire to prepare and furnish such drawings forthwith. Upon receiving a requisition to this effect, the Concessionaire shall promptly prepare and furnish such drawings to the Independent Engineer, as if such drawings formed part of Annex-I of this Schedule.

Annex - I
(Schedule-H)

List of Drawings

- All the Drawings /Designs required for the successful completion of the project.
- Any other drawing related to the project as demanded by Independent Engineer

SCHEDULE – I
(See Clauses 23.1 and 23.2)

I. SELECTION OF INDEPENDENT ENGINEER

1. Selection of Independent Engineer

- 1.1 The Concessioneing Authority have already appointed **M/s WAPCOS Limited**, A Govt of India Undertaking Firm a consulting engineering firm the Independent Engineer under this Agreement (the “**Independent Engineer**”). **WAPCOS** has been appointed as Project Management Consultant (PMC) for development of innovative urban transport solution for Shimla, Manali and Dharamshala cities as per the MoA signed between Govt. of H.P and WAPCOS. The appointment shall be extending upto the commencement of COD.
- 1.2 In the event of termination of an Independent Engineer appointed in accordance with the provisions of Paragraph 1.1, the Authority shall appoint another firm of technical consultants forthwith or may engage a government-owned entity in accordance with the provisions of Paragraph 5 of this Schedule-I.
- 1.3 The Concessionaire may, in its discretion, nominate a representative to participate in the process of selection to be undertaken by the Authority under this Schedule-I.

2. Terms of Reference

- 2.1 The Terms of Reference for the Independent Engineer shall substantially conform with Annex -1 to this Schedule-I.

3. Fee and expenses

- 3.1 In determining the nature and quantum of duties and services to be performed by the Independent Engineer during the Development Period and Construction Period, the Authority shall endeavour that payments to the Independent Engineer on account of fee and expenses do not exceed [1% (one per cent)] of the Total Project Cost, including Equity Support, if any. Payments not exceeding such [1% (one per cent)] shall be borne equally by the Authority and the Concessionaire in accordance with the provisions of this Agreement and any payments in excess thereof shall be borne entirely by the Authority.
- 3.2 The nature and quantum of duties and services to be performed by the Independent Engineer during the Operation Period shall be determined by the Authority in conformity with the provisions of this Agreement and with due regard for economy in expenditure. All payments made to the Independent Engineer on account of fee and expenses during the Operation Period, including the construction of system augmentation, shall be borne equally by the Authority and the Concessionaire.

4. Selection every three years

- 4.1 No later than 3 (three) years from the date of appointment of the Independent Engineer, in accordance with the provisions of Paragraph 1 of this Schedule-I, the Authority shall engage another firm in accordance with the criteria set forth in this Schedule-I.

5. Appointment of government entity as Independent Engineer

- 5.1 [Notwithstanding anything to the contrary contained in this Schedule - I, the Authority may in its discretion appoint a government-owned entity as the Independent Engineer; provided that

such entity shall be a body corporate having as one of its primary function the provision of consulting, advisory and supervisory services for engineering projects and shall be accredited and/or approved by the CEN or enter into an agreement with an agency which is accredited and/or approved by CEN; provided further that a government- owned entity which is owned or controlled by the Authority shall not be eligible for appointment as an Independent Engineer.]

II. TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

1. Scope

- 1.1 These Terms of Reference for the Independent Engineer (the “**TOR**”) are being specified in accordance with the Concession Agreement dated (the “**Agreement**”), which has been entered into between the Authority and (the “**Concessionaire**”) for Lambadug Ropeway at corridor in city of on design, build, finance, operate and transfer (the “**DBFOT**”) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.
- 1.2 This TOR shall apply to construction, operation and maintenance of the Lambadug Ropeway, and shall apply, *mutatis mutandis*, to system augmentation thereof.

The TOR for the appointment of the Independent Engineer will be as follows:

2. Terms for Reference for Test Standards and Other Documentation

- 2.1 The present CEN Standards are of the year 2015 which are revised from time to time.

The latest standards will be applicable for test standards.

The inspection is based on the following regulations and directives:

- (i) Testing and inspection is carried out mainly based on the technical and procedural standards listed below. In addition, the provisions referred to in these documents and implementing guide-lines shall be applied.

Directive 2000/9/EC relating cableway installations designed to carry persons.

“Safety requirements for cableway installations designed to carry persons” (European standards), particularly:

- EN 1709:2004: Precommissioning inspection, maintenance, operational inspection and checks
- EN 12929-1:2004: General requirements – Part 1: Requirements for all installations
- EN 13223:2004: Drive systems and other mechanical equipment
- EN 13243:2004: Electrical equipment other than for drive systems
- EN 12397:2004: Operation

- (ii) The technical partner/equipment supplier will provide relevant equipment related technical details regarding their equipment to the CEN certified auditor to cover the following scope:

1. Scope of examination
2. Hydraulic
3. Review of confirming documents and certificates
4. Inspection of the rope guidance, pre tensioning, rope clearance
5. Inspection of the tensioning device
6. Inspection of the professional installation of the safety relevant components
7. Inspection of the cables and the cable connections
8. Inspection of the line equipment
9. Inspection of the carriers/vehicles including clamping device

10. Inspection of the cabin door system
11. Validation of the safety functions
12. Validation of safety functions recovery drives
13. Adjustment of the brakes
14. Adjustment of the grip force monitoring
15. Trial runs regarding main drive operation
16. Trial runs regarding recovery drives
17. Trial runs regarding braking performance
18. Trial runs regarding anti-collision monitoring
19. Safety signatures

3. Definitions and Interpretation

- 3.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.
- 3.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.

The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement shall apply, mutatis mutandis, to this TOR.

4. Role and functions of the Independent Engineer

- 4.1 The role and functions of the Independent Engineer shall include the following:

The CEN certified entity will test Lambadug Ropeway as per the following scope spread over the stages of installation:

Phase 1: Design Checking of Ropeway

- Counterproof of the design and the project of the supplier;
- Design and technology check of the planning documents of the supplier, including design check of all drawings according to the European ropeway directive 2000/9/EC and according to the contract (Scope of supply of the ropeway supplier);
- Check of all descriptions, safety analysis;
- Counterproof of the line calculation according to EN 12930, EN 12929-1 and EN13223 with an independent line calculation software;
- Counterproof of all static calculations of the steel parts and concrete works of the ropeway according to Eurocode 3;
- Check of all safety reports (technical studies of Schedule D viz. geological report, meteorological report, etc.);
- Final detailed project report (DPR); and
- One site visits to check the local situation.

Phase 2: Quality Check during Execution Phase

Check and control of the quality of the execution of the ropeway on site, monitoring of the time schedule, factory acceptance test. In detail this phase will include following items:

- To monitor contractor's supervision of the construction activities as per predetermined inspection test plan;

- Quality planning and quality assurance;
- Quality check and final approval of the ropeway foundations;
- Check of the correct position of all anchor frames and foundation positions;
- Quality check of the foundation reinforcement steel bars and concrete material;
- To review and approve construction schedules proposed & periodically updated by contractors;
- To review and approve contractors' method statement, erection procedures & work plans;
- To monitor quality of the work being executed through good engineering practices;
- Check of the correct assembly of all ropeway components; and
- Factory acceptance test of all ropeway components before dispatching to India.

Phase 3: System Testing for Commissioning of the System

After the internal tests of the supplier, the notified and accredited inspection body, will do the final safety tests on the installation which includes:

- check of the correct execution and assembly of the ropeway;
- check the final documentation of the supplier including certificates and conformity declaration of all safety parts and subsystems;
- check all safety devices of the ropeway including the correct setting;
- check the electrical safety control system;
- check the correct settings of all brakes and drives;
- check the emergency drive;
- check the smooth and safe running of the rope and cabins on the line and on the roller batteries;
- check of the operation and maintenance manual;
- check the experience and the knowledge of the service staff for the operation;
- check the correct, safe and smooth running of:
 - (a) the garage system;
 - (b) the conveyor system; and
 - (c) the coupling system.
- check the rescue equipment and do a rescue exercise on the installation

Notified Body:

- Notified body according to the ropeway regulation 200/9/EC, after April ropeway directive 2016/424/EN;
- Accredited inspection body according to EN/ISO 17020:2012 and accredited testing body according to EN/ISO 17025:2007;
- All accreditations must be confirmed by a national accreditation body of a country of the EU;
- At least one inspection engineer should have experience in the project engineering of ropeways; and
- The leading inspection engineers (at least two) should have at least 15 (fifteen) years of ropeway experience in ropeway engineering or/and ropeway inspection.

The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

4.2 Development Period

4.2.1 During the Development Period, the Independent Engineer shall undertake a detailed review of the Drawings to be furnished by the Concessionaire along with supporting data, including the geo-technical and hydrological investigations, characteristics of materials, topographical surveys and

traffic surveys. The Independent Engineer shall complete such review and send its comments/observations to the Authority and the Concessionaire within 15 (fifteen) days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and Specifications and Standards.

- 4.2.2 The Independent Engineer shall review any modified Drawings or supporting Documents sent to it by the Concessionaire and furnish its comments within 7 (seven) days of receiving such Drawings or Documents.
- 4.2.3 The Independent Engineer shall review the Drawings sent to it by the Safety Consultant in accordance with Schedule-M and furnish its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receiving such Drawings. The Independent Engineer shall also review the Safety Report and furnish its comments thereon to the Authority within 15 (fifteen) days of receiving such report.
- 4.2.4 The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.
- 4.2.5 The Independent Engineer shall review the detailed design, manufacturing, installation, testing and commissioning plans for the Lambadug Ropeway sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.
- 4.2.6 Upon reference by the Authority, the Independent Engineer shall review and comment on the EPC contract or any other contract for construction, operation and maintenance of the Lambadug Ropeway and furnish its comments within 7 (seven) days from receipt of such reference from the Authority.

5. Construction Period

- 5.1 In respect of the Drawings, Documents and Safety Report received by the Independent Engineer for its review and comments during the Construction Period, the provisions of Paragraph 4 shall apply, mutatis mutandis.
- 5.2 The Independent Engineer shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 5.3 The Independent Engineer shall inspect the construction works and electromechanical equipment (if any) once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the “**Inspection Report**”) setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works and electromechanical with the Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Lambadug Ropeway or the deficiencies in the electromechanical equipment. The Independent Engineer shall send a copy of its Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.
- 5.4 The Independent Engineer may inspect the Lambadug Ropeway more than once in a month if any lapses, defects or deficiencies require such inspections. In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the Specifications and Standards, and the provisions of this Paragraph 5 shall apply to such tests.

- 5.5 In the event that the Concessionaire fails to achieve any of the Project Milestones, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Lambadug Ropeway is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which COD shall be achieved. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire forthwith.
- 5.6 If at any time during the Construction Period, the Independent Engineer determines that the Concessionaire has not made adequate arrangements for the safety of workers and Users in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers and the Users, it shall make a recommendation to the Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.
- 5.7 In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works and Users, it may, by notice in writing, require the Independent Engineer to inspect such works, and within 3 (three) days of receiving such notice, the Independent Engineer shall inspect the suspended works and make a report to the Authority forthwith, recommending whether or not such suspension may be revoked by the Authority.
- 5.8 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of dates set forth in the Project Completion Schedule, to which the Concessionaire is reasonably entitled, and shall notify the Authority and the Concessionaire of the same.
- 5.9 The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in Schedule-I and issue a Completion Certificate.
- 5.10 For carrying out its functions under this Paragraph 5.10 and all matters incidental thereto, the Independent Engineer shall act under and in accordance with the provisions of Article 14 and Schedule-I.
- 5.11 Upon reference from the Authority, the Independent Engineer shall make a fair and reasonable assessment of the costs of providing information, works and services as set forth in Article 16 and certify the reasonableness of such costs for payment by the Authority to the Concessionaire. The Independent Engineer shall aid and advise the Concessionaire in preparing the Maintenance Manual.

6. Operation Period

- 6.1 In respect of the Drawings, Documents and Safety Report received by the Independent Engineer for its review and comments during the Operation Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.
- 6.2 The Independent Engineer shall review the annual Maintenance Programme furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 15 (fifteen) days of receipt of the Maintenance Programme.
- 6.3 The Independent Engineer shall review the monthly status report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 6.4 The Independent Engineer shall inspect the Lambadug Ropeway, including cabins and stations, once

every month, preferably after receipt of the monthly status report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out an O&M Inspection Report setting forth an overview of the status, quality and safety of O&M including its conformity with the Key Performance Indicators, Maintenance Requirements and Safety Requirements. In a separate section of the O&M Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the Lambadug Ropeway. The Independent Engineer shall send a copy of its O&M Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.

- 6.5 The Independent Engineer may inspect the Lambadug Ropeway more than once in a month, if any lapses, defects or deficiencies require such inspections.
- 6.6 The Independent Engineer shall in its O&M Inspection Report specify the tests, if any, that the Concessionaire shall carry out, or cause to be carried out, for the purpose of determining that the Lambadug Ropeway is in conformity with the Maintenance Requirements. It shall monitor and review the results of such tests and the remedial measures, if any, taken by the Concessionaire in this behalf. In respect of any defect or deficiency referred to in Paragraph 3 of Schedule - L, the Independent Engineer shall, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards and shall also specify the time limit for repair or rectification of any deviation or deterioration beyond the permissible limit.
- 6.7 The Independent Engineer shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Agreement, and shall also determine the Damages, if any, payable by the Concessionaire to the Authority for such delay.
- 6.8 The Independent Engineer shall examine the request of the Concessionaire for closure of the Lambadug Ropeway for undertaking maintenance/repair thereof, keeping in view the need to minimize disruption in traffic and the time required for completing such maintenance/repair in accordance with Good Industry Practice. It shall grant permission with such modifications, as it may deem necessary, within 3 (three) days of receiving a request from the Concessionaire. Upon expiry of the permitted period of closure, the Independent Engineer shall monitor the re-opening of such rope(s), and in case of delay, determine the Damages payable by the Concessionaire to the Authority under Clause 17.7.
- 6.9 The Independent Engineer shall monitor and review the curing of defects and deficiencies by the Concessionaire as set forth in Clause 19.4.
- 6.10 In the event that the Concessionaire notifies the Independent Engineer of any modifications that it proposes to make to the Lambadug Ropeway, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire within 15 (fifteen) days of receiving the proposal.

7. Audit of Fee collection system

- 7.1 The Independent Engineer shall, at least once every month, conduct an audit of the working of the automatic fee collection system installed by the Concessionaire, to check its accuracy in recording the entry and exit of Users and in recording the fee.

8. Termination

- 8.1 At any time, not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the Independent Engineer shall, in the presence of a representative of the Concessionaire, inspect the Lambadug Ropeway for determining compliance by the Concessionaire with the Divestment Requirements set forth in Clause 38.1 and, if required, cause

tests to be carried out at the Concessionaire's cost for determining such compliance. If the Independent Engineer determines that the status of the Lambadug Ropeway is such that its repair and rectification would require a larger amount than the sum set forth in Clause 39.2, it shall recommend retention of the required amount in the Escrow Account and the period of retention thereof.

- 8.2 The Independent Engineer shall inspect the Lambadug Ropeway once in every 15 (fifteen) days during a period of 90 (ninety) days after Termination for determining the liability of the Concessionaire under Article 39, in respect of the defects or deficiencies specified therein. If any such defect or deficiency is found by the Independent Engineer, it shall make a report in reasonable detail and send it forthwith to the Authority and the Concessionaire.

9. Determination of costs and time

- 9.1 The Independent Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement. The Independent Engineer shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

10. Assistance in Dispute resolution

- 10.1 When called upon by either Party in the event of any Dispute, the Independent Engineer shall mediate and assist the Parties in arriving at an amicable settlement. In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

11. Other duties and functions

- 11.1 The Independent Engineer shall perform all other duties and functions specified in the Agreement.

12. Miscellaneous

- 12.1 The Independent Engineer shall notify its programme of inspection to the Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.
- 12.2 A copy of all communications, comments, instructions, Drawings or Documents sent by the Independent Engineer to the Concessionaire pursuant to this TOR, and a copy of all the test results with comments of the Independent Engineer thereon shall be furnished by the Independent Engineer to the Authority forthwith.
- 12.3 The Independent Engineer shall obtain and the Concessionaire shall furnish in 2 (two) copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Independent Engineer, whereupon the Independent Engineer shall send 1 (one) of the copies to the Authority along with its comments thereon.
- 12.4 The Independent Engineer shall retain at least one copy each of all Drawings and Documents received by it, including 'as-built' Drawings, and keep them in its safe custody.
- 12.5 Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list all Drawings, Documents, results of tests and other relevant records, and hand them over to the Authority or such other person as the Authority may specify and obtain written receipt thereof. Two copies of the said documents shall also be furnished in editable digital format or in such other medium or manner as may be acceptable to the Authority.

- 12.6 Wherever no period has been specified for delivery of services by the Independent Engineer, the Independent Engineer shall act with the efficiency and urgency necessary for discharging its functions in accordance with Good Industry Practice.

SCHEDULE – J

(See Clause 14.1.2)

TEST

1 Schedule for Tests

- 1.1 The Concessionaire shall, no later than 60 (sixty) days prior to the likely completion of the Lambadug Ropeway, notify the Independent Engineer and the Authority of its intent to subject the Lambadug Ropeway to Tests, and no later than 7 (seven) days prior to the actual date of Tests, furnish to the Independent Engineer and the Authority detailed inventory and particulars of all works and equipment forming part of the Lambadug Ropeway.
- 1.2 The Concessionaire shall notify the Independent Engineer of its readiness to subject the Lambadug Ropeway to Tests at any time after 7 (seven) days from the date of such notice, and upon receipt of such notice, the Independent Engineer shall, in consultation with the Concessionaire, determine the date and time for each Test and notify the same to the Authority who may designate its representative to witness the Tests. The Independent Engineer shall thereupon conduct the Tests itself or cause any of the Tests to be conducted in accordance with Article 14 and this Schedule-J.

2 Tests

- 2.1 The Independent Engineer shall conduct, or cause to be conducted, the Tests in accordance with Applicable Law, Good Industry Practice and Specifications and Standards. The tests to be conducted shall include *inter alia*:
- check of the correct execution and assembly of the ropeway
 - check the final documentation of the supplier including certificates and conformity declaration of all safety parts and subsystems
 - check all safety devices of the ropeway including the correct setting
 - check the electrical safety control system
 - check the correct settings of all brakes and drives
 - check the emergency drive
 - check the smooth and safe running of the rope and cabins on the line and on the roller batteries
 - check of the operation and maintenance manual
 - check the experience and the knowledge of the service staff for the operation
 - check the correct, safe and smooth running of the garage system, the conveyor system and the coupling system
 - Check the rescue equipment and do a rescue exercise on the installation

Any other Test as may be prescribed under Applicable Laws, Good Industry Practice and Specifications and Standards.

SCHEDULE – K
(See Clause 14.2 & 14.3)
COMPLETION CERTIFICATE

1. I/We, (Name of the Independent Engineer) (Name of the CEN Accredited Certification Agency), under and in accordance with the Concession Agreement dated (the “**Agreement**”), for development and operation of the Lmbadug Ropeways for corridor in city of on design, build, finance, operate and transfer (the “**DBFOT**”) basis, through (Name of Concessionaire), hereby certify that the Tests specified in Article 14 and Schedule-J of the Agreement have been successfully undertaken to determine compliance of the Lmbadug Ropeway with Specifications and Standards and with the provisions of the Agreement, and I/We am/are satisfied that the Lmbadug Ropeway can be safely and reliably placed in commercial service of the Users thereof.
2. It is certified that, in terms of the aforesaid Agreement, all works forming part of Lmbadug Ropeway have been completed, and the Lmbadug Ropeway is ready for entry into commercial operation on this the day of 20.....

SIGNED, SEALED AND DELIVERED

For and on behalf of INDEPENDENT ENGINEER by:

(Signature)

(Name)

(Designation)

(Address)

PROVISIONAL CERTIFICATE

- 1 I, (Name of the Independent Engineer)(Name of the CEN Accredited Certification Agency), under and in accordance with the Concession Agreement dated (the “**Agreement**”), for ***ropeway (the “**Lambadug Ropeway**”) on design, build, finance, operate and transfer (the “**DBFOT**”) basis through (Name of Concessionaire), hereby certify that the Tests specified in Article 14 and Schedule-J of the Agreement have been undertaken to determine compliance of the Lambadug Ropeway with the provisions of the Agreement.
- 2 Construction Works that were found to be incomplete and/or deficient have been specified in the Punch List appended hereto, and the Concessionaire has agreed and accepted that it shall complete and/or rectify all such works in the time and manner set forth in the Agreement. (Some of the incomplete works have been delayed as a result of reasons attributable to the Authority or due to Force Majeure and the Provisional Certificate cannot be withheld on this account. Though the remaining incomplete works have been delayed as a result of reasons attributable to the Concessionaire,)[@] I am satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the Lambadug Ropeway, pending completion thereof.
- 3 In view of the foregoing, I am satisfied that the Lambadug Ropeway can be safely and reliably placed in commercial service of the Users thereof, and in terms of the Agreement, the Lambadug Ropeway is hereby provisionally declared fit for entry into commercial operation on this the day of 20.....

ACCEPTED, SIGNED, SEALED
AND DELIVERED
For and on behalf of
CONCESSIONAIRE by:

SIGNED, SEALED AND
DELIVERED
For and on behalf of
INDEPENDENT ENGINEER by :

(Signature)
(Name and Designation)
(Address)

(Signature)
(Name and (Designation)
(Address)

@ Strike out if not applicable.

SCHEDULE – L

(See Clause 17.2)

PERFORMANCE AND MAINTENANCE REQUIREMENTS

1. Maintenance Requirements

- 1.1 The Concessionaire shall, at all times, operate and maintain the Lambadug Ropeway in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits. In particular, the Concessionaire shall, at all times during the Operation Period, conform to the maintenance requirements set forth in this Schedule-L (the “**Maintenance Requirements**”).

Performance and Maintenance Requirements

The list of performance and maintenance requirements of key ropeway components to optimize ropeway efficiency during its operational life time. Each equipment supplier will provide service schedule which the Concessionaire will follow for trouble free and safe performance of the ropeway. Checks are recommended for daily, weekly, monthly, quarterly, half yearly, yearly, 3-year, 6-year basis etc. CEN Standards define that parts must undergo non-destructive and destructive tests to check for cracks and quality of materials. Based on CEN Standards and equipment supplier’s experience, schedule of performance and maintenance is recommended for safe operations.

1. Check the loading and unloading points as well as the access and exit areas and fix them if need be;
2. Towers: Check the platforms, handrails, catwalks, anemometers, ladders and rope lifting frames for cracks, rust, deformation, correct position or any deviation from the standard ;
3. Overhead Cables - Signal Cables: Check for any visual deviation in terms of physical damage such as breakage, color deformation, cuts, correct position, overhead cable for oscillations;
4. Lighting Protection Cable inspection as Overhead Cables at Serial No.3;
5. Main Gear Box: Follow gear box manufacturers recommendation for maintenance schedule;
6. Universal Shaft: Check for any unusual noise (technician should be trained to differentiate between a normal and abnormal noise during shaft operation);
7. Main Motor: refer to manufacturer’s manual schedule of activities;
8. Gear Rim: General check for any physical damage or aberration;
9. Hydraulic Unit for emergency drive / brakes;
10. Service Brake: check for correct functioning by actuating the switch 'EMERGENCY STOP' check stopping distance. Check the brake and hydraulic lines for any leaks;
11. Emergency Brake: Check for correct functioning by actuating the switch 'EMERGENCY STOP' check stopping distance. Check the brake release cylinder and the hydraulic lines for any leaks;
12. Rope Tensioner Hydraulic Unit: check tension on display and visual check for leaks;
13. Drive and Return Bull wheels: Check for any unusual noise, wobble or eccentricity in the motion of the bull wheel, etc;
14. Bull wheel coupling, positioning monitoring unit, axle position monitoring unit, bearing;
15. Tension Carriage: Check tension carriage position;
16. Grip Opening/Closing Equipment: Check for Normal Operation as per approved manufacturer’s process; other components associated with functioning of the grips such as grip fault before launch limit switch, not open limit switch, grip gauge, grip operating lever fault, electronic grip force testing device;

17. Outer Guide Rail: Functional check of the dampened outer guide rail;
18. Tyre Conveyors: General inspection as per schedule of maintenance;
19. Hydraulic Lifting Unit: Check for leaks and loose pipe connections;
20. Clutch/Brake Combination/Safety Clutch: Check the clutch/brake combination/safety clutch for correct functioning;
21. Line components such as rope, sheave assemblies, hangar, grip mechanism, tacho drive, counting sheave, haul rope grounding, towers, overhead cables, signal cables, lightning protection rope, gear rim, rope tensioner hydraulic unit, power take off (PTO) drive, break fork switch etc. including all safety features listed in Schedule M to be checked as per CEN requirements and technical specifications of the equipment suppliers;
22. Door opening closing of gondolas, access control barriers and passenger control systems; and
23. CEN Standards provision for Magnetic Particle Testing of components to ensure safety of the operations.

- 1.2 The Concessionaire shall repair or rectify any defect or deficiency set forth in Paragraph 2 of this Schedule-L within the time limit specified therein and any failure in this behalf shall constitute a breach of the Agreement. Upon occurrence of any breach hereunder, the Authority shall be entitled to recover Damages as set forth in Clause 17.7 of the Agreement, without prejudice to the rights of the Authority under the Agreement, including Termination thereof.

2. Repair/rectification of defects and deficiencies

The obligations of the Concessionaire in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies specified in Annex - I of this Schedule - L within the time limit set forth therein. The Concessionaire shall at all times maintain an adequate inventory of spares and consumables to meet the Maintenance Requirements.

3. Other defects and deficiencies

- 3.1 In respect of any defect or deficiency not specified in Annex - I of this Schedule-L, the Concessionaire shall undertake repair or rectification in accordance with Good Industry Practice and within the time limit specified by the Independent Engineer.
- 3.2 In respect of any defect or deficiency not specified in Annex - I of this Schedule-L, the Independent Engineer may, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards, and any deviation or deterioration beyond the permissible limit shall be repaired or rectified by the Concessionaire within the time limit specified by the Independent Engineer.

4. Extension of time limit

Notwithstanding anything to the contrary specified in this Schedule-L, if the nature and extent of any defect or deficiency justifies more time for its repair or rectification than the time specified herein, the Concessionaire shall be entitled to additional time in conformity with Good Industry Practice and Specification and Standards. Such additional time shall be determined by the Independent Engineer and conveyed to the Concessionaire and the Authority with reasons thereof.

5. Emergency repairs/restoration

Notwithstanding anything to the contrary contained in this Schedule-L, if any defect, deficiency or deterioration in the Lambadug Ropeway poses a hazard to safety or risk of damage to property, the Concessionaire shall promptly take all reasonable measures for eliminating or minimizing such danger.

6. Daily Inspection by the Concessionaire

The Concessionaire shall, through its engineer, undertake a daily visual inspection of the Lambadug Ropeway and maintain a record thereof in a register to be kept in such form and manner as the Independent Engineer may specify. Such record shall be kept in safe custody of the Concessionaire and shall be open to inspection by the Authority and the Independent Engineer at any time during office hours.

7. Divestment Requirements

All defects and deficiencies specified in this Schedule-L shall be repaired and rectified by the Concessionaire so that the Lambadug Ropeway conforms to the Maintenance Requirements on the Transfer Date.

8. Display of Schedule - L

The Concessionaire shall display a copy of this Schedule-L at every station along with the Complaint Register stipulated in Article 46.

Annex - I
(Schedule-L)

Repair/Rectification of Defects and Deficiencies

Any deficiency leading to stoppage of Lambadug Ropeway shall be rectified in accordance with Applicable Laws, Good Industry Practice and Specifications and Standards.

SCHEDULE-M

(See Clause 18.1)

SAFETY REQUIREMENTS

1 Guiding principles

- 1.1 Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on the Lambadug Ropeway, irrespective of the person(s) at fault.
- 1.2 Users of the Lambadug Ropeway include staff of the Concessionaire and its contractors working on the Lambadug Ropeway.
- 1.3 Safety Requirements apply to all phases of construction, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.
- 1.4 Safety Requirements include measures associated with safe movement, safety management, safety equipment, fire safety, enforcement and emergency response, with particular reference to the safety guidelines specified in Annex - I of this Schedule - M.

2 Obligations of the Concessionaire

The Concessionaire shall abide by the following insofar as they relate to safety of the Users:

- (a) Applicable Laws and Applicable Permits;
- (b) Manual for safety, issued by the Authority;
- (c) provisions of this Agreement; and
- (d) relevant Standards/Guidelines contained in internationally accepted codes, including without limitation, the CEN Standards; and
- (e) Good Industry Practice.

3 Appointment of Safety Consultant

For carrying out safety audit of the Lambadug Ropeway under and in accordance with this Schedule- M, the Authority shall appoint from time to time, one or more qualified firms or organisations as its consultants (the “**Safety Consultant**”). The Safety Consultant shall employ a team comprising, without limitation, one CEN certified ropeway safety expert and one traffic planner to undertake safety audit of the Lambadug Ropeway.

4 Safety measures during Development Period

- 4.1 No later than 90 (ninety) days from the date of this Agreement, the Authority shall appoint a Safety Consultant for carrying out safety audit at the design stage of the Project.
- 4.2 The Concessionaire shall provide to the Safety Consultant, in four copies, the relevant drawings containing the design details that have a bearing on safety of Users (the “**Safety Drawings**”). Such design details shall include ropeway alignments; horizontal and vertical forces, layouts of ropeway profile, foundation drawings, inertia forces, bending moments in global coordinates, tower loads, sheave loads, effects of forces caused by winds, snow, ice or any other external factors, station forces and design, people movement and safety procedures at stations along

with other incidental or consequential information. The Safety Consultant shall review the design details and forward 3 (three) copies of the Safety Drawings with its recommendations, if any, to the Independent Engineer who shall record its comments, if any, and forward one copy each to the Authority and the Concessionaire.

- 4.3 The design details shall be compiled, analysed and used by the Safety Consultant for evolving a package of recommendations consisting of safety related measures for the Lambadug Ropeways. The safety audit shall be completed in a period of three months and a report thereof (the “**Safety Report**”) shall be submitted to the Authority, in 5 (five) copies. One copy each of the Safety Report shall be forwarded by the Authority to the Concessionaire and the Independent Engineer forthwith.
- 4.4 The Concessionaire shall endeavour to incorporate the recommendations of the Safety Report in the design of the Lambadug Ropeways, as may reasonably be required in accordance with Applicable Laws, Applicable Permits, Manuals and Guidelines of the Authority, Specifications and Standards, and Good Industry Practice. If the Concessionaire does not agree with any or all of such recommendations, it shall state the reasons thereof and convey them to the Authority forthwith. In the event that any or all of the works and services recommended in the Safety Report fall beyond the scope of Schedule-C, Schedule-D or Schedule-E, the Concessionaire shall make a report thereon and seek the instructions of the Authority for funding such works in accordance with the provisions of Article 18.
- 4.5 Without prejudice to the provisions of Paragraph 4, the Concessionaire and the Independent Engineer shall, within 15 (fifteen) days of receiving the Safety Report, send their respective comments thereon to the Authority, and no later than 15 (fifteen) days of receiving such comments, the Authority shall review the same alongwith the Safety Report and by notice direct the Concessionaire to carry out any or all of the recommendations contained therein with such modifications as the Authority may specify; provided that any works or services required to be undertaken hereunder shall be governed by the provisions of Article 18.

5 Safety measures during Construction Period

- 5.1 A Safety Consultant shall be appointed by the Authority, no later than 6 (six) months prior to the expected Project Completion Date, for carrying out a safety audit of the completed Construction Works.
- 5.2 The Safety Consultant shall study the Safety Report for the Development Period and inspect the Lambadug Ropeway to assess the adequacy of safety measures. The Safety Consultant shall complete the safety audit within a period of 4 (four) months and submit a Safety Report recommending a package of additional safety measures, if any, that are considered essential for reducing accident hazards on the Lambadug Ropeway. Such recommendations shall be processed, *mutatis mutandis*, and acted upon in the manner set forth in Paragraphs 4.3, 4.4 and 4.5 of this Schedule-M.
- 5.3 The Concessionaire shall make adequate arrangements during the Construction Period for the safety of workers and road users in accordance with Applicable Laws and Good Industry Practice for safety in construction zones and notify the Authority and the Independent Engineer about such arrangements.

6 Safety measures during Operation Period

- 6.1 The Concessionaire shall develop, implement and administer a surveillance and safety programme for Users, including correction of safety violations and deficiencies and all other actions necessary to provide a safe environment in accordance with this Agreement.

- 6.2 The Concessionaire shall establish a Ropeway Safety Management Unit (the “**RSMU**”) to be functional on and after COD and designate one of its officers to be in-charge of the RSMU. Such officer shall have specialist knowledge and training in ropeway system safety by having attended a course conducted by a reputed organisation on the subject.
- 6.3 The Concessionaire shall keep a copy of every FIR recorded by the Police with respect to any accident occurring on the Lambadug Ropeway. In addition, the Concessionaire shall also collect data for all cases of accidents not recorded by the Police. The information so collected shall be summarised in the form prescribed by the Authority for this purpose. The Concessionaire shall also record the exact location of each accident on a route map. The aforesaid data shall be submitted to the Authority at the conclusion of every quarter and to the Safety Consultant as and when appointed.
- 6.4 The Concessionaire shall submit to the Authority before the 31st (thirty first) May of each year, an annual report (in ten copies) containing, without limitation, a detailed listing and analysis of all accidents of the preceding Accounting Year and the measures taken by the Concessionaire pursuant to the provisions of Paragraph 6.1 of this Schedule-M for averting or minimising such accidents in future.
- 6.5 Once in every Accounting Year, a safety audit shall be carried out by the Safety Consultant to be appointed by the Authority. It shall review and analyse the annual report and accident data of the preceding year and undertake an inspection of the Lambadug Ropeway. The Safety Consultant shall complete the safety audit within a period of 1 (one) month and submit a Safety Report recommending specific improvements, if any, required to be made in the Lambadug Ropeway. Such recommendations shall be processed, *mutatis mutandis*, and acted upon in the manner set forth in Paragraphs 4.3, 4.4 and 4.5 of this Schedule-M.

7 Costs and expenses

Costs and expenses incurred in connection with the Safety Requirements set forth herein, including the provisions of Paragraph 2 of this Schedule, shall be met in accordance with Article 18, and in particular, the remuneration of the Safety Consultant, safety audit, and costs incidental thereto, shall be met by the Concessionaire.

Annex - I
(Schedule-M)

Safety Guidelines

1. Safe movement

- 1.1. In the design, construction and operation of stations and ropeway system, particular care shall be taken to ensure safety of users in entry and exit; while waiting, boarding or alighting; and in moving systems. This shall include facilities for safe and efficient evacuation in case of emergency. In particular, ropeways shall be designed and tested for safe movement.

2. System integrity

- 2.1 In the design of power supply, ropeway, circuits and equipments, particular care shall be taken to minimise the likely incidence of failure.

3. Safety management

- 3.1 A safety statement shall be prepared by the Concessionaire once every quarter to bring out clearly the system of management of checks and maintenance tolerances for various assets including cabins, and compliance thereof. The statement shall also bring out the nature and extent of, staff training and awareness in dealing with such checks and tolerances. Two copies of the statement shall be sent to the Independent Engineer within 15 (fifteen) days of the close of every quarter.

4. Safety equipment

- 4.1 The following equipment shall be provided at every station:
- a. Fire extinguishers and fire alarms at the appropriate locations on the platforms;
 - b. Two fire extinguishers in the station office;
 - c. Two stretchers and two standard first aid boxes; and
 - d. Such other equipment as may be required in conformity with Good Industry Practice.

5. Emergency

- 5.1 A set of emergency procedures shall be formulated to deal with different emergency situations and the operations staff shall be trained to respond appropriately during emergency through periodic simulated exercises as laid down in a manual for management of disasters (the “**Disaster Management Manual**”) to be prepared and published by the Concessionaire prior to COD. The Concessionaire shall provide 5 (five) copies each of the Disaster Management Manual to the Authority and the independent expert no later than 30 (thirty) days prior to COD.

6. Fire safety

- 6.1 The Concessionaire shall adopt provisions in a combination of the National Fire Protection Association (NFPA) 130 standard & Fire Safety Recommendations as per CEN Standards for Passenger Ropeway Systems.
- 6.2 To prevent fire in the passenger areas, the Concessionaire shall use fire resistant materials in the construction thereof and shall avoid use of materials which are to some extent flammable, or which emit smoke and harmful gases when burning.

6.3 Emergency exit should be accessible without any obstructions and the exit doors should be kept locked in the ordinary course. The exit doors shall be easy to open from inside the station in case of emergency.

6.4 Escape routes shall be clearly marked by arrows in the correct direction and no cryptic symbols shall be used. In complying with the provisions of this Clause 6.4, the possibility of poor visibility due to smoke shall be duly taken into account. All notices and signages shall be uniform and standardized.

7 User safety and information system:

7.1 The Concessionaire shall provide the RSMU with the facilities required for supervising passenger areas and cabins, and shall provide visual information to Users, both onboard and on the stations. The Concessionaire shall also provide one way communication to Users at the stations through a Public Announcement (PA) system. The User call points should be located on all platforms at convenient locations to allow Users to contact the RSMU in emergencies.

7.2 The User information system shall comprise dynamic visual displays and loudspeakers.

SCHEDULE – N
(See Clause 38.4)

VESTING CERTIFICATE

The Chief General Manager, RTDC, Govt. of HP (the “**Authority**”) refers to the Concession Agreement dated (the “**Agreement**”) entered into between the Authority and (the “**Concessionaire**”) for *** ropeway (the “**Lambadug Ropeway**”) on design, build, finance, operate and transfer (the “**DBFOT**”) basis.

The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Clause 38.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Lambadug Ropeway shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.

Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

Signed this day of, 20..... at Delhi.

AGREED, ACCEPTED AND SIGNED

SIGNED, SEALED AND DELIVERED

For and on behalf of

For and on behalf of CONCESSIONAIRE

by:

AUTHORITY by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

In the presence of:

1.

2.

SCHEDULE – O

(See Clause 40.3)

SUBSTITUTION AGREEMENT

THIS SUBSTITUTION AGREEMENT is entered into on this the day of 20....

AMONGST

- 1 The VChief General manager, RTDC State and having its principal offices at U.S. Club-Shimla – Pin code (hereinafter referred to as the “**Authority**” which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);
- 2 LIMITED, a company incorporated under the provisions of the Companies Act, 1956 or Companies Act, 2013, as the case may be and having its registered office at, (hereinafter referred to as the “**Concessionaire**” which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);
- 3name and particulars of Lenders’ Representative and having its registered office at, acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**”, which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

- (A) The Authority has entered into a Concession Agreement dated with the Concessionaire (the “**Concession Agreement**”) for ***** ropeway (“**Lambadug Ropeway**”) on design, build, finance, operate and transfer basis (the “**DBFOT**”), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.
- (D) In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Substitution Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

“Agreement” means this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

“Financial Default” means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months;

“Lenders’ Representative” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

“Nominated Company” means a company, incorporated under the provisions of the Companies Act, 1956, selected by the Lenders’ Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/transfer of the Concession as provided in this Agreement;

“Notice of Financial Default” shall have the meaning ascribed thereto in Clause 3.2.1; and

“Parties” means the parties to this Agreement collectively and “Party” shall mean any of the Parties to this Agreement individually.

1.2 INTERPRETATION

1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.

1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.3 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2 ASSIGNMENT

2.1 Assignment of rights and title

The Concessionaire hereby agrees to assign the rights, title and interest in the Concession to, and in favour of, the Lenders’ Representative pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

3 SUBSTITUTION OF THE CONCESSIONAIRE

3.1 Rights of substitution

3.1.1 Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

3.1.2 The Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. For the avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Lambadug Ropeway as Concessionaire either individually or collectively.

3.2 Substitution upon occurrence of Financial Default

3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "**Notice of Financial Default**") along with particulars thereof and send a copy to the Authority for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.

3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.

3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Lambadug Ropeway in accordance with the provisions of Article 36 of the Concession Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days. For the avoidance of doubt, the Authority expressly agrees and undertakes to terminate the Concession Agreement forthwith, upon receipt of a written request from the Lenders' Representative at any time after 240 (two hundred and forty) days from the date of Suspension hereunder.

3.3 Substitution upon occurrence of Concessionaire Default

3.3.1 Upon occurrence of a Concessionaire Default, the Authority shall, by a notice, inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.

3.3.2 In the event that the Lenders' Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

3.4 Procedure for substitution

3.4.1 The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Lambadug Ropeway including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.

3.4.2 To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Authority for shortlisting the bidders for award of the Concession; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.

3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall request the Authority to:

- (a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Lambadug Ropeway in accordance with the provisions of the Concession Agreement;
- (b) endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
- (c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.

3.4.4 If the Authority has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority thereupon shall transfer and endorse the Concession within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of

the Concessionaire.

3.5 Selection to be binding

The decision of the Lenders' Representative and the Authority in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Authority taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Authority and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Authority or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

4 PROJECT AGREEMENTS

4.1 Substitution of Nominated Company in Project Agreements

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Company's assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

5 TERMINATION OF CONCESSION AGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 37 of the Concession Agreement.

5.2 Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to the Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2, the Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

5.3 Realisation of Debt Due

The Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement. For realisation of the Debt Due, the Lenders' Representative shall be entitled to make its claim from the Escrow Account in accordance with the provisions of the Concession Agreement and the Escrow Agreement.

6 DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- (a) Termination of the Agreement; or
- (b) no sum remains to be advanced and no sum is outstanding to the Senior Lenders, under the Financing Agreements.

7 INDEMNITY

7.1 General indemnity

- 7.1.1 The Concessionaire will indemnify, defend and hold the Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.
- 7.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.
- 7.1.3 The Lenders' Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8 DISPUTE RESOLUTION

8.1 Dispute resolution

8.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Concessionaire and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "**Rules**") or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.

8.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Delhi and the language of arbitration shall be English.

9 MISCELLANEOUS PROVISIONS

9.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at Delhi shall have jurisdiction over all matters arising out of or relating to this Agreement.

9.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

9.3 Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

9.4 **Alteration of terms**

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

9.5 **Waiver**

9.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

9.5.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

9.6 **No third party beneficiaries**

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

9.7 **Survival**

9.7.1 Termination of this Agreement:

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

9.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

9.8 **Severability**

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or

unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

9.9 Successors and assigns

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

9.12 Authorised representatives

Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

9.13 Original Document

This Agreement may be executed in three counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

THE COMMON SEAL OF
CONCESSIONAIRE has been affixed

SIGNED, SEALED AND DELIVERED
For and on behalf of

pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the day of 20..... hereunto affixed in the presence of, Director, who has signed these presents in token thereof and, Company Secretary / Authorised Officer who has countersigned the same in token thereof ^{\$}:

AUTHORITY by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

SENIOR LENDERS by the Lenders' Representative:

(Signature)
(Name)
(Designation)
(Address)
(Fax)
(e-mail address)

In the presence of:

1.

2.

^{\$} To be affixed in accordance with the articles of association of the Concessionaire.

SCHEDULE – P
(See Clause 27.1.1)

FEE NOTIFICATION

[The Fee Rules/Notification issued by the State Government shall constitute Schedule- P of the Agreement and shall be in accordance with the local legislation governing ropeways in the applicable state.]

[Note 1: Fee Rules/ Notification shall be included in the draft concession agreement to be provided to the bidders before inviting bids and would broadly cover the following:

The notification shall specify the fee payable for each category of Users using the Lambadug Ropeway. The fee shall be based on the rates approved by Government/Authority and escalated to reflect the increase in price index as specified therein.

The notification shall specify that the fee structure shall be modified to reflect the variation in price index as specified in Clause 27.2, and the fee notification shall be issued and gazetted by the concerned department.

The notification shall provide for rounding off of the fee to the nearest one rupee, and for escalation of fee, in line with the provisions of Article 27.

Discounted fee rates for frequent Users ,additional charge for evasion of fee and differential fee structure for peak and off- peak hours should be provided in the notification.]

[Note 2: For assistance in drafting the fee rules for the project, a model notification is provided at Annex-I for consideration of the respective State Governments.]

Annex - I

(Schedule-P)

[Model Rules/Notification]27

GOVERNMENT OF ***

***** DEPARTMENT

The Passenger Ropeway (Collection of Fee by Concessionaires) Rules, 20**

In exercise of the powers conferred by [section ** of the ***** Act, 20**] (hereinafter referred to as the “**Act**”), and all other powers enabling him in this behalf, the Governor of *** makes the following rules (hereinafter referred to as the “**Rules**”) for collection of fee for use of passenger ropeway system, namely: -

1. Short title, commencement and application:

These Rules may be called the Passenger Ropeway (Collection of Fee by Concessionaires) Rules, 20**.

These Rules shall come into force on the date of their publication in the Official Gazette and shall apply to all concessions granted by the State Government after such date.

2. Definitions

2.1 In these Rules, unless the context otherwise requires,

- (a) “**Act**” means the ***** Act, 20**
- (b) “**Appellate Authority**” means any officer not below the rank of superintending engineer or equivalent designated as such by the Government;
- (c) “**Authority**” means an agency appointed by the Government under the provisions of the Act, which will enter into an agreement with the Concessionaire for construction, operation or maintenance of a Ropeway system for transportation;
- (d) “**CPI (IW)**” means the Consumer Price Index for Industrial Workers as published by the Labour Bureau, Government of India or any Index published in substitution thereof by the Government of India;
- (e) “**Concession Agreement**” means an agreement entered into between the Authority and any person or persons for construction, operation or maintenance of a Ropeway system for transportation;
- (f) “**Concessionaire**” means a person who has entered into a Concession Agreement with the Authority under the provisions of the Act;
- (g) “**Government**” means the Government of ***;

(h) **“Price Index”** shall comprise:

[(a) 70% (seventy per cent) of WPI; and

(b) 30% (thirty per cent) of CPI (IW)],

which constituents may be substituted by such alternative index or indices as the Parties may by mutual consent determine;

(i) **“Ropeway system”** means the Ropeway system that is constructed, operated or maintained under a Concession Agreement for transporting commuters;

(j) **“Unauthorised Collection”** means the collection of any amount not provided for in these Rules, by the concessionaire;

(k) **“User”** means a person who uses the Ropeway system or any part thereof on payment of fee; and

(l) **“WPI”** means the Wholesale Price Index as published by the Ministry of Industry, Government of India or any Index published in substitution thereof by the Government of India.

(m) **“Year”** means a period from 1st April of a year and ending on 31st March of the following year.

Words and expressions used herein but not defined in these Rules shall have the meaning respectively assigned to them in the Act.

3. Levy and Collection of Fee

3.1 It shall be levied and paid to the Concessionaire by every User, a fee under and in accordance with the provisions of these Rules.

3.2 Every User, upon payment of the fee shall be issued a ticket / token / smart card by the Concessionaire.

4. Basic Fee

4.1 The Concessionaire will communicate the fee for Ropeway system in the Concession Agreement. Basic fee for parking at any designated parking area within a station of the Ropeway system shall be as specified in column (4) below and will be revised from time to time.

Serial No. (1)	Vehicle (2)	Time period of parking (3)	Basic fee (in Rs.) (4)
1.	Car	Upto 2 hours For every hour in excess of the first 2 hours 105	10 5
2.	Motorised 2-wheeler	Upto 2 hours For every hour in excess of the first 2 hours	4 2

The basic fee for parking specified in sub-rule (2) above shall be increased by 50% (fifty per cent)

thereof for parking provided in the basement or on a floor above the ground floor.

5. Annual revision of basic fee

- 5.1 The basic fee referred to in Rule 4 shall be increased annually, without compounding, by 5% (five per cent) thereof for a period of 15 (fifteen) successive years commencing from April 1, 2019. The first increase of 5% (five per cent) hereunder shall take effect on April 1, 2020, and the last and fifteenth such increase shall be affected on April 1, 2034. Such increased rates shall be deemed to be the base rates for the purpose of these rules.

6. Peak and off-peak fee

- 6.1 Every Concessionaire may, after obtaining prior written approval of the Authority, which approval the Authority may in its discretion deny, levy and collect a higher and discounted fee (the “**Differential Fee**”) for use of the Ropeway system, during peak and off-peak hours respectively in accordance with this Rule 6:

Provided, however, that such Differential Fee shall not apply to Users availing of a lower fee under Rule 9.

- 6.2 The Concessionaire shall, for the purposes of these Rules, designate not more than 4 (four) hours in a day as peak hours and a period equal to twice the peak hours as off-peak hours. During peak hours, the Concessionaire may levy and collect a premium of upto 25% (twenty-five per cent) on the applicable fee or such higher premium as the Authority may by order permit. Simultaneously, with levy of such premium for peak hours, the Concessionaire shall offer a discount during off- peak hours for an amount equal to the premium for peak hours. For the avoidance of doubt, the determination of Differential Fee shall be with reference to the time of entry of a user in the Ropeway system.
- 6.3 If the determination and collection of Differential Fee results in an increase in the fee revenues of the Concessionaire, then 80% (eighty per cent) of the additional revenue in each year resulting from the Differential Fee shall be deposited in the Safety Fund and used in accordance with provisions of the respective concession agreement. For the purposes of this Rule 6.3, additional revenue from Differential Fee shall mean the gross amount collected at differential fee pursuant to this Rule 6, less gross revenues which would have been collected at the applicable fee on footing that the option to levy and collect Differential Fee pursuant to this Rule 6 has not been exercised by the Concessionaire.

7. Fee collection points

- 7.1 For collection of fee under these Rules, the Concessionaire shall establish and operate ticket counters and ticket vending machines in accordance with the provisions of its Concession Agreement. The Concessionaire may install fee collection gates for checking evasion of fee.

8. Remittance and Utilisation of fee

- 8.1 The fee collected shall be appropriated by the Concessionaire in accordance with and for the performance of its obligations under and in accordance with the provisions of the Concession Agreement.

9. Discounted rates for frequent users

- 9.1 Upon request from any person, the Concessionaire shall issue a return ticket on payment of a sum equal to 180% (one hundred and eighty per cent) of the fee payable if it were to undertake a single one-way trip on the Ropeway system. Such return pass shall entitle the User to undertake a return journey on the same day as the outward journey.

- 9.2 Upon request from any person, the Concessionaire shall issue a daily pass on payment of a sum equal to twice the fee payable if it were to undertake a single one-way trip on the longest route of the Ropeway system. Such daily pass shall entitle the user to unlimited travel on the Ropeway system for the date of issue.
- 9.3 The Concessionaire shall, upon request from any person for issue of a weekly pass, issue such pass on payment of a sum equal to ten times the fee payable if it were to undertake a single one-way trip on the selected section of the Ropeway system. Such weekly pass shall entitle the user to unlimited travel on such section of the Ropeway system for one week from the date of issue. The Concessionaire shall, upon request from any person for issue of a monthly pass, issue such pass on payment of a sum equal to forty times the fee payable if it were to undertake a single one-way trip on the selected section of the Ropeway system. Such monthly pass shall entitle the user to unlimited travel on such section of the Ropeway system for one month from the date of issue.

[In addition to the above, the Authority may prescribe any other scheme of discounted fee under these Rules.]

10. Luggage

- 10.1 A User may carry upto 7 (seven) kg of hand luggage without any payment for such luggage. A User can carry 50 (fifty) kg of luggage on a payment of an amount equal to the cost of one ticket. The cabins are designed to carry a fixed number of riders. The assumption for luggage is that the weight of 50 (fifty) kg luggage will occupy one seat equivalent of weight in the cabin. Therefore, one person carrying 50 (fifty) kg luggage will be deemed to buy tickets for 2 (two) travelling riders. The Concessionaire can levy a per kilogram charge equal to or more than the cost of ticket for a single rider. e.g. users may, at any time other than peak hours, carry luggage in excess of 7 (seven) kilograms, but not exceeding 50 (fifty) kg, upon payment of basic fee calculated at the rate of Rs. 2 (two) per kilogram, which rate may be revised by the Concessionaire in accordance with Rule 5; provided that any luggage which is hazardous, unhygienic or in any manner offensive to other users shall not be permitted on the train.

11. Increase in fee due to increase in insurance premium

- 11.1 In the event of a significant rise in the risk premium for insurance on account of a change in the security environment, the Concessionaire shall be entitled to recover 80% (eighty percent) of such increase in premium from the Users by means of a corresponding increase in fee with the prior written approval of the Authority which approval shall not be unreasonably withheld.

12. Additional charge for evasion of fee

- 12.1 The Concessionaire shall be entitled to levy and collect an additional sum equal to the greater of three times the applicable fee [or Rs. 200] from a person found to be evading payment of fee due. Such additional sum shall be deemed to be fee due and payable under these Rules and may be used for defraying the expenses on prevention of such evasion.

Provided that the Concessionaire shall not be entitled to any reduction in its liability on account of any amount payable by it to the Authority or to any other relief from or any claim against the Authority for its failure to stop evasion of fee; and its failure to collect fee prescribed under these Rules.

13. Rounding off of the fee

- 13.1 Fee to be collected under these Rules shall be rounded off to the nearest Rupee.

14. Commencement of fee collection

- 14.1 Levy and collection of fee shall commence upon completion/ provisional completion of construction of the Ropeway system for entry into commercial service, in accordance with the provisions of the Concession Agreement.

15. Display of Fee

- 15.1 The Concessionaire shall, near the entry point of each station, prominently display the applicable fee for information of Users approaching from either side of the station. The Concessionaire shall from time to time, by written notice, inform the Authority of the applicable fee and the detailed calculation thereof. Such information shall be communicated at least 30 (thirty) days prior to the date of initial levy of fee or revision thereof, as the case may be.
- 15.2 The Concessionaire shall, at least 15 (fifteen) days prior to the commencement of collection of fee or revised fee, as the case may be, publish a notice specifying the actual amount of fee to be charged from Users, in at least one newspaper each in English and local language of the area and having a wide circulation in such area.

16. Unauthorised collection

- 16.1 In the event that a Concessionaire collects from any person a sum of money not due and payable hereunder, the Concessionaire shall be liable to refund to such person forthwith the amount so collected along with a sum computed @ 0.5 % (zero point five per cent) of the amount so collected, for each day from the date of collection till the date of refund, by way of damages. In the event that such amount together with damages computed in the manner as aforesaid is not paid to such person for any reason whatsoever, the same shall be deposited with the Authority within a period of 15 (fifteen) days from the date of such collection.
- 16.2 Any User aggrieved with the collection of unauthorised fee, may lodge a complaint with the authorised representative of the Concessionaire who shall, after hearing the Parties pass an order on such complaint within 30 (thirty) days of receiving the complaint and appeal, if any, against such order may be made to the Appellate Authority designated as such by the Authority within 45 (forty five) days of the date on which the order of the authorised representative was received by such User. In passing an order under this Rule, the authorised representative or the Appellate Authority may, after giving an opportunity of hearing to the complainant and the Concessionaire, direct the Concessionaire to refund the excess payment and may also award damages for the inconvenience suffered by an applicant.
- 16.3 The Concessionaire shall keep a record of all complaints received and action taken thereon with respect to the fee collection, and forward a copy on a fortnightly basis to the authorised representative of the Authority.
- 16.4 The Authority may assess the excess fee collection, if any, made by a Concessionaire and take appropriate action for recovering the same from such Concessionaire along with an additional sum equal to the 25% (twenty five per cent) of the excess fee collection. Such additional sum shall be deemed to be predetermined liquidated damages for assessment and recovery of the excess fee collection.

17. Power of Authority to verify records

- 17.1 The Authority shall have the power to verify, through any of its designated officers, the collection of fee and for this purpose, inspect any document, records, other information or reports of the Concessionaire.

18. Exempted Users

18.1 The following categories of Users shall be exempted from payment of fee:

- Employees of the concessionaire on duty; and
- Security personnel on station duty.

SCHEDULE – Q

(See Clause 19.5)

MONTHLY FEE STATEMENT

Ropeway System:

Month:

For corresponding month of previous year		For preceding month		For the month reported upon		
No. of Users (2)	Fee collected (in lakh Rs.) (3)	No. of Users (4)	Fee collected (in lakh Rs.) (5)	Fee per User (in Rs.) (6)	No. of Users (7)	Fee collected (in lakh Rs.) (8)

Note 1: Monthly Fee Statements for Monthly Passes and Daily Passes have been prepared separately in the above format and are enclosed.

Remarks, if any:

WEEKLY TRAFFIC CENSUS

Ropeway System: Week ending:					
PKM and No. of Users using the Ropeway System during the week (total) (in thousand)					
Corresponding week/last year		Preceding week		week of report	
PKM (2)	No. of Users (3)	PKM (4)	No. of Users (5)	PKM (6)	No. of Users (7)

Remarks, if any:

DAILY REPORT FOR Ropeway OPERATIONS

	Ropeway System:		Date:
Time During the Day (peak hours are 6.00 am to 10 am & 5 pm to 9.00 pm)*	Carrying capacity (in User nos.)	No. of Users (In thousand)	People Per Hour (PPH)
5.00 am to 6.00 am			
6.00 am to 10 am			
10 am to 11 am			
11 am to 12 noon			
12 noon to 1 pm			
1 pm to 2 pm			
2 pm to 3 pm			
3 pm to 4 pm			
4 pm to 5 pm			
5 pm to 9 pm			
9 pm to 10 pm			
10 pm to 11 pm			

Remarks, if any:

SCHEDULE- R

DELETED

SCHEDULE – S

(See Clause 31.1.2)

ESCROW AGREEMENT

THIS ESCROW AGREEMENT is entered into on this the day of 20.....

AMONGST

- 1 Limited, a company incorporated under the provisions of the Companies Act, 1956/ Companies Act, 2013 and having its registered office at(hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
- 2 (name and particulars of Lenders’ Representative) and having its registered office at acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
- 3 (name and particulars of the Escrow Bank) and having its registered office at (hereinafter referred to as the “**Escrow Bank**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
- 4 The Governor of *****, represented by [Secretary, Public Works Department and having its principal offices at *****] (hereinafter referred to as the “**Government**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

WHEREAS:

- (A) The Government has entered into a Concession Agreement dated with the Concessionaire (the “**Concession Agreement**”) for **** ropeway (the “**Lambadug Ropeway**”) in the State on design, build, finance, operate and transfer (“**DBFOT**”) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) The Concession Agreement requires the Concessionaire to establish an Escrow Account, inter alia, on the terms and conditions stated therein.

NOW THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

“Agreement” means this Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

“Concession Agreement” means the Concession Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

“Cure Period” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Concessionaire, and shall commence from the date on which a notice is delivered by the Government or the Lenders’ Representative, as the case may be, to the Concessionaire asking the latter to cure the breach or default specified in such notice;

“Escrow Account” means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

“Escrow Default” shall have the meaning ascribed thereto in Clause 6.1;

“Lenders’ Representative” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

“Parties” means the parties to this Agreement collectively and “Party” shall mean any of the Parties to this Agreement individually;

“Payment Date” means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

“Sub-Accounts” means the respective Sub-Accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective Sub Accounts and paid out therefrom on the Payment Date(s).

1.2 Interpretation

1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.

1.2.2 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

1.2.3 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2 ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

- 2.1.1 The Concessionaire hereby appoints the Escrow Bank to act as trustee for the Government, the Lenders' Representative and the Concessionaire in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.
- 2.1.2 The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Government, the Lenders' Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Government, the Lenders' Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Agreement.

2.2 Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Senior Lenders or the Government with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Government, the Lenders' Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

2.3 Establishment and operation of Escrow Account

- 2.3.1 Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Concessionaire shall open and establish the Escrow Account with the **** (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.
- 2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.
- 2.3.3 The Escrow Bank and the Concessionaire shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Escrow Bank's fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Concessionaire. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with Clause 4.1.

2.5 Rights of the parties

The rights of the Government, the Lenders' Representative and the Concessionaire in the

monies held in the Escrow Account are set forth in their entirety in this Agreement and the Government, the Lenders' Representative and the Concessionaire shall have no other rights against or to the monies in the Escrow Account.

2.6 Substitution of the Concessionaire

The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Concessionaire under this Agreement on and with effect from the date of substitution of the Concessionaire with the Nominated Company.

3 DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposits by the Concessionaire

3.1.1 The Concessionaire agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

- (a) all monies received in relation to the Project from any source, including the Senior Lenders, lenders of Subordinated Debt and the Government;
- (b) all funds received by the Concessionaire from its share-holders, in any manner or form;
- (c) all Fee levied and collected by the Concessionaire;
- (d) any other revenues, rentals, deposits or capital receipts, as the case may be, from or in respect of the Lambadug Ropeway; and
- (e) all proceeds received pursuant to any insurance claims.

3.1.2 The Concessionaire may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

3.2 Deposits by the Government

The Government agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

- (a) Grant and any other monies disbursed by the Government to the Concessionaire;
- (b) all Fee collected by the Government in exercise of its rights under the Concession Agreement; and
- (c) Termination Payments:

Provided that, notwithstanding the provisions of Clause 4.1.1, the Government shall be entitled to appropriate from the aforesaid amounts, any Concession Fee due and payable to it by the Concessionaire, and the balance remaining shall be deposited into the Escrow Account.

3.3 Deposits by Senior Lenders

The Lenders' Representative agrees, confirms and undertakes that the Senior Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project; provided that notwithstanding anything to the contrary contained

in this Agreement, the Senior Lenders shall be entitled to make direct payments to the EPC Contractor under and in accordance with the express provisions contained in this behalf in the Financing Agreements.

3.4 Interest on deposits

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Concessionaire in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

4 WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdrawals during Concession Period

4.1.1 At the beginning of every month, or at such shorter intervals as the Lenders' Representative and the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):

- (a) all taxes due and payable by the Concessionaire for and in respect of the Lambadug Ropeway;
- (b) all payments relating to construction of the Lambadug Ropeway, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- (d) O&M Expenses incurred by the Government, provided it certifies to the Escrow Bank that it had incurred such expenses in accordance with the provisions of the Concession Agreement and that the amounts claimed are due to it from the Concessionaire;
- (e) Concession Fee due and payable to the Government;
- (f) monthly proportionate provision of Debt Service due in an Accounting Year;
- {(g) Premium due and payable to the Government;}
- (h) all payments and Damages certified by the Government as due and payable to it by the Concessionaire pursuant to the Concession Agreement;
- (i) monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- (j) any reserve requirements set forth in the Financing Agreements; and
- (k) balance, if any, in accordance with the instructions of the Concessionaire.

4.1.2 No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

4.2 Withdrawals upon Termination

Upon Termination of the Concession Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

- (a) all taxes due and payable by the Concessionaire for and in respect of the Lambadug Ropeway;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) outstanding Concession Fee;
- (d) all payments and Damages certified by the Government as due and payable to it by the Concessionaire pursuant to the Concession Agreement, including {Premium,} and any claims in connection with or arising out of Termination;
- (e) retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in Article 39 of the Concession Agreement;
- (f) outstanding Debt Service including the balance of Debt Due;
- (g) outstanding Subordinated Debt;
- (h) incurred or accrued O&M Expenses;
- (i) any other payments required to be made under the Concession Agreement; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire;

Provided that the disbursements specified in Sub-clause (j) of this Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by the Government.

4.3 Application of insufficient funds

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

4.4 Application of insurance proceeds

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Lambadug Ropeway, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

4.5 Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, the Government may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 36 of the Concession Agreement. Any instructions given by the Government to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Government hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

5 OBLIGATIONS OF THE ESCROW BANK

5.1 Segregation of funds

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank.

5.2 Notification of balances

7 (seven) business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire and/or the Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lenders' Representative of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

5.3 Communications and notices

In discharge of its duties and obligations hereunder, the Escrow Bank:

- (a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;
- (b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- (c) shall, within 5 (five) business days after receipt, deliver a copy to the Lenders' Representative of any notice or document received by it in its capacity as the Escrow Bank from the Concessionaire or any other person hereunder or in connection herewith; and
- (d) shall, within 5 (five) business days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Lenders' Representative in connection herewith.

5.4 No set off

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

5.5 Regulatory approvals

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

6 ESCROW DEFAULT

6.1 Escrow Default

6.1.1 Following events shall constitute an event of default by the Concessionaire (an “**Escrow Default**”) unless such event of default has occurred as a result of Force Majeure or any act or omission of the Government or the Lenders’ Representative:

- (a) the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;
- (b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or
- (c) the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.

6.1.2 Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Concession Agreement.

7 TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the debt, guarantee or financial assistance received by it from the Senior Lenders, or any of its obligations to the Government remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

7.2 Substitution of Escrow Bank

The Concessionaire may, by not less than 45 (forty five) days prior notice to the Escrow Bank, the Government and the Lenders’ Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Lenders’ Representative and arrangements are made satisfactory to the Lenders’ Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank.

The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3 Closure of Escrow Account

The Escrow Bank shall, at the request of the Concessionaire and the Lenders’ Representative made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement and the Financing Agreements including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

8 SUPPLEMENTARY ESCROW AGREEMENT

8.1 Supplementary escrow agreement

The Lenders' Representative and the Concessionaire shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, inter alia, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to Clause 4.1.1 and for matters not covered under this Agreement such as the rights and obligations of Senior Lenders and lenders of Subordinated Debt, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

9 INDEMNITY

9.1 General indemnity

- 9.1.1 The Concessionaire will indemnify, defend and hold the Government, Escrow Bank and the Senior Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.
- 9.1.2 The Government will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Government to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Government, its officers, servants and agents.
- 9.1.3 The Escrow Bank will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

9.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 or in respect of which it is entitled to reimbursement (the **"Indemnified Party"**), it shall notify the other Party responsible for indemnifying such claim hereunder (the **"Indemnifying Party"**) within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any

claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

10 DISPUTE RESOLUTION

10.1 Dispute resolution

10.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “Rules”) or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996, as amended from time to time.

10.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be [***] and the language of arbitration shall be English.

11. MISCELLANEOUS PROVISIONS

11.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at *** shall have jurisdiction over all matters arising out of or relating to this Agreement.

11.2 Waiver of sovereign immunity

The Government unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Government with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

11.3 Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

11.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

11.5 Waiver

11.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

11.5.2 Neither the failure by any Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by any Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

11.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

11.7 Survival

11.7.1 Termination of this Agreement:

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

11.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

11.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 10.1 of this Agreement or otherwise.

11.9 Successors and assigns

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

11.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

11.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

11.12 Authorised representatives

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

11.13 Original Document

This Agreement may be executed in four counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

THE COMMON SEAL OF
CONCESSIONAIRE has been affixed pursuant
to the resolution passed by the Board of Directors
of the Concessionaire at its meeting held on the
..... day of 20..... hereunto affixed in the
presence of, Director, who has signed
these presents in token thereof and,
Company Secretary / Authorised Officer who has
countersigned the same in token thereof in the
presence of^{\$}:

SIGNED, SEALED AND DELIVERED
For and on behalf of
SENIOR LENDERS by the
Lenders' Representative:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED, SEALED AND
DELIVERED
For and on behalf of
ESCROW BANK by:

SIGNED, SEALED AND
DELIVERED
For and on behalf of
THE GOVERNMENT OF *** by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail
address)

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

In the presence of:

1.

2.

^{\$} To be affixed in accordance with the articles of association of the Concessionaire.

SCHEDULE – T
(See Clause 33.2.1)

PANEL OF CHARTERED ACCOUNTANTS

1. Panel of Chartered Accountants

Pursuant to the provisions of Clause 33.2.1 of the Agreement, the Authority and the Concessionaire shall prepare a mutually agreed panel of 10 (ten) reputable firms of Chartered Accountants having their registered offices in India (the “**Panel of Chartered Accountants**”). The criteria for preparing such Panel and the procedure to be adopted in this behalf shall be as set forth in this Schedule-T.

2. Invitation for empanelment

2.1 The Authority shall invite offers from all reputable firms of Chartered Accountants who fulfil the following eligibility criteria, namely:

- (a) the firm should have conducted statutory audit of the annual accounts of at least one hundred companies registered under the Companies Act, 1956 or Companies Act 2013, as the case may be, of which at least ten should have been public sector undertakings;
- (b) the firm should have at least 5 (five) practicing Chartered Accountants on its rolls, each with a minimum experience of ten years in the profession;
- (c) the firm or any of its partners should not have been disqualified or black-listed by the Comptroller and Auditor General of India or the Authority; and
- (d) the firm should have an office in the State or in an adjacent State with at least 2 (two) practicing Chartered Accountants on its rolls in such State.

2.2 Interested firms meeting the eligibility criteria shall be required to submit a statement of their capability including the bio-data of all the practicing Chartered Accountants on its rolls. In particular, each firm shall be required to furnish year-wise information relating to the names of all the companies with an annual turnover exceeding Rs. 25,00,00,000 (Rs. twenty five crore) whose annual accounts were audited by such firm in any of the preceding 5 (five) Accounting Years.

3. Evaluation and selection

3.1 The information furnished by each firm shall be scrutinised and evaluated by the Authority and 1 (one) point shall be awarded for each annual audit of the companies specified in Paragraph 2.2 above. (For the avoidance of doubt, a firm which has conducted audit of the annual accounts of any such company for five years shall be awarded five points).

3.2 The Authority shall prepare a list of all the eligible firms along with the points scored by each such firm and 10 (ten) firms scoring the highest points shall be identified and included in the draft Panel of Chartered Accountants.

4. Consultation with the Concessionaire

The Authority shall convey the aforesaid panel of firms to the Concessionaire for scrutiny and

comments, if any. The Concessionaire shall be entitled to scrutinise the relevant records of the Authority to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Authority within 15 (fifteen) days of receiving the aforesaid panel.

5. Mutually agreed panel

- 5.1 The Authority shall, after considering all relevant factors including the comments, if any, of the Concessionaire, finalise and constitute a panel of 10 (ten) firms which shall be deemed to be the mutually agreed Panel of Chartered Accountants.
- 5.2 After completion of every five years from the date of preparing the mutually agreed Panel of Chartered Accountants, or such earlier period as may be agreed between the Authority and the Concessionaire, a new panel shall be prepared in accordance with the provisions of this Schedule-T.

SCHEDULE- U
(See Clause 20.8)

PASSENGER CHARTER

Lambadug Ropeways

At your service

Our Passenger Charter explains our commitments to you and sets out the targets that these are based upon. It is not legally binding and does not affect your legal rights, which are set under the Applicable Law. Copies of the conditions can be obtained from all staffed stations or from our customer service center. They can also be viewed online at [www \[please mention the website\]](#)

Contents

- 1 Introduction
- 2 Our standards for ropeway service performance
- 3 Information and planning for your journey
- 4 Passengers who require assistance
- 5 Buying a ticket
- 6 Your journey
- 7 Claims for delays and cancellations
- 8 Listening to your views

1. Introduction

We want to give our passengers excellent service!

This is a bold statement but its intention is to focus the mind of every employee of the Lambadug Ropeway, on what is important - our passengers. We aim to provide you with:

- i. Safe, clean, reliable services
- ii. Clean and safe stations
- iii. Reliable, timely and easy to understand information
- iv. Polite, friendly and helpful staff

Inevitably, there will be times when problems occur and we are not able to achieve the standards we aim for. Our charter explains what we will do for you when this happens.

2. Our Standards for Ropeway Service Performance

We will continue to work hard at improving our performance to provide you with a consistently reliable service.

2.1 Peak Hour Operation

The Concessionaire will define the peak hours based on the RFP specifications and ridership. Typically, [0600 and 1000] hours inclusive, or between [1700 and 2100] inclusive, Monday to Friday only are peak hours. The aforesaid time definition may be modified from time to time depending on average daily traffic volumes during these hours. The peak hour operation will be suitably dealt by increasing or decreasing the maximum speed limit of the ropeway system.

2.2 Reliability

Our target is 99% (Ninety nine) percent availability of the transport system for all the 7 (seven) days of the week. You can view our performance results for the previous four weeks and 12 (twelve) months on 'Track Record' posters displayed at every station of the Lambadug Ropeway. The results are also available for inspection on request, at all our stations and are published in our season ticket (discounted fee) section.

The method of monitoring our performance is independently audited annually. We do not include disruption caused by matters out of the ropeway industry's control, such as trespass, vandalism and terrorism.

3. Information and Planning the Usage of the Ropeway

We will provide you with accurate information about the ropeway services, fees and facilities to help you plan your journey. You can obtain this information in a number of ways.

..... Ropeway Enquiries - telephone: (24 hours)

..... Ropeway Enquiries on the fees applicable for the system

Calls are charged at a local rate and may be monitored.

You can also obtain online information about train times and up-to-the- minute train-running information by visiting www.

Customer Service Centre – Tel:

In addition to the ropeway enquiries, customer service centre also provides information on the ropeway service. The customer service centre is open 24 hours a day except on national holidays. Calls are charged at a local rate and may be monitored.

3.1 At Stations

Staff in our ticket offices and travel centres can provide you with information to help you plan your journey. We will display up-to-date timetable posters at all stations. These will include the locations serviced by the ropeway and connecting transport systems available at each ropeway station locations to plan your journey ahead.

3.2 Engineering work

Planned engineering work

From time to time, Lambadug Ropeway has to carry out planned engineering and improvement work to maintain the system. This can cause alterations to our services, especially on weekends and public holidays.

The maintenance work on ropeway systems is done during shutdown hours which means that system functions at peak performance during the operation hours. However, in case of any specific instances when planned engineering work time extends beyond the shutdown time viz affecting operations during service time, advance information along with notification will be posted on the display system and website.

Information on services will also be available from:

Ropeway Enquiries
Customer Service Centre

Under best effort circumstances, we will try to post information well in advance for you to plan your trips.

3.3 Help and advice during your journey

Our customer service helpline is available during operation hours and equipped to handle all enquiries.

4. Passengers who Require Assistance

We are committed to meeting the travelling needs of our disabled passengers. We recognise that many of our passengers may have special needs which require us to adjust the way we provide our service. The ropeway station is equipped to handle requirements of all riders and the ropeway system, cabins are designed to accommodate wheel chairs, baby prams, prosthetics etc. The design facilitates seamless travel from start to finish.

4.1 Advance information and assistance for disabled passengers

We advise passengers who would like assistance to contact our customer service centre in advance.

Telephone (24 hours):

Fax:

Textphone:

Ropeway Enquiries textphone:

4.2 Car Parking

Every station that has a tarmac or concrete surfaced car park for customers has designated parking spaces [for either blue or orange badge holders].

4.3 On-Board Information

We are committed to providing information to provide a safe and pleasurable ride in a variety of ways so that it can be accessed by as wide a group of passengers as possible.

Cabins are equipped with public address systems to provide audible announcements to hearing passengers and equipped with a passenger information system that uses visual displays to enable hearing-impaired passengers to access information.

We recognize that good announcements are essential to visually impaired passengers, so our employees are trained to speak clearly.

4.4 Disability awareness training

All our frontline staff and managers receive training in disability awareness.

Further Information

..... Rail System Disabled Persons' Protection Policy (DPPP) sets out our full arrangements for passengers with disabilities. It can be supplied in a range of formats (large print, braille and audio), available from our customer service centre.

We have also produced a leaflet containing useful information, called 'Our Service for Passengers with Impairments'. It is available at staffed stations and from our customer service centre.

5. Buying a ticket

We will sell you the most appropriate ticket for your journey. To purchase a ticket, visit any of our staffed stations or telephone our customer service centre.

5.1 At stations

- Our ticket office opening hours are displayed at every staffed station. They are also available from our website or by telephoning our customer service centre.
- You can pay by cash or major credit and debit cards.
- Many stations also have self-service ticket machines, which sell a range of tickets to main destinations.

We will try to ensure that you do not need to queue for more than five minutes at busy times and no more than three minutes during less busy times. Details of busy times are displayed at each staffed station.

At major stations, our travel centres enable you to buy tickets, get travel information and also purchase other travel services.

Tickets can also be purchased from our authorised travel agents.

5.2 By Telephone

Season tickets can also be purchased over the telephone by calling our customer service centre. We accept most major credit and debit cards. Please allow at least five working days for delivery of your tickets.

5.3 Tickets online

You can also buy your season ropeway tickets (Discounted Fee) online.

5.4 Penalty fees

..... Lambadug Ropeway has a duty to its fee-paying passengers to ensure that no-one travels for free.

To help us achieve this, we operate a penalty fees scheme across our network. If you travel without a valid ticket you may be liable to a penalty fee of [Rs.200 or three times of the single fee (whichever is the greater)].

6. Your journey

Getting a seat

We operate a ‘walk-on’ service, which means you can board the next arriving cabin provided you have a valid ticket. The seat is guaranteed as the ropeway cabin is designed not to allow more people to board than its capacity. In Aerial Tramway (ATW), Cable Liners (Automated People Movers) are designed to allow sitting and standing passengers.

6.1 Security

We work very closely with the local authorities to improve security at our stations and car parks.

We aim to reduce levels of crime, trespass and vandalism and we are investing to achieve this. Initiatives include:

- Teams of Travel Safe Officers, trained and co-ordinated by the Police
- Installation of CCTV at stations
- Installation of CCTV in the cabins
- Lighting at stations and car parks
- Help points at our stations
- Security guards at key locations.

More information can be found in the safety and security section of our website.

6.2 Cycles

We welcome the opportunity to integrate ropeway and cycle travel by providing cycle parking at most of our stations.

Cycles are also welcome on our services, except during peak hours.

Our guards do have the right to refuse a cycle if there is insufficient space available or where the cycles cannot be accommodated safely.

Our cycle policy is published in our timetable book and shows those services where cycles are not permitted. Information can be found at staffed stations and from our customer service centre, and in our travel information section.

6.3 Smoking

Smoking is not permitted anywhere on the Lambadug Ropeway.

6.4 Lost Property

Our lost property office at is open from 0730 -1900 Monday to Friday. Telephone the office on All property found on our services and at our stations is forwarded to our lost property office.

To make an enquiry, complete our lost property online form.

6.5 Service Disruption

Unfortunately, things do sometimes go wrong, causing disruption that cannot always be foreseen or avoided. In case emergency maintenance is required, we will host the information on relevant media to ensure that the riders of the ropeway are informed well in advance to avoid any inconvenience.

Other causes of disruption include:

- Emergency engineering work
- Trespass and vandalism
- Security alerts.

Under such circumstances we may have to make changes to our services without giving prior warning to protect your safety and that of our staff. We will always try to minimise disruption, keep you informed and provide or recommend alternative means of travel.

If a problem does occur mid-way in the ropeway journey, we will ensure that you reach the nearest station with minimum inconvenience.

All our cabins are fitted with public address systems are equipped to provide all information on real time basis and most of our staff are linked by telephone systems. We aim to let you know what is happening.

7. Claims for delays or cancellations

7.1 Season Tickets Valid for one month or longer ‘Void’ day refunds

As a holder of a season ticket valid for one month or longer, we may provide you with the appropriate refund for exceptional days when there has been widespread serious, extended disruption. This is known as a ‘void’ day. In these cases, the period of disruption will be excluded from our performance statistics.

When we have declared a ‘void’ day we will tell you through ‘Track Record’ posters displayed at key stations.

When you renew your season ticket you will be advised by staff at your local ticket office to apply for ‘void’ day refunds if they have been declared. You will be given a ‘void’ day refund application form, which you can complete and submit along with your expired season ticket.

7.2 Availability and Reliability discounts for Season Tickets (Discounted Fee)

We have certain performance standards for reliability. If we fail to meet these standards, we will

offer you a discount from the cost of your season ticket renewal. Discounts will be paid automatically at the time of renewal.

Delays and cancellations that are caused by incidents beyond the control of the ropeway industry are excluded from our performance results. Incidents that are beyond our control include security alerts, vandalism and trespass. We will display the number of trains affected on posters at key stations and also on our website.

5% discount

We will offer you a 5% discount if, on average, over the previous 12 months if there is deficient service as per the performance parameters (system availability of 99%) has been more than 10% below the standard or reliability has been more than 5% below the standard.

10% discount

We will offer you a 10% discount if performance parameters for system availability are below these discount threshold levels.

To obtain your discount, you must renew your season ticket within four weeks of the previous ticket's expiry.

Other tickets and weekly seasons

We will treat all claims on their merits and give consideration to any problems you encounter. However, for your guidance, you can expect us to offer the following:

Please send us your travel tickets to support your claim. This will also help to speed up your claim. Completed claims should be sent to our customer service centre.

8. Listening to your views

We carry out and analyse passenger survey research to provide information about what you think of different aspects of our service.

We hold regular 'Meet the Manager' events, which enable you to speak directly to managers to put your views to them or ask them questions. Details of Meet the Manager events will be advertised on station posters, in our passenger magazine e-motion, through our customer service centre and also online.

We will listen to your views and communicate through correspondence and by telephone. We have a specially trained customer service centre team able to respond to you and we also liaise with passenger representative bodies and user groups that exist to protect your interests.

Making a comment or complaint

We welcome your comments, suggestions, complaints and praise about any aspect of our service. We also welcome comments about our charter. Senior managers monitor the number and type of complaints and comments that you make. They are also responsible for delivering continuous improvement to customer service. Your feedback can therefore help us to achieve this. If you are commenting on a journey, please remember to include your ropeway tickets and any other details, as this will help us to provide you with a swift response.

Further information:

We have a full Customer Comments and Complaints Handling Procedure (CCCHP). copies which can be obtained from our customer service centre or from our website www.

Contacting our Customer Service Centre

Please visit ‘Contact Us’ section for details.

Our promised response times

If you write to us, you should hear from us within five working days of us receiving your communication.

However, it may take longer to provide a full reply (e.g. if an investigation is required) and if this happens we will send you an acknowledgement within five working days and reply within twenty working days.

If a full reply cannot be made within twenty working days, we will contact you again to update you.

If you are unhappy with our reply

We will work hard to deal with your concerns to your satisfaction but if you are unhappy with our response, please let us know.

Alternatively, you can approach the consumer courts or other similar fora set up under Applicable Laws.

220 B, NITI Bhawan, Sansad Marg
New Delhi-110 001
Tel. No.: 011- 23096669
E-mail: a.sonkusare@nic.in

Dated : the 9th of October, 2020

OFFICE MEMORANDUM

Sub.: Manufacture, installation, operation and maintenance of ropeways in India.

A Technical Committee – constituted by NITI Aayog in August, 2019 – has, through its efforts, enabled formulation of 2 new standards by Bureau of Indian Standards (BIS), Department of Consumer Affairs, Government of India, thereby ensuring that there is no longer any gap between the Indian Standards and European Standards as regard to standardization of manufacture, installation, operation and maintenance of ropeways in India.

2. All the State Governments and Union Territories may, therefore, follow the following guidelines for manufacture, installation, operation and maintenance of ropeways in India:

The State Governments / Administrators of all Union Territories should mandate, in all their tenders, work orders, etc., that entire work of manufacturing of ropeways, and associated support structures, should be done in India. In other words, "Make-in-India" should be mandated for all the ropeways projects.

ii. The State Governments / the Administrators of all the Union Territories should encourage use of Indian Standards – formulated and notified by BIS – for manufacture, installation, operation and maintenance of the ropeways. If at all any State Government / any Union Territory wishes to encourage foreign standards for any ropeways project, then it can do so subject to the fulfillment of the criteria as given in the point (i) above.

3. The revision of the Public Procurement (Preference to Make in India), Order 2017 of the Department for Promotion of Industry and Internal Trade, Government of India, dated the 4th of June, 2020 (Annexure-1) and the Amendment in the General Financial Rules (GFRs), 2017 for Global Tender Enquiry, as notified by the Department of Expenditure, Government of India, on the 15th of May, 2020 (Annexure-2), may also be kept in mind for all the up-coming ropeways projects.

4. This issues with the approval of the Competent Authority in NITI Aayog.

Pranav 9/10/2020
(ASHOK A. SONKUSARE)
DEPUTY ADVISER (S&T)

Encls. Annexure-1 & Annexure-2

To:

- i. Chief Secretaries to the Governments of all the States.
- ii. Administrators of all the Union Territories.

No. P-45021/2/2017-PP (BE-II)
Government of India
Ministry of Commerce and Industry
Department for Promotion of Industry and Internal Trade
(Public Procurement Section)

Udyog Bhawan, New Delhi
Dated: 04th June, 2020

To

All Central Ministries/Departments/CPSUs/All concerned

ORDER

Subject: Public Procurement (Preference to Make in India), Order 2017– Revision; regarding.

Department for Promotion of Industry and Internal Trade, in partial modification [Paras 2, 3, 5, 9(a), 9(b) and 10(b) modified and Para 3A added] of Order No.P-45021/2/2017-B.E.-II dated 15.6.2017 as amended by Order No.P-45021/2/2017-B.E.-II dated 28.05.2018 and Order No.P-45021/2/2017-B.E.-II dated 29.05.2019, hereby issues the revised 'Public Procurement (Preference to Make in India), Order 2017' dated 04.06.2020 effective with immediate effect.

Whereas it is the policy of the Government of India to encourage 'Make in India' and promote manufacturing and production of goods and services in India with a view to enhancing income and employment, and

Whereas procurement by the Government is substantial in amount and can contribute towards this policy objective, and

Whereas local content can be increased through partnerships, cooperation with local companies, establishing production units in India or Joint Ventures (JV) with Indian suppliers, increasing the participation of local employees in services and training them,

Now therefore the following Order is issued:

1. This Order is issued pursuant to Rule 153 (iii) of the General Financial Rules 2017.
2. **Definitions:** For the purposes of this Order:

'Local content' means the amount of value added in India which shall, unless otherwise prescribed by the Nodal Ministry, be the total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent.

'Class-I local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, has local content equal to or more than 50%, as defined under this Order.

'Class-II local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, has local content more than 20% but less than 50%, as defined under this Order.

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'Non - Local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, has local content less than or equal to 20%, as defined under this Order.

'L1' means the lowest tender or lowest bid or the lowest quotation received in a tender, bidding process or other procurement solicitation as adjudged in the evaluation process as per the tender or other procurement solicitation.

'Margin of purchase preference' means the maximum extent to which the price quoted by a "Class-I local supplier" may be above the L1 for the purpose of purchase preference.

'Nodal Ministry' means the Ministry or Department identified pursuant to this order in respect of a particular item of goods or services or works.

'Procuring entity' means a Ministry or department or attached or subordinate office of, or autonomous body controlled by, the Government of India and includes Government companies as defined in the Companies Act.

'Works' means all works as per Rule 130 of GFR- 2017, and will also include *'turnkey works'*.

3. Eligibility of 'Class-I local supplier'/ 'Class-II local supplier'/ 'Non-local suppliers' for different types of procurement

(a) In procurement of all goods, services or works in respect of which the Nodal Ministry / Department has communicated that there is sufficient local capacity and local competition, only 'Class-I local supplier', as defined under the Order, shall be eligible to bid irrespective of purchase value.

(b) In procurement of all goods, services or works, not covered by sub-para 3(a) above, and with estimated value of purchases less than Rs. 200 Crore, in accordance with Rule 161(iv) of GFR, 2017, Global tender enquiry shall not be issued except with the approval of competent authority as designated by Department of Expenditure. Only 'Class-I local supplier' and 'Class-II local supplier', as defined under the Order, shall be eligible to bid in procurements undertaken by procuring entities, except when Global tender enquiry has been issued. In global tender enquiries, 'Non-local suppliers' shall also be eligible to bid along with 'Class-I local suppliers' and 'Class-II local suppliers'.

(c) For the purpose of this Order, works includes Engineering, Procurement and Construction (EPC) contracts and services include System Integrator (SI) contracts.

3A. Purchase Preference

(a) Subject to the provisions of this Order and to any specific instructions issued by the Nodal Ministry or in pursuance of this Order, purchase preference shall be given to 'Class-I local supplier' in procurements undertaken by procuring entities in the manner specified here under.

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(b) In the procurements of goods or works, which are covered by para 3(b) above and which are divisible in nature, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:

- i. Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract for full quantity will be awarded to L1.
- ii. If L1 bid is not a 'Class-I local supplier', 50% of the order quantity shall be awarded to L1. Thereafter, the lowest bidder among the 'Class-I local supplier' will be invited to match the L1 price for the remaining 50% quantity subject to the Class-I local supplier's quoted price falling within the margin of purchase preference, and contract for that quantity shall be awarded to such 'Class-I local supplier' subject to matching the L1 price. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price or accepts less than the offered quantity, the next higher 'Class-I local supplier' within the margin of purchase preference shall be invited to match the L1 price for remaining quantity and so on, and contract shall be awarded accordingly. In case some quantity is still left uncovered on Class-I local suppliers, then such balance quantity may also be ordered on the L1 bidder.

(c) In the procurements of goods or works, which are covered by para 3(b) above and which are not divisible in nature, and in procurement of services where the bid is evaluated on price alone, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:

- i. Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract will be awarded to L1.
- ii. If L1 is not 'Class-I local supplier', the lowest bidder among the 'Class-I local supplier', will be invited to match the L1 price subject to Class-I local supplier's quoted price falling within the margin of purchase preference, and the contract shall be awarded to such 'Class-I local supplier' subject to matching the L1 price.
- iii. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price, the 'Class-I local supplier' with the next higher bid within the margin of purchase preference shall be invited to match the L1 price and so on and contract shall be awarded accordingly. In case none of the 'Class-I local supplier' within the margin of purchase preference matches the L1 price, the contract may be awarded to the L1 bidder.

(d) "Class-II local supplier" will not get purchase preference in any procurement, undertaken by procuring entities.

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4. **Exemption of small purchases:** Notwithstanding anything contained in paragraph 3, procurements where the estimated value to be procured is less than Rs. 5 lakhs shall be exempt from this Order. However, it shall be ensured by procuring entities that procurement is not split for the purpose of avoiding the provisions of this Order.
5. **Minimum local content:** The local content requirement to categorize a supplier as 'Class-I local supplier'/ 'Class-II local supplier'/ 'Non-local supplier' shall be as defined in the Para "2" of the Order. No change is permissible on this account. However, if any nodal Ministry/ Department finds that for any particular item, pertaining to their nodal ministry/department, the definition of Local Content, as defined in the Order, is not workable/ has limitations, it may notify alternate suitable mechanism for calculation of local content for that particular item.
6. **Margin of Purchase Preference:** The margin of purchase preference shall be 20%.
7. **Requirement for specification in advance:** The minimum local content, the margin of purchase preference and the procedure for preference to Make in India shall be specified in the notice inviting tenders or other form of procurement solicitation and shall not be varied during a particular procurement transaction.
8. **Government E-marketplace:** In respect of procurement through the Government E-marketplace (GeM) shall, as far as possible, specifically mark the items which meet the minimum local content while registering the item for display, and shall, wherever feasible, make provision for automated comparison with purchase preference and without purchase preference and for obtaining consent of the local supplier in those cases where purchase preference is to be exercised.
9. **Verification of local content:**
 - a. The 'Class-I local supplier'/ 'Class-II local supplier' at the time of tender, bidding or solicitation shall be required to indicate percentage of local content and provide self-certification that the item offered meets the local content requirement for 'Class-I local supplier'/ 'Class-II local supplier', as the case may be. They shall also give details of the location(s) at which the local value addition is made.
 - b. In cases of procurement for a value in excess of Rs. 10 crores, the 'Class-I local supplier'/ 'Class-II local supplier' shall be required to provide a certificate from the statutory auditor or cost auditor of the company (in the case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) giving the percentage of local content.
 - c. Decisions on complaints relating to implementation of this Order shall be taken by the competent authority which is empowered to look into procurement-related complaints relating to the procuring entity.

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- d. Nodal Ministries may constitute committees with internal and external experts for independent verification of self-declarations and auditor's/ accountant's certificates on random basis and in the case of complaints.
 - e. Nodal Ministries and procuring entities may prescribe fees for such complaints.
 - f. False declarations will be in breach of the Code of Integrity under Rule 175(1)(i)(h) of the General Financial Rules for which a bidder or its successors can be debarred for up to two years as per Rule 151 (iii) of the General Financial Rules along with such other actions as may be permissible under law.
 - g. A supplier who has been debarred by any procuring entity for violation of this Order shall not be eligible for preference under this Order for procurement by any other procuring entity for the duration of the debarment. The debarment for such other procuring entities shall take effect prospectively from the date on which it comes to the notice of other procurement entities, in the manner prescribed under paragraph 9h below.
 - h. The Department of Expenditure shall issue suitable instructions for the effective and smooth operation of this process, so that:
 - i. The fact and duration of debarment for violation of this Order by any procuring entity are promptly brought to the notice of the Member-Convenor of the Standing Committee and the Department of Expenditure through the concerned Ministry /Department or in some other manner;
 - ii. on a periodical basis such cases are consolidated and a centralized list or decentralized lists of such suppliers with the period of debarment is maintained and displayed on website(s);
 - iii. in respect of procuring entities other than the one which has carried out the debarment, the debarment takes effect prospectively from the date of uploading on the website(s) in the such a manner that ongoing procurements are not disrupted.
- 10. Specifications in Tenders and other procurement solicitations:**

- a. Every procuring entity shall ensure that the eligibility conditions in respect of previous experience fixed in any tender or solicitation do not require proof of supply in other countries or proof of exports.
- b. Procuring entities shall endeavour to see that eligibility conditions, including on matters like turnover, production capability and financial strength do not result in unreasonable exclusion of 'Class-I local supplier'/ 'Class-II local supplier' who would otherwise be eligible, beyond what is essential for ensuring quality or creditworthiness of the supplier.
- c. Procuring entities shall, within 2 months of the issue of this Order review all existing eligibility norms and conditions with reference to sub-paragraphs 'a' and 'b' above.

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- d. If a Nodal Ministry is satisfied that Indian suppliers of an item are not allowed to participate and/ or compete in procurement by any foreign government, it may, if it deems appropriate, restrict or exclude bidders from that country from eligibility for procurement of that item and/ or other items relating to that Nodal Ministry. A copy of every instruction or decision taken in this regard shall be sent to the Chairman of the Standing Committee.
- e. For the purpose of sub-paragraph 10 d above, a supplier or bidder shall be considered to be from a country if (i) the entity is incorporated in that country, or (ii) a majority of its shareholding or effective control of the entity is exercised from that country; or (iii) more than 50% of the value of the item being supplied has been added in that country. Indian suppliers shall mean those entities which meet any of these tests with respect to India."

10A. Action for non-compliance of the Provisions of the Order: In case restrictive or discriminatory conditions against domestic suppliers are included in bid documents, an inquiry shall be conducted by the Administrative Department undertaking the procurement (including procurement by any entity under its administrative control) to fix responsibility for the same. Thereafter, appropriate action, administrative or otherwise, shall be taken against erring officials of procurement entities under relevant provisions. Intimation on all such actions shall be sent to the Standing Committee.

11. Assessment of supply base by Nodal Ministries: The Nodal Ministry shall keep in view the domestic manufacturing / supply base and assess the available capacity and the extent of local competition while identifying items and prescribing minimum local content or the manner of its calculation, with a view to avoiding cost increase from the operation of this Order.

12. Increase in minimum local content: The Nodal Ministry may annually review the local content requirements with a view to increasing them, subject to availability of sufficient local competition with adequate quality.

13. Manufacture under license/ technology collaboration agreements with phased indigenization: While notifying the minimum local content, Nodal Ministries may make special provisions for exempting suppliers from meeting the stipulated local content if the product is being manufactured in India under a license from a foreign manufacturer who holds intellectual property rights and where there is a technology collaboration agreement / transfer of technology agreement for indigenous manufacture of a product developed abroad with clear phasing of increase in local content.

14. Powers to grant exemption and to reduce minimum local content: The administrative Department undertaking the procurement (including procurement by any entity under its administrative control), with the approval of their Minister-in-charge, may by written order, for reasons to be recorded in writing,

- a. reduce the minimum local content below the prescribed level; or
- b. reduce the margin of purchase preference below 20%; or

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- c. exempt any particular item or supplying entities from the operation of this Order or any part of the Order.

A copy of every such order shall be provided to the Standing Committee and concerned Nodal Ministry / Department. The Nodal Ministry / Department concerned will continue to have the power to vary its notification on Minimum Local Content.

- 15. **Directions to Government companies:** In respect of Government companies and other procuring entities not governed by the General Financial Rules, the administrative Ministry or Department shall issue policy directions requiring compliance with this Order.

- 16. **Standing Committee:** A standing committee is hereby constituted with the following membership:

Secretary, Department for Promotion of Industry and Internal Trade—Chairman
 Secretary, Commerce—Member
 Secretary, Ministry of Electronics and Information Technology—Member
 Joint Secretary (Public Procurement), Department of Expenditure—Member
 Joint Secretary (DPIIT)—Member-Convenor

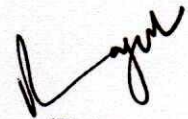
The Secretary of the Department concerned with a particular item shall be a member in respect of issues relating to such item. The Chairman of the Committee may co-opt technical experts as relevant to any issue or class of issues under its consideration.

- 17. **Functions of the Standing Committee:** The Standing Committee shall meet as often as necessary, but not less than once in six months. The Committee

- a. shall oversee the implementation of this order and issues arising therefrom, and make recommendations to Nodal Ministries and procuring entities.
- b. shall annually assess and periodically monitor compliance with this Order
- c. shall identify Nodal Ministries and the allocation of items among them for issue of notifications on minimum local content
- d. may require furnishing of details or returns regarding compliance with this Order and related matters
- e. may, during the annual review or otherwise, assess issues, if any, where it is felt that the manner of implementation of the order results in any restrictive practices, cartelization or increase in public expenditure and suggest remedial measures
- f. may examine cases covered by paragraph 13 above relating to manufacture under license/ technology transfer agreements with a view to satisfying itself that adequate mechanisms exist for enforcement of such agreements and for attaining the underlying objective of progressive indigenization
- g. may consider any other issue relating to this Order which may arise.

- 18. **Removal of difficulties:** Ministries /Departments and the Boards of Directors of Government companies may issue such clarifications and instructions as may be necessary for the removal of any difficulties arising in the implementation of this Order.

19. **Ministries having existing policies:** Where any Ministry or Department has its own policy for preference to local content approved by the Cabinet after 1st January 2015, such policies will prevail over the provisions of this Order. All other existing orders on preference to local content shall be reviewed by the Nodal Ministries and revised as needed to conform to this Order, within two months of the issue of this Order.
20. **Transitional provision:** This Order shall not apply to any tender or procurement for which notice inviting tender or other form of procurement solicitation has been issued before the issue of this Order.



(Rajesh Gupta)

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