



Ropeways and Rapid Transport System Development Corporation



Development, Operations and Maintenance of Passenger Ropeway from Narkanda to Hatu Peak, Distt. Shimla on Design, Build, Finance, Operate and Transfer (DBFOT) Mode

REQUEST FOR PROPOSAL (RFP)

BID DOCUMENT

VOLUME-1

INSTRUCTION TO BIDDERS

February 2025



**ROPEWAYS AND RAPID TRANSPORT SYSTEM DEVELOPMENT CORPORATION H.P. Ltd. (RTDC)
U.S. Club, Shimla, Himachal Pradesh**

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NOTICE INVITING BID

RTDC/Ropeways/2025.....

Dated: 03.02.2025

RFP for Development, Operations and Maintenance of Passenger Ropeway from Narkanda to Hatu Peak, Distt. Shimla on Design, Build, Finance, Operate and Transfer (DBFOT) Mode.

The Government of Himachal Pradesh had entrusted to the **Ropeways and Rapid Transport System Development Corporation (hereinafter referred to as “Authority”)** the Development, Operations and Maintenance of Passenger Ropeway from Narkanda to Hatu Peak, Distt. Shimla on Design, Build, Finance, Operate and Transfer (DBFOT) Mode and has decided to carry out the bidding process for selection of a private entity as the Bidder to whom the Project may be awarded.

Brief particulars of the Project are as follows:

Name of the Project	Length (in Km)	Total Project Cost (In Rs. Cr.)	Concession Period
Development, Operations and Maintenance of Passenger Ropeway from Narkanda to Hatu Peak, Distt. Shimla on Design, Build, Finance, Operate and Transfer (DBFOT) Mode	3.10	206.00	3 years Construction period + 40 years Operation & Maintenance period

The complete Bidding Documents can be viewed / downloaded from e-procurement portal of Himachal Pradesh (<http://hptenders.gov.in>) from 03.02.2025 to 04.03.2025 (up to 1100 Hrs. IST). Bid must be submitted online only at <http://hptenders.gov.in> on or before 04.03.2025 (up to 1100 Hrs. IST). Bids received online shall be opened on 04.03.2025 at 1500 Hrs. IST.

Bid submitted through any other mode shall not be entertained. However, Bid Security, Original Power of Attorney for signing of Bid, Original Power of Attorney for lead member of Consortium, if any, Original Joint Bidding Agreement for Consortium, if any, Original Integrity Pact, and experience certificates apostille at foreign origin, if any other documents required as per clause 2.11.2 of RFP shall be submitted physically in original by the Highest Bidder before issuance of Letter of Award (LOA) by the Authority. However, while submitting Bid Security via Account Payee demand draft or Fixed Deposit Receipt or Banker’s Cheque, it is to be ensured by the Bidder that Account Payee demand draft or Fixed Deposit Receipt or Banker’s Cheque are submitted physically latest within 5 working days of the Bid Due Date. Please note that the Authority reserves the right to accept or reject all or any of the Bids without assigning any reason whatsoever.

Thanking you,

Yours faithfully,

Deputy General Manager
Ropeways and Rapid Transport
System Development Corporation
U.S. Club, Shimla, Himachal Pradesh – 171001
Email: dgmrtldchp@gmail.com

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 the Authority 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 the Authority 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 the formulation of their application for qualification and making their financial offers (Bids) pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Authority 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 the Authority, 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 the Feasibility Report, 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 Authority accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The Authority, 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 Stage.

The Authority 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 Authority 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 the Authority is bound to select a Bidder or to appoint the Selected Bidder or Concessionaire, as the case may be, for the Project and the Authority 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 the Authority or

any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and the Authority 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.

ROPEWAYS AND RAPID TRANSPORT SYSTEM DEVELOPMENT CORPORATION**SECTION 1
INTRODUCTION****1.1 Background**

1.1.1 The Ropeways And Rapid Transport System Development Corporation HP Ltd (the “Authority”) is engaged in the development of ropeway & allied infrastructure projects and as part of this endeavor, the Authority has decided to undertake Development, Operation and Maintenance of Passenger Ropeway from Narkanda to Hatu Peak, Distt. Shimla in the State of Himachal Pradesh on DBFOT mode (hereinafter referred to as 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 a private entity as the Bidder to whom the Project may be awarded. A brief description of the Project may be seen in the Information Memorandum of the Project at the Authority’s website <https://rtdchp.org/>. Brief particulars of the Project are as follows:

Project Name	Length (in Km)	Total Project Cost (In Rs. Cr.)	Concession Period
Development, Operations and Maintenance of Passenger Ropeway from Narkanda to Hatu Peak, Distt. Shimla on Design, Build, Finance, Operate and Transfer (DBFOT) Mode	3.10	206.00	3 years Construction period + 40 years Operation & Maintenance period

1.1.2 The Selected Bidder, who is either a company incorporated under the Companies Act, 1956/2013 or its substitute thereof or undertakes to incorporate as such prior to execution of the concession agreement (the “**Concessionaire**”), shall be responsible for designing, engineering, financing, procurement, construction, operation and maintenance of the Project under and in accordance with the provisions of a long term concession agreement (the “**Concession Agreement**”) to be entered into between the Concessionaire and the Authority in the form provided by the Authority as part of the Bidding Documents pursuant thereto.

1.1.3 The scope of work will broadly include designing, engineering, financing, procurement, construction, operation and maintenance of the Ropeway project from Narkanda to Hatu Peak, Distt. Shimla in the State of Himachal Pradesh on DBFOT mode as prescribed in the Concession Agreement and its Schedules and the operation and maintenance thereof.

1.1.4 The estimated cost of the Project (the “**Total Project Cost**”) has been specified in the clause 1.1.1 above. The assessment of actual costs, however, will have to be made by the Bidders.

1.1.5 The Concession Agreement sets forth the detailed terms and conditions for grant of the concession to the Concessionaire, including the scope of the Concessionaire’s services and obligations (the “**Concession**”).

1.1.6 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 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 by the Authority.

- 1.1.7 The Authority shall receive Bids pursuant to and in accordance with the terms set forth in this RFP and other documents to be provided by the Authority pursuant to this RFP, as modified, altered, amended and clarified from time to time by the Authority (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 Bids (the "**Bid Due Date**").

1.2 Brief description of Bidding Process

- 1.2.1 The Authority has adopted a single stage two parts process (referred to as the "**Bidding Process**") for selection of the Bidder for award of the Project. Under this process, the Bid shall be invited under two parts. Prior to or along with the Bid, the Bidder shall pay to the Authority a sum of **Rs. 3,54,000/- (Rupees Three Lacs Fifty four thousand only)** (inclusive of GST) as the cost of the Bidding Process transmitted online to Authority. Eligibility and qualification of the Bidder (the "Bidder"), which expression shall, unless repugnant to the context, include the members of the Consortium) will be first examined based on the details submitted under first part ("**Technical Bid**") with respect to eligibility and qualifications criteria prescribed in this RFP. The Financial bid under the second part ("**Financial Bid**") shall be opened of only those Bidders whose Technical Bids are responsive to eligibility and qualifications requirements as per this RFP. The details of Authority Account for deposition of application cost of bid document online is given below:

Beneficiary	Ropeways and Rapid Transport System Development Corporation Hp Ltd
Bank	ICICI The Mall Shimla
Account Number	635301009485
IFSC Code	ICIC0006353

GOI has issued guidelines (see Annexure VI of Appendix-IA of RFP) for qualification of bidders seeking to acquire stakes in any public sector enterprise through the process of disinvestment. These guidelines shall apply mutatis mutandis to this Bidding Process. The Authority shall be entitled to disqualify any Bidder in accordance with the aforesaid guidelines at any stage of the Bidding Process. Bidders must satisfy themselves that they are qualified to bid, and should give an undertaking to this effect in the form at Appendix-IA.

- 1.2.2 Interested bidders (the "**Bidders**") are being called upon to submit their Bid in accordance with the terms specified in this Bidding Document. The Bid shall be valid for a period of 120 days from the date specified in Clause 1.3 for submission of Bids (the "**Bid Due Date**").
- 1.2.3 The complete Bidding Documents including the draft Concession Agreement for the Project is enclosed for the Bidders. The Feasibility Report / Detailed Project Report prepared by the Authority/ consultants of the Authority (the "Feasibility Report/Detailed Project Report") is also enclosed for guidance purposes only. Subject to the provisions of

Clause 2.1.3, the aforesaid documents and any addenda issued subsequent to this RFP Document, will be deemed to form part of the Bidding Documents.

- 1.2.4 A Bidder is required to deposit, along with its Bid, a Bid Security of **Rs. 2.06 Crore (Rupees Two Crores and Six Lakhs Only)** (the "Bid Security"), 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 Agreement. The Bidders will have an option to provide Bid Security in the form of Insurance Surety Bond, Account Payee Demand Draft, Fixed Deposit Receipt, Banker's cheque or Bank Guarantee (including e-Bank Guarantee) acceptable to the Authority, and in such event, the validity period of the Insurance Surety Bond, Account Payee Demand Draft, Fixed Deposit Receipt, Banker's cheque, or Bank Guarantee (including e-Bank Guarantee) shall not be less than 120 (one hundred and twenty) days from the Bid Due Date with a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder from time to time and that the validity of the demand draft shall not be less than 60 (sixty) days from the Bid Due Date. Upon submission of demand draft, the same shall be encashed by the Authority. The Insurance Surety Bond shall be verified from the specific portal created for this purpose. This Bank Guarantee or Electronic Bank Guarantee shall be transmitted through SFMS Gateway to Authority's Bank. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.
- 1.2.5 During the Bid Stage, Bidders are advised to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the Concession including implementation of the Project.
- 1.2.6 Bids are invited for the Project on the basis of the highest premium (the "Premium") required by a Bidder for implementing the Project. The percentage of revenue as Premium, the quoted percentage would be applied on the Realizable Fee in the first year post Commercial Operations Date of the project. The quoted percentage of revenue would be increased by 5% (five per cent) for each subsequent year of the remaining Concession Period. The Concession Period is predetermined, as indicated in the Concession Agreement. The Premium amount shall constitute the sole criteria for evaluation of Bids. Subject to Clause 2.16, the Project will be awarded to the Bidder quoting the highest Premium. In this RFP, the term "Highest Bidders" shall mean the Bidder who is offering the highest Premium.

In this RFP, the term "**Highest Bidder**" shall mean the Bidder who is offering the highest Premium.

- 1.2.7 Generally, the Highest Bidder in terms of percentage of revenue offered as Premium payable to the Authority, 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 Selected Bidder in case such Selected Bidder withdraws or is not selected for any reason except the reason mentioned in clause 3.8. In the event that none of the other Bidders match the Bid of the Selected Bidder, the Authority may, in its discretion, either invite fresh Bids from the remaining Bidders or annul the Bidding Process.
- 1.2.8 The Concessionaire shall be entitled to levy and charge a pre-determined user fee from users of the Project.

- 1.2.9 Other details of the process to be followed under this Bidding Process and the terms thereof are spelt out in this RFP.
- 1.2.10 Any queries or request for additional information concerning this RFP shall be submitted by e-mail to the officer designated in Clause 2.11.4 below with identification/ title: "Queries/Request for Additional Information: **RFP for Development, Operations and Maintenance of Passenger Ropeway from Narkanda to Hatu Peak, Distt. Shimla on Design, Build, Finance, Operate and Transfer (DBFOT) Mode** "
- 1.2.11 In case Highest/ Selected Bidder fails to submit the originals Bid Security, Power of Attorney for signing of Bid, Power of Attorney for lead member of Consortium, if any, Joint Bidding Agreement for Consortium, if any, Integrity Pact, and experience certificates apostille at foreign origin, if any and other documents required as per clause 2.11.2 of RFP, the Bidding Process shall be annulled and Tender shall be re-invited.

1.3 Schedule of Bidding Process

The Authority shall endeavour to adhere to the following schedule:

Sl. No.	Event Description	Date
1.	Date of online Publication	03.02.2025 upto 05:00 P.M.
2.	Downloading of bid start date & time	03.02.2025 from 05:00 P.M.
3.	Last date for receiving online pre bid queries	12.02.2025 upto 11:59 P.M.
4.	Pre-Bid Meeting Online	13.02.2025 at 11:30 A.M.
5.	Authority response to pre bid queries latest by	20.02.2025 till 05:00 P.M.
6.	Last date for Submission of bid	04.03.2025 till 11:00 A.M.
7.	Physical submission of bid security/POA, etc.	04.03.2025 till 12.00 Noon
8.	Date of opening of Technical Bids	04.03.2025 at 03:00 P.M.
9.	Date & Time of opening of Financial Bid	Will be informed later on after the evaluation of technical bids (Only to the bidders who will successfully qualify the Technical Evaluation)
10.	Authority for seeking clarifications and submission of completed Bid documents	Dy. General Manager Ropeways And Rapid Transport System Development Corporation. (RTDC) US Club, Shimla, 171001 (H.P.) Email: dgm.rtdc@hpmail.in & dgmrtchp@gmail.com Phone:0177-2811001,0177-2811003,0177-2811004
12.	Validity of Bid	120 days from Bid Due Date

SECTION-2 INSTRUCTIONS TO BIDDERS

A. GENERAL

2.1 General Terms of Bidding

- 2.1.1 No Bidder shall submit more than one Bid for the Project. A Bidder bidding 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.
- 2.1.2 An international Bidder bidding individually or as a member of a Consortium shall ensure that Power of Attorney is legalised/apostilled by appropriate authority notarised in the jurisdiction where the Power of Attorney is being issued and requirements under the Indian Stamp Act, 1899 are duly fulfilled.
- 2.1.3 The Feasibility Report / Detailed Project Report of the Project is being provided only as a preliminary reference document by way of assistance to the Bidders who are expected to carry out their own surveys, investigations and other detailed examination of the Project before submitting their Bids. Nothing contained in the Feasibility Report/Detailed Project Report shall be binding on the Authority nor confer any right on the Bidders, and the Authority shall have no liability whatsoever in relation to or arising out of any or all contents of the Feasibility Report/Detailed Project Report.
- 2.1.4 Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the draft Concession Agreement shall have an overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the Concession Agreement.
- 2.1.5 The Bid shall be furnished in the format prescribed in the RFP. The Technical Bid shall be as per Appendix IA and the Financial Bid shall be as per Appendix IB of the RFP. Bid percentage shall be indicated clearly in both figures and words, in prescribed format of Financial Bid and shall be signed by the Bidder's authorised signatory. In the event of any difference between figures and words, the percentage indicated in words shall be taken into account.
- 2.1.6 The Bid shall consist of a Premium, to be quoted by the Bidder. Premium shall be payable by the Concessionaire to the Authority, as per the terms and conditions of this RFP and the provisions of the Concession Agreement.
- 2.1.7 The Bidder shall deposit a Bid Security of **Rs. 2.06 Crore (Rupees Two Crores and Six Lakhs Only)** in accordance with the provisions of this RFP. The Bidder has the option to provide the Bid Security as Insurance Surety Bond as per the format at Appendix-VIII, Account Payee Demand Draft, Fixed Deposit Receipt, Banker's cheque or Bank Guarantee (including e-Bank Guarantee) acceptable to the Authority, as per format at Appendix-II. The Bidders shall also make online payment towards cost of bid document of **Rs. 3,54,000/- (Rupees Three Lacs Fifty four thousand only)** (inclusive of GST) transmitted online to Authority.
- 2.1.8 The validity period of the Insurance Surety Bond, Account Payee Demand Draft, Fixed Deposit Receipt, Banker's cheque or Bank Guarantee (including e-Bank Guarantee), as the case may be, shall not be less than 120 (one hundred and twenty) days from the Bid Due Date with a claim period of 60 (Sixty) days, and may be extended as may be mutually

agreed between the Authority and the Bidder. The Bid shall be summarily rejected if it is not accompanied by the Bid Security. The Bid Security shall be refundable no 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 Agreement.

- 2.1.9 The Bidder should submit a Power of Attorney as per the format at Appendix-III, authorizing the signatory of the Bid to commit the Bidder.
- 2.1.10 In case the Bidder is a Consortium, the Members thereof should furnish a Power of Attorney in favour of any Member, which Member shall thereafter be identified as the Lead Member, in the format at Appendix – IV1. In case the Bidder is a Consortium, Joint Bidding Agreement in the format of Appendix V shall be submitted by the Bidder.
- 2.1.11 Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.
- 2.1.12 The Bid and all communications in relation to or concerning the Bidding Documents and the Bid shall be in English language.
- 2.1.13 The Bidding Documents including this RFP and all attached documents, provided by the Authority are and shall remain or become the property of the Authority 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 2.1.12 shall also apply mutatis mutandis to Bids and all other documents submitted by the Bidders, and the Authority will not return to the Bidders any Bid, document or any information provided along therewith.
- 2.1.14 This RFP is not transferable.
- 2.1.15 Any award of Project pursuant to this RFP shall be subject to the terms of Bidding Documents.
- 2.1.16 Where the Bidder is a single entity, it shall be required to form an appropriate Special Purpose Vehicle, incorporated under the Indian 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). However, none of the members in a Consortium should be under any sort of ineligibility under the Bidding Documents. Information sought in the Bid may be restricted to 3 (three) members in the order of their equity contribution;
 - (b) subject to the provisions of clause (a) above, the Bid should contain the information required for each member of the Consortium;

¹ In case of a Consortium, the Members should submit a Power of Attorney in favour of the any Member as per the format as Appendix-IV. Such Member shall thereafter be identified as the Lead Member. The Lead Member should submit a power of Attorney as per the format in Appendix-III, authorizing the signatory of the Application. Members of the Consortium need not submit Power of Attorney as per the format at Appendix-III, authorizing the signatory of the Application.

- (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, technical and O&M obligations;
- (e) an individual Bidder cannot at the same time be member of a Consortium applying RFP. Further, a member of a particular Bidder Consortium cannot be member of any other Bidder Consortium applying for RFP;
- (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-V (the “**Joint. Bidding Agreement**”), for the purpose of submitting a Bid. The Joint. Bidding Agreement, to be submitted along with the Application, shall, *inter alia*:
 - (i) convey the intent to form an SPV, solely for the purpose of domiciling the Project and no other purpose, 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 1 (one) year from the date of the Project completion, 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 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 Joint Bidding Agreement without the prior written consent

of the Authority.

2.1.17 Any entity which has been barred by the Central/ State Government, or any entity controlled by it, from participating in any project (DBFOT 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. The Bidder, including an individual or any of its Joint Venture member or Members of its consortium, should not be a nonperforming party on the bid submission date. The bidder, including any Joint Venture Member/ Members of its Consortium, shall be deemed to be a non – performing party, if it attracts any or more of the following conditions in any of its ongoing or completed project:

- (i) Fails to set up institutional mechanism and procedure as per contract.
- (ii) Fails to mobilize key construction equipment within a period of 4 months from the Appointed Date;
- (iii) Fails to complete or has missed any milestone and progress not commensurate with contiguous unencumbered project length/ROW available even after lapse of 6 months from respective project milestone/Schedule Completion date, unless Extension of Time has been granted due to Authority's Default or Force Majeure;
- (iv) Fails to achieve progress commensurate with funds released from Escrow Account (Equity + Debt + Grant) in BOT or HAM project and variation is more than 25% in the last 365 days;
- (v) Fails to achieve the target progress or complete the project as per schedule agreed at the time of sanctioning of funds under One Time Funds Infusion (OTFI) or relaxations to contract conditions to improve cash flow solely on account of Concessionaire's/contractor's failure/default;
- (vi) Fails to complete rectification (excluding minor rectifications) as per time given in non-conformity reports (NCR) in design/completed works/maintenance or reported in Inspection Reports issued by Quality Inspectors deployed by the Authority or Officers of the Authority.
- (vii) Fails to complete minor rectifications exceeding 3 instances in a project as per time given in non-conformity reports (NCR) in design/ completed works/maintenance;
- (viii) Fails to fulfil its obligations to maintain a Project in a satisfactory condition in spite of two rectification notices issued in this regard;
- (ix) Damages/penalties recommended by Independent/Authority's Engineer during O&M Period and remedial works are still not taken up;
- (x) Fails to complete Punch list items even after lapse of time for completion of such items excluding delays attributable to the Authority;
- (xi) Occurrence of minor failure of structures/system due to construction defect wherein no causalities are reported (causalities include injuries to human being/animals);

- (xii) Occurrence of major failure of structures/system due to construction defect wherein no causalities are reported (causalities include injuries to human being/animals);
- (xiii) Occurrence of major failure of structures/system due to construction defect leading to loss of human lives besides loss of reputation etc. of the authority;
- (xiv) Fails to make premium payments excluding the current instalment in one or more projects;
- (xv) Fails to achieve financial closure in two or more projects within the given or extended period (which shall not be more than six months in any case);
- (xvi) Fails to submit the Performance Security within the permissible time period in more than one project;
- (xvii) Rated as an unsatisfactory performing entity/non-performing entity by an independent third-party agency and so notified on the website of the Authority;
- (xviii) Failed to perform for the works of RTDC in the last 2 (two) years, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitral award against the Bidder, including individual or any of its Joint Venture/ Consortium Member, as the case be;
- (xix) Expelled from the contract or the contract terminated by the Central/ State Government or its implementing agencies for breach by such Bidder, including individual or any of its Joint Venture/ Consortium; Provided that any such decision of expulsion or termination of contract leading to debarring of the Bidder from further participation in bids for the prescribed period should have been ordered after affording an opportunity of hearing to such party.
- (xx) Fails to start the works or causes delay in maintenance & repair/overlay of the project.

The Bidder, including individual or each member of Joint Venture or Members of its Consortium, shall give the list of the projects with Central and State Government implementing agencies and the status of the above issues in each project as on the bid submission date and undertake that they do not attract any of the above categories (Ref. Sr No. 6, Annex I of Appendix – IA).

The Bidder, including individual or any of its Joint Venture or Members of its Consortium may provide

- (i) details of all their on-going projects along with updated stage of litigation, if so, against the Authority/Governments; and
- (ii) details of updated on-going process of blacklisting if so, under any contract with Authority / Government;

The Authority reserves the right to reject an otherwise eligible Bidder on the basis of the information provided under this clause 2.1.17. The decision of the Authority in this case shall be final.

2.1.18 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 any public entity for breach by such Bidder, Consortium Member or Associate.

Authority would place sole reliance on the certification provided by the Bidder in this regard in its letter comprising the Technical Bid.

2.1.19 In computing the Technical Capacity and Net Worth of the Bidder/ Consortium Members under Clauses 2.2.2, 2.2.4 and 3.4, the Technical Capacity and Net Worth of their respective Associates would also be eligible hereunder.

For the 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.

It is clarified that a certificate from a qualified external auditor who audits the book of accounts of the Bidder or the Consortium Member shall be provided to demonstrate that a person is an Associate of the Bidder or the Consortium as the case may be.

2.1.20 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 format² 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 RFP submissions, 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 RFP requirements to the extent specified herein.

2.1.21 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 50% (fifty 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 an Bidder or its Member is controlled by

² Format refers to the way a document is laid out on the page and it addresses things like font selection, font size and presentation (like bold or italics), spacing, margins, alignment, columns, indentation, and lists. It does not include addition or deletion of any text which would alter the meaning of the prescribed form.

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 50% (fifty 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 eligibility and/ or opening of Financial Bid and/or award of the Project to such Bidder shall be subject to approval of the Authority from national security and public interest perspective. The decision of the Authority 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, the Authority 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, 2011, or any substitute thereof, as in force on the date of such acquisition.

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

- 2.1.22 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.
- 2.1.23 The Bidder shall provide an undertaking to the Authority that the EPC works of the Project would be executed only by such EPC contractors who have completed at least a single package of more than 20% of the Total Project Cost or Rs 500 crores, whichever is less. In addition, the Bidder shall also provide an undertaking along with supporting documents in the form of agreement with OEM supplier for this Project before the signing of Concession Agreement.
- 2.1.24 All Orders of Ministry of Finance/DPIIT/any other Government agencies, as applicable and prevalent on the date of LOA, shall be applicable.
- 2.1.25 The Selected Bidder would be required to make a payment of **Rs. 2.06 Crore (Rupees Two Crores Six Lakh Only)** for the Project Development Fee (PDF) to the authority either in the form of NEFT/RTGS/Demand Draft in favour of “Deputy General Manager, Ropeways & Rapid Transport System Development Corporation HP Ltd Shimla, Himachal Pradesh” payable at Shimla or transfer the money by any electronic mode to the account, the details of which are given in clause 1.2.1 of this RFP. This Project development fee shall be paid as per Clause 2.21 of this RFP.

2.2 Eligibility and qualification requirements of Bidder

- 2.2.1 For determining the eligibility of Bidder the following shall apply:

- (a) The Bidder may be a single entity or a group of entities (the “Consortium”), coming together to implement the Project. 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.
- (b) Bidder may be a natural person, private entity, or any combination of them with a formal intent to enter into a Joint Bidding Agreement or under an existing agreement to form a Consortium.
- (c) 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. In the event of disqualification, the bidder will be suspended for participation in the tendering process for the works of Authority and works under other Centrally Sponsored Schemes, for a period of One Year from the bid due date of this work or the authority shall be entitled to forfeit and appropriate 5% of the value of the Bid Security or equivalent amount from the Performance Security, as the case may be, as mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Authority and not by way of penalty for, inter alia, the time, cost and effort of the Authority, including consideration of such Bidder’s proposal (the “Damages”), without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/or the Concession Agreement or otherwise. Without limiting the generality of the above, 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 director in direct shareholding of a Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding of not more than 25% (twenty five percent) of the paid up and subscribed capital; of such Bidder, Member or Associate, as the case may be) in the other Bidder, its Member or Associate, is not more than 25% (Twenty five percent) 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, 1956/2013. For the purposes of this Clause 2.2.1(c), 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% 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, its Member or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, its Member or Associate, 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 Authority in the preparation of any documents, design or technical specifications of the Project.
- (vii) Such Bidder or any Associate thereof has appointed any official of the Authority, Technical Advisors of Authority for the Project, Legal Advisors of Authority for the Project, Financial Advisors of Authority for the Project, dealing with the Project, within a period of 6 months from the date of award of the Project to that Bidder.

Explanation:

In case a Bidder is a Consortium, then the term Bidder as used in this Clause 2.1.12, shall include each Member of such Consortium.

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 percent) 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.

- (d) A Bidder shall be liable for disqualification and suspension for participation in the tendering process for the works of Authority and works under other Centrally Sponsored Schemes, for a period of One Year from the bid due date of this work and shall be liable for disqualification, forfeiture of Bid Security if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Bidder, its Members or any Associate thereof, as the case may be, in any manner for matters related to or incidental to such 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 the Authority, including suspension of the Bidder for participation in the tendering process for the works of Authority and works under other Centrally Sponsored Schemes, for a period of One Year from the

bid due date of this work or the forfeiture and appropriation of the Bid Security or Performance Security as the case may be, which the Authority may have thereunder or otherwise, the LOA or the Concession Agreement, as the case may be, shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Selected Bidder or 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 RFP for the Project. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the Project.

Notwithstanding anything to the contrary contained in sub-clause (c) (i) of Clause 2.2.1, a Bidder may, within 10 (ten) days after the Application Due Date remove from its Consortium any Member who suffers from a Conflict of Interest, and such removal shall be deemed to cure the Conflict of Interest arising in respect thereof. However, his financial bid shall not be opened.

Provided further, in case the Authority seeks information / clarification from a Bidders related to occurrence / non-occurrence of Conflict of Interest and the Bidders fails to provide such information within a reasonable time, the Authority shall disqualify the Bidders and entitled to suspend the bidder for participation in the tendering process for the works of Authority for a period of One Year from the bid due date of this work and encash its Bid Security as per provision of Clause 2.20.7 (a) and further debar it from participation in future procurement process for a minimum period of 1 Year.

- (e) For determining the eligibility of Bidder from a country which shares a land border with India the following shall apply:
- (i) Any Bidder from a country which shares a land border with India will be eligible to bid, only if the Bidder is registered with the Competent Authority, specified in Annexure-I of Order (Public Procurement No. 1) issued by Ministry of Finance, Department of Expenditure Public Procurement Division vide F. No. 6/18/2019-PPD, dated 23rd July 2020, which shall form an integral part of RFP and DCA (Copy enclosed).

“Bidder” (including the terms ‘tendered’, ‘consultant’ or ‘service provider’ in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in a procurement process.

- (ii) “**Bidder from a country which shares a land border with India**” means:
- (a) An entity incorporated, established or registered in such a country, or
- (b) A subsidiary of an entity incorporated, established or registered in such a country; or
- (c) An entity substantially controlled through entities incorporated, established or registered in such a country; or

- (d) An entity whose beneficial owner is situated in such a country; or
- (e) An Indian (or other) agent of such an entity; or
- (f) A natural person who is a citizen of such a country; or
- (g) A Consortium or joint venture where any member of the consortium or joint venture falls under any of the above.

(iii) **Beneficial owner for the purpose of (ii) above** means:

1. In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more judicial person, has a controlling ownership interest or who exercises control through other means.

Explanation:

(a) “Controlling ownership interest” means ownership of or entitlement to more than twenty-five per cent of shares or capital or profits of the company.

(b) “Control” shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholding agreements or voting agreements;

2. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person: has ownership or entitlement to more than fifteen percent of capital or profits of the partnership
3. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individual;
4. Where no natural person is identified under (1) or (2) or (3) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;
5. In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership

- (iv) An Agent is a person employed to do any act for another, or to represent another in dealings with third person
- (v) The Selected Bidder shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such

contractor is registered with the Competent Authority. The definition of “contractor from a country which shares a land border with India” shall be as in Clause 2.2.1(e)(ii) above.

Certificate regarding Compliance:

A certificate on the letterhead of the Bidder shall be required to be submitted by the bidders certifying the following in the format prescribed at Appendix – VII:

“I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries;

I/ We certify that this bidder is not from a country or, if from such a country, has been registered with the Competent Authority as defined in Public Procurement Order no. F.no.6/18/2019- PPD dated 23rd July 2020 and will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority;

I hereby certify that this bidder fulfils all requirements in this regard and is eligible to be considered.”

It may be noted that in case the above certification is found to be false, this would be a ground for immediate rejection of Bid/termination and further legal action in accordance with law.

Validity of Registration:

In respect of RFP, registration should be valid at the time of submission of bids and at the time of acceptance of bids. If the Bidder was validly registered at the time of acceptance, registration shall not be a relevant consideration during contract execution.

- (f) The Bidder shall have 'BBB' and above Credit Rating given by Credit Rating agencies authorized by SEBI. If the bidder does not have 'BBB' and above Credit Rating, the Bidder shall be required to submit a comfort letter from its Bankers/Financial Institutions along with its Bid that they will provide Credit Facilities (Term Loan) to the bidder to meet the project cost excluding grant, if any, for domiciling the project.

2.2.2 To be eligible for this RFP a Bidder shall fulfil the following conditions of eligibility:

(A.1) Technical Capacity: For demonstrating technical capacity and experience (the “**Technical Capacity**”), the Bidder shall, over the past 10 (ten) financial years preceding the Bid Due Date, have:

- (i) paid for, or received payments for, construction of Eligible Project(s) in Category 3 and/or Category 4 specified in Clause 3.4.1; and/ or
- (ii) paid for development of Eligible Project(s) in Category 1 and/or Category 2 specified in Clause 3.4.1; and/ or
- (iii) collected and appropriated revenues from Eligible Project(s) in Category 1 and/or

Category 2 specified in Clause 3.4.1,

such that the sum total of the above, as further adjusted in accordance with clause 3.4.6, is more than **Rs. 206.00 Crore (Rupees Two Hundred Six Crore Only) (the “Threshold Technical Capability”)**.

- (A.2) The Bidder shall also meet the criteria of experience of commissioning “Similar Projects” over the past 10 (ten) financial years preceding the Bid Due Date. Similar Projects is defined as under.

Similar Project of Cable Propelled Transit system shall the criteria:

- (a) use of equivalent or better technology prescribed for the Project under bidding, as given below:

Technology for Project under bidding

MDG/3S

- (b) Ultimate design passenger carrying capacity of 1000 PPHPD

- (B) **Financial Capacity:** The Bidder shall have a minimum **Net Worth (the “Financial Capacity”)** of **Rs. 30.90 Crore (Rupees Thirty Crore and Ninety Lakh only)** at the close of the preceding financial year³.

In case of a Consortium, the combined technical capability and net worth 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 1 (one) year from the date of 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 specified in the Concession Agreement⁴.

Further a Bidder including any Consortium Member shall, in the last three financial years, shall have positive net cash accruals and have not been in the list of Non Performing Asset (NPA) and / or Corporate Debt Restructuring (CDR) and / or Strategic Debt Restructuring (SDR). The Bidder shall provide a certificate as per the format given at Appendix- IA Annexure IIIA.

Provided further that each member of the Consortium shall have a minimum Net Worth of 15% of Total Project Cost in the immediately preceding financial year⁵.

- 2.2.3 In case where the Bidder(s) does not meet the criteria as specified under Clause 2.2.2.A.2, the Bidder shall ensure that the EPC contractor(s)/ OEM supplier for Electromechanical system meets the criteria as stated above with regard to Similar Project.

³ In case a Bidder has issued any fresh Equity Capital during the current financial year, the same shall be permitted to be added to the Bidder's Net Worth subject to the Statutory Auditor of the Bidder certifying to this effect.

⁴ The Authority may, in its discretion, impose further obligations in the Concession Agreement, but such obligations should provide sufficient mobility for partial divestment of equity without compromising the interests of the Project.

⁵ In case a Bidder has issued any fresh Equity Capital during the current financial year, the same shall be permitted to be added to the Bidder's Net Worth subject to the Statutory Auditor of the Bidder certifying to this effect.

Bidder shall submit supporting documents in the form of agreement with EPC contractor(s)/ OEM supplier for this Project at the time of bid submission for proper evaluation of the Bid, as per the terms of Bidding Documents. For avoidance of doubt, the Bidder has to submit the requisite proofs of experience claimed, in the form of client certificate countersigned by concerned Government agencies / apostille, in case of foreign entity, for work experience of commissioning of the Similar Projects claimed by the Bidder and / or for EPC contractor(s)/ OEM suppliers. Non-submission of the agreement with the EPC contractor(s)/ OEM supplier shall render the Bid non responsive. Any change of EPC contractor(s)/ OEM supplier for Electromechanical system would with be prior written approval of the Authority. Authority shall grant such permission only if the substitute proposed is of the required technical capacity as applicable.

The Concessionaire shall ensure that the Project is implemented through the appointed EPC contractor(s)/ OEM supplier for Electromechanical system, who meets the criteria for commissioning of Similar Projects as defined in Clause 2.2.2.A.2.

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

- (i) Certificate(s) from its statutory auditors⁶ or the concerned client(s) stating the payments made/ received or works commissioned, as the case may be, during the past 10 years in respect of the projects specified in paragraph 2.2.2 (A) above. In case a particular job/ contract has been jointly executed by the Bidder (as part of a Consortium), it should further support its claim for the share in work done for that particular job/ contract by producing a certificate from its statutory auditor or the client; and
- (ii) Certificate(s) from its statutory auditors specifying the net worth of the Bidder, as at the close of the preceding financial year, and also specifying that the methodology adopted for calculating such net worth conforms to the provisions of this Clause 2.2.4

For the purposes of this RFP, net worth (the “**Net Worth**”) shall mean the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write back of depreciation and amalgamation, profits on fair value measurement. Further, Statutory auditors shall ensure and certify that any disputed receivables, advances, other assets need to be excluded for Net Worth computation. While issuing the **certificate Statutory Auditor shall also certify that certificate has been issued in compliance to this Clause 2.2.4 (ii) of RFP.**

2.3 Proprietary data

All documents and other information supplied by the Authority or submitted by a Bidder to the Authority shall remain or become the property of the Authority. Bidders

⁶ 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 Bidder may provide the certificates required under this RFP.

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 Authority will not return any Bid or any information provided along therewith.

2.4 Cost of Bidding

The Bidders shall be responsible for all of the costs associated with the preparation of their Bids and their participation in the Bidding Process. The Authority 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

2.5.1 Bidders are encouraged to submit their respective Bids after visiting the Project site and ascertaining for themselves the site conditions, location, surroundings, climate, availability of power, water & 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. Bidders are advised to visit the site and familiarise themselves with the Project with in the stipulated time of submission of the Bid. No extension of time is likely to be considered for submission of Bids.

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

- (a) made a complete and careful examination of the Bidding Documents;
- (b) received all relevant information requested from the Authority;
- (c) accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Authority relating to any of the matters referred to in Clause 2.5.1 above;
- (d) satisfied itself about all matters, things and information including matters referred to in Clause 2.5.1 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 thereunder;
- (e) 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 2.5.1 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 the Authority, or a ground for termination of the Concession Agreement by the Concessionaire;
- (f) acknowledged that it does not have a Conflict of Interest; and
- (g) agreed to be bound by the undertakings provided by it under and in terms hereof.

2.5.3 The Authority 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 RFP, including any error or mistake therein or in any information or data given by the Authority.

2.6 Verification and Disqualification

- 2.6.1 The Authority reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP and the Bidder shall, when so required by the Authority, make available all such information, evidence and documents as may be necessary for such verification. Any such verification, or lack of such verification, by the Authority shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Authority thereunder.
- 2.6.2 The Authority reserves the right to reject any Bid and to suspend the bidder for participation in the tendering process for the works of Authority for a period of One Year from the bid due date of this work and appropriate the Bid Security if:
- (a) at any time, a material misrepresentation is made or uncovered, or
 - (b) the Bidder does not provide, within the time specified by the Authority, the supplemental information sought by the Authority for evaluation of the Bid.

Such misrepresentation/ improper response shall lead to the disqualification of the Bidder. If the Bidder is a Consortium, then the entire Consortium and each Member of the Consortium may be disqualified/rejected. If such disqualification/rejection occurs after the Bids have been opened and the Highest Bidder gets disqualified/rejected, then the Authority reserves the right to annul the Bidding Process and invites fresh Bids.

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 Authority, that one or more of the eligibility and /or qualification requirements 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 Selected Bidder has already been issued the LOA or the SPV 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 the Authority to the Selected Bidder or the Concessionaire, as the case may be, without the Authority being liable in any manner whatsoever to the Selected Bidder or the Concessionaire. In such an event, the Authority shall be entitled suspend the bidder for participation in the tendering process for the works of Authority for a period of One Year from the bid due date of this work and forfeit 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 the Authority under this RFP, the Bidding Documents, the Concession Agreement or otherwise

B. DOCUMENTS

2.7 Contents of the RFP

- 2.7.1 This RFP comprises the Disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.9.

Invitation for Bids

- Section 1. Introduction
- Section 2. Instructions to Bidders
- Section 3. Evaluation of Bids
- Section 4. Fraud and Corrupt Practices
- Section 5. Pre-Bid Conference
- Section 6. Miscellaneous

Appendices

- IA Letter comprising the Technical Bid including Annexure I to VI
- IB Letter comprising the Financial Bid
- II Bank Guarantee for Bid Security
- III Power of Attorney for signing of Bid
- IV Power of Attorney for Lead Member of Consortium
- V Joint Bidding Agreement for Consortium
- VI Integrity Pact
- VII Certificate regarding Compliance with Restrictions under Rule 144 (xi) of the General Financial Rules (GFRs)
- VIII Surety Bond for Bid Security

2.7.2 The draft Concession Agreement and Feasibility/ Detailed Project Report provided by the Authority as part of the Bidding Documents shall be deemed to be part of this RFP.

2.8 Clarifications

2.8.1 Bidders requiring any clarification on the RFP may notify the Authority in writing and e-mail in accordance with Clause 1.2.10. They should send in their queries before the date mentioned in the Schedule of Bidding Process specified in Clause 1.3. The Authority shall endeavour to respond to the queries within the period specified therein, but no later than 15 (fifteen) days prior to the Bid Due Date. The responses will be sent by e-mail. The Authority will forward all the queries and its responses thereto, to all Bidders without identifying the source of queries.

2.8.2 The Authority shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, the Authority 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 the Authority to respond to any question or to provide any clarification.

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

2.9 Amendment of RFP

2.9.1 At any time prior to the Bid Due Date, the Authority 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.

2.9.2 Any Addendum issued hereunder will be in writing and shall be send to all the Bidders.

2.9.3 In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Authority may, at its own discretion, extend the Bid Due

Date⁷.

C. PREPARATION AND SUBMISSION OF BIDS

2.10 Format and Signing of Bid

2.10.1 The Bidder shall provide all the information sought under this RFP. The Authority will evaluate only those Bids that are received online in the required formats and complete in all respects. However, Bid Security, Power of Attorney for signing of Bid, Power of Attorney for lead member of Consortium, if any, Joint Bidding Agreement for Consortium, if any, Integrity Pact, and experience certificates apostille at foreign origin, if any and other documents required as per clause 2.11.2 of RFP shall be submitted physically in original by the Highest Bidder (including all of its Consortium Members) before issuance of Letter of Award (LOA) by the Authority. However, while submitting Bid Security via Account Payee demand draft or Fixed Deposit Receipt or Banker's Cheque, it is to be ensured by the bidder that Account Payee demand draft or Fixed Deposit Receipt or Banker's Cheque are submitted physically latest within 5 working days of the Bid Due Date. Highest Bidder (including all of its Consortium Members) failing to submit the original documents required as per above shall be unconditionally debarred from bidding in Authority projects for a period of 5 years.

2.10.2 The Bid shall be typed and signed in indelible blue ink by the authorised signatory of the Bidder. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialed by the person(s) signing the Bid.

2.11 Documents comprising Technical and Financial Bid

2.11.1 The Bidder shall submit the Technical Bid & Financial Bid online through e-procurement portal <http://hptenders.gov.in> comprising of the following documents along with supporting documents as appropriate:

Technical Bid

- (a) Appendix-IA (Letter comprising the Technical Bid) including Annexure I to V and supporting certificates / documents
- (b) Power of Attorney for signing the Bid as per the format at Appendix-III;
- (c) if applicable, Power of Attorney for Lead Member of Consortium as per the format at Appendix-IV;
- (d) if applicable, Joint Bidding Agreement for Consortium as per the format at Appendix-V;
- (e) 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;

⁷ While extending the Bid Due Date on account of an addendum, the Authority shall have due regard for the time required by Bidders to address the amendments specified therein. In the case of significant amendments, at least 15 (fifteen) days shall be provided between the date of amendment and the Bid Due Date, and in the case of minor amendments, at least 7 (seven) days shall be provided.

- (f) Copies of Bidder's duly audited balance sheet and profit and loss statement for preceding 5 years'
- (g) Integrity pact as per format given in Appendix VI shall be submitted by the Bidder with the Bid duly signed by authorised signatory & shall be part of the Concession Agreement;
- (h) BID Security of **Rs. 2.06 Crore (Rupees Two Crores and Six Lakhs Only)** in the form of Insurance Surety Bond (issued by Insurance Company authorized by Insurance Regulatory and Development Authority of India in the format at Appendix-VIII), Account Payee Demand Draft, Fixed Deposit Receipt, Banker's cheque or Bank Guarantee (including e-Bank Guarantee) in the format at Appendix-II from a Scheduled Bank;
- (i) Proof of online payment of **Rs. 3,54,000/- (Rupees Three Lacs Fifty four thousand only)** towards cost of Bidding Documents transmitted online to RTDC;
- (j) An undertaking from the person having Power of Attorney referred to in Sub. Clause-(b) above that they agree and abide by the Bidding Documents uploaded by Authority and amendments uploaded, if any;
- (k) Certificate regarding Compliance with Restrictions under Rule 144 (xi) of the General Financial Rules (GFRs) as per format given in Appendix-VII shall be submitted by the Bidder with the RFP Bid duly signed by Authorised signatory & shall be part of the Concession Agreement; and
- (l) Copy of Registration from the Competent Authority as defined in Public Procurement Order No. F. No. 6/18/2019-PPD dated 23rd July 2020, if applicable (to be submitted by the "Bidder from a country which shares a land border with India").

Financial Bid

- (m) Appendix-IB (Letter comprising the Financial Bid)⁸.

2.11.2 The Highest Bidder shall submit the following documents physically before issuance of Letter of Award (LOA) by the Authority:

- (a) Original Power of Attorney for signing the Bid as per format at Appendix-III;
- (b) if applicable, original Power of Attorney for Lead Member of Consortium as per the format at Appendix-IV;
- (c) if applicable, original Joint Bidding Agreement for Consortium as per the format at Appendix-V;
- (d) Bid Security of **Rs. 2.06 Crore (Rupees Two Crores and Six Lakhs Only)** in the form of Insurance Surety Bond (issued by Insurance Company authorized by Insurance Regulatory and Development Authority of India in the format at Appendix-VIII), Account Payee Demand Draft, Fixed Deposit

⁸ Appendix – IB shall be uploaded in a separate folder along with the financial quotation

Receipt, Banker's cheque or Bank Guarantee (including e-Bank Guarantee) in the format at Appendix-II from a Scheduled Bank;

- (e) Integrity pact on plain paper shall be submitted by the Bidder with the Bid duly signed by authorized signatory & shall be part of the Concession Agreement;
- (f) An undertaking from the person having Power of Attorney referred to in Sub. Clause-(a) above that they agree and abide by the Bidding Documents uploaded by Authority and amendments uploaded, if any and
- (g) Original Statement of Legal Capacity as per format at Annexure V to Appendix IA.
- (h) Original of Experience certificates apostille at foreign origin, if any.
- (i) Certificate regarding Compliance with Restrictions under Rule 144 (xi) of the General Financial Rules (GFRs) as per format given in Appendix-VII shall be submitted by the Bidder with the RFP Bid duly signed by Authorised signatory & shall be part of the Concession Agreement.
- (j) Registration from the Competent Authority as defined in Public Procurement Order No. F. No. 6/18/2019-PPD dated 23rd July 2020, if applicable (to be submitted by the "Bidder from a country which shares a land border with India").

while submitting Bid Security via Account Payee demand draft or Fixed Deposit Receipt or Banker's Cheque, it is to be ensured by the bidder that Account Payee demand draft or Fixed Deposit Receipt or Banker's Cheque are submitted physically in accordance with timeline mentioned in Clause 1.3 to the following address placed in a sealed envelope and bearing the identification Ropeway from Narkanda to Hatu Peak, Distt. Shimla in the State of Himachal Pradesh on DBFOT mode Address: **Ropeways and Rapid Transport System Development Corporation (RTDC) US Club Shimla –** Else the bid submitted will be rejected.

2.11.3 The documents listed at clause 2.11.2 shall be placed in an envelope, which shall be sealed. The envelope shall clearly bear the identification "**BID for Development, Operations and Maintenance of Passenger Ropeway from Narkanda to Hatu Peak, Distt. Shimla on Design, Build, Finance, Operate and Transfer (DBFOT) Mode**" and shall clearly indicate the name and address of the Bidder. In addition, the Bid Due Date should be indicated on the right hand top corner of the envelope.

2.11.4 The envelope shall be addressed to one of the following officer and shall be submitted at the respective address:

ATTN. OF:	Mr. Munish Sahni
DESIGNATION	Deputy General Manager, RTDC
ADDRESS:	Ropeways and Rapid Transport System Development Corporation U.S. Club, Shimla, Himachal Pradesh – 171001,
PHONE NO.:	+91177-2811003/004

E-MAIL ADDRESS: dgmrtdchp@gmail.com/cgmrtdchp@gmail.com

2.11.5 If the envelopes are not sealed and marked as instructed above, the Authority assumes no responsibility for the misplacement or premature opening of the contents of the Bid submitted and consequent losses, if any, suffered by the Bidder. Highest Bidder (including all of its Consortium Members) failing to submit the original documents required as per clause 2.11.2 above shall be unconditionally debarred from bidding in Authority projects for a period of 5 years.

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

2.12 Bid Due Date

Technical & Financial Bid comprising of the documents listed at clause 2.11.1 of the RFP shall be submitted online through e-procurement portal <http://hptenders.gov.in> on or before 1100 Hrs IST on 04.03.2025. Documents listed at clause 2.11.2 of the RFP shall be physically submitted before issuance of Letter of Award (LOA) by the Authority at the address provided in Clause 2.11.4 in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the person specified at Clause 2.11.4. Highest Bidder (including all of its Consortium Members) failing to submit the original documents required as per clause 2.11.2 above shall be unconditionally debarred from bidding in Authority projects for a period of 5 years.

2.13 Late Bids

E-procurement portal <http://hptenders.gov.in> shall not allow submission of any Bid after the prescribed date and time at Clause 2.12. Physical receipt of documents listed at Clause 2.11.2 of the RFP after the prescribed date and time at Clause 2.12 shall not be considered and the Bid shall be summarily rejected.

2.14 Procedure for e-tendering

2.14.1 Accessing/ Purchasing of Bidding Documents

2.14.1.1 It is mandatory for all the Bidders to have class-III Digital Signature Certificate (DSC) (in the name of Authorized Signatory / Firm or Organization / Owner of the Firm or organisation) from any of the licensed Certifying Agency (Bidders can see the list of licensed CAs from the link www.cca.gov.in) to participate in e-tendering of the Authority.

DSC should be in the name of the authorized signatory as authorized in Appendix III of this RFP. It should be in corporate capacity (that is in Bidder capacity / in case of Consortium in the Lead Member capacity, as applicable). The Bidder shall submit document in support of the class III DSC.

The authorized signatory holding Power of Attorney or the person executing/delegating such Power of Attorney shall only be the Digital Signatory. In other cases, the Bid shall be considered **non –responsive**.

2.14.1.2 To participate in the bidding, it is mandatory for the Bidders to get registered their firm / Consortium with e-procurement portal of the Authority <http://hptenders.gov.in> to have user ID & password for which has to be obtained free of cost. Following may

kindly be noted:

- a) Registration with e-procurement portal of the Authority should be valid at least up to the date of submission of Bid.
- b) Bids can be submitted only during the validity of registration.

2.14.1.3 If the firm / Consortium is already registered with e-tendering service provider of the Authority, and validity of registration is not expired the firm / Consortium is not required a fresh registration.

2.14.1.4 The complete Bidding Documents can be viewed / downloaded by the Bidder from e-procurement portal of the Authority <http://hptenders.gov.in> from 03.02.2025 to 04.03.2025 (up to 1100 Hrs. IST).

2.14.2 **Preparation & Submission of Bids:**

2.14.2.1 The Bidder may submit his Bid online following the instruction appearing on the screen. A buyer manual containing the detailed guidelines for e-procurement is also available on e-procurement portal of the Authority.

2.14.2.2 The documents listed at clause 2.11.1 shall be prepared and scanned in different files (in PDF or RAR format such that file size is not more than 30 MB) and uploaded during the on-line submission of Bid.

2.14.2.3 Bid must be submitted online only through e-procurement portal of the Authority <http://hptenders.gov.in> using the digital signature of authorised representative of the Bidder on or before 04.03.2025 (up to 1100 hours IST).

2.14.3 **Modifications/ Substitution/ withdrawal of Bids**

2.14.3.1 The Bidder may modify, substitute or withdraw its e- Bid after submission prior to the Bid Due Date. No Bid can be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date & Time.

2.14.3.2 For modification of e-Bid, Bidder has to detach its old Bid from e-procurement portal and upload / resubmit digitally signed modified Bid. For withdrawal of Bid, a Bidder has to click on withdrawal icon at e-procurement portal and can withdraw its e-Bid. Before withdrawal of a Bid, it may specifically be noted that after withdrawal of a Bid for any reason, Bidder cannot re-submit e-Bid again.

2.15 **Online Opening of Bids.**

2.15.1 Opening of Bids will be done through online process.

2.15.2 The Authority shall on-line open Technical Bids on 04.03.2025 at 1500 hours IST, in the presence of the authorized representatives of the Bidders, who choose to attend. The Authority will subsequently examine and evaluate the Bids in accordance with the provisions of Section 3 of RFP.

2.16 **Rejection of Bids**

2.16.1 Notwithstanding anything contained in this RFP, the Authority reserves the right to

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 thereof. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

- 2.16.2 The Authority reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.

2.17 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 the Authority.

2.18 Confidentiality

Information relating to the examination, clarification, evaluation and recommendation for the Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the Authority in relation to, or matters arising out of, or concerning the Bidding Process. The Authority will treat all information, submitted as part of the Bid, in confidence and will require all those who have access to such material to treat the same in confidence. The Authority 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 the Authority or as may be required by law or in connection with any legal process.

2.19 Correspondence with the Bidder

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

D. BID SECURITY

2.20 Bid Security

- 2.20.1 The Bidder shall furnish as part of its Bid, a Bid Security referred to in Clauses 2.1.7 and 2.1.8 hereinabove in the form of an Insurance Surety Bond (issued by Insurance Company authorized by Insurance Regulatory and Development Authority of India in the format at Appendix-VIII), Account Payee Demand Draft, Fixed Deposit Receipt, Banker's cheque, or Bank Guarantee (including e-Bank Guarantee) issued by 37 nationalized bank, or a Scheduled Bank in India having a net worth of at least Rs. 1,000 crore (Rs. One thousand crore), in favour of the Authority in the format at Appendix-II (the "Bank Guarantee") and having a validity period of not less than 120 (one hundred twenty) days from the Bid Due Date and a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. If the bidder is awarded the contract and fail to sign the contract or to submit a performance security before the deadline defined in the request for bid documents, the bidder will be suspended for participation in the tendering process for the works of Authority and works under other Centrally sponsored schemes, for a period of one year from the bid due date of this work. In case the Bank

Guarantee or Electronic Bank Guarantee is issued by a foreign bank outside India, confirmation of the same by any 37 nationalized bank in India is required. For the avoidance of doubt, Scheduled Bank shall mean a bank as defined under Section 2€ of the Reserve Bank of India Act, 1934.

- 2.20.2 Bid Security can also be in the form of a demand draft issued by a Scheduled Bank in India, drawn in favour of the Authority and payable at Shimla (the “**Demand Draft**”). The Authority shall not be liable to pay any interest on the Bid Security deposit so made and the same shall be interest free.
- 2.20.3 Any Bid not accompanied by the Bid Security shall be summarily rejected by the Authority as non-responsive.
- 2.20.4 Save and except as provided in Clauses 1.2.4 above, the Bid Security of unsuccessful Bidders will be returned by the Authority, without any interest, as promptly as possible on acceptance of the Bid of the Selected Bidder or when the Bidding process is cancelled by the Authority, and in any case within 90 (ninety) days from the Bid Due Date. Where Bid Security has been paid by Demand Draft, the refund thereof shall be in the form of an account payee demand draft in favour of the unsuccessful Bidder(s). Bidders may by specific instructions in writing to the Authority give the name and address of the person in whose favour the said demand draft shall be drawn by the Authority for refund, failing which it shall be drawn in the name of the Bidder and shall be mailed to the address given on the Bid.
- 2.20.5 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. The Authority 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.
- 2.20.6 The Authority shall be entitled to suspend the bidder from participation in the tendering process for the works of Authority and works under other Centrally sponsored schemes, for a period of one year from the bid due date of this work as Damages inter alia in any of the events specified in Clause 2.20.7 herein below. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the Authority 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.
- 2.20.7 The Bid Security shall be forfeited as Damages without prejudice to any other right or remedy that may be available to the Authority 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; Subject however that in the event of encashment of Bid Security occurring due to operation of para 2.20.7 (a), the Damage so claimed by the Authority shall be restricted to 5% of the value of the Bid Security.
 - (b) If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice,

undesirable practice or restrictive practice as specified in Clause 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 the Authority;

(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 sign the Concession Agreement; or
- iii) to furnish the Performance Security within the period prescribed in the Concession Agreement; or

In case the Selected Bidder, having signed the Concession Agreement, commits any breach thereof prior to furnishing the Performance Security.

E. PROJECT DEVELOPMENT FEE (NON – REFUNDABLE)

2.21 Project Development Fee

2.21.1 The Selected Bidder, within 21 (twenty-one) days of issuance of the Letter of Award (LOA), shall make a payment of 50% of Project Development Fee mentioned in Clause 2.1.25 in the form of NEFT/RTGS/Demand Draft in favour of “Deputy General Manager, Ropeways & Rapid Transport System Development Corporation HP Ltd Shimla, Himachal Pradesh”, 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 and developmental expenditure related to project conducting pre-bid meeting(s) etc. by Authority.

The Concessionaire shall pay balance 50% of Project Development Fee in the form of NEFT/RTGS/Demand Draft within seven (7) days after the Conditions Precedent have been met.

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.

SECTION-3

EVALUATION OF TECHNICAL BIDS AND OPENING & EVALUATION OF FINANCIAL BIDS

3.1 Opening and Evaluation of Technical Bids

- 3.1.1 The Authority shall open the Technical Bids received online at 1500 hours IST on 04.03.2025, at the place specified in Clause 2.11.4 and in the presence of the Bidders who choose to attend.
- 3.1.2 The Authority will subsequently examine and evaluate the Bids in accordance with the provisions set out in this Section 3.
- 3.1.3 To facilitate evaluation of Bids, the Authority may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid within a prescribed time period.
- 3.1.4 If any information furnished by the Bidder is found to be incomplete, or contained in formats other than those specified herein, the Authority may, in its sole discretion, exclude the relevant information for consideration of eligibility and qualification of the Bidder.

3.2 Tests of responsiveness

- 3.2.1 As a first step towards evaluation of Technical Bids, the Authority shall determine whether each Technical Bid is responsive to the requirements of this RFP. A Technical Bid shall be considered responsive only if:
- (a) Technical Bid is received online as per the format at Appendix-IA including Annexure I to V;
 - (b) Technical Bid is accompanied by the Bid Security as specified in Clause 2.1.7 and 2.1.8;
 - (c) Technical Bid is accompanied by the Power of Attorney as specified in Clauses 2.1.9;
 - (d) Technical Bid is accompanied by Power of Attorney for Lead Member of Consortium and the Joint Bidding Agreement as specified in Clause 2.1.10, if so required;
 - (e) Technical Bid contain all the information (complete in all respects);
 - (f) Technical Bid does not contain any condition or qualification;
 - (g) Integrity pact as per format given in Appendix VI has been submitted by the Bidder with the Bid duly signed by authorised signatory;
 - (h) Technical Bid contains proof of online payment of **Rs. 3,54,000/- (Rupees Three**

Lacs Fifty four thousand only) towards cost of Bidding Documents transmitted online to RTDC

(i) it is not non-responsive in terms hereof.

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

3.3 Evaluation parameters

3.3.1 Only those Bidders who meet the eligibility criteria specified in Clause 2.2.2 above shall qualify for evaluation under this Section 3. Bids of firms/ consortia who do not meet these criteria shall be rejected.

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

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

3.4 Technical Capacity for purposes of evaluation

3.4.1 Subject to the provisions of Clause 2.2, the following categories of experience would qualify as Technical Capacity and eligible experience (the "**Eligible Experience**") in relation to eligible projects as stipulated in Clauses 3.4.3 and 3.4.4 (the "**Eligible Projects**"):

Category 1: Project experience on Eligible Projects in Cable-Propelled Transit system that qualify under Clause 3.4.3

Category 2: Project experience on Eligible Projects in core sector that qualify under Clause 3.4.3

Category 3: Construction experience on Eligible Projects in Cable-Propelled Transit system that qualify under Clause 3.4.4

Category 4: Construction experience on Eligible Projects in core sector that qualify under Clause 3.4.4

For the purpose of this RFP:

- (a) Cable-Propelled Transit system would be deemed to include any cable-propelled transport systems including ropeways, cableways, tramways, funiculars, etc.; and
- (b) core sector would be deemed to include civil construction cost of roads, highways, expressways, bridges, tunnels, power sector including dams, commercial setups (SEZs etc.), telecom, ports, airports, railways, metro rail, industrial parks/ estates, logistic parks, pipelines, irrigation, water supply, stadium, hospitals, hotel,

smart city, warehouses/ Silos, oil and gas sewerage and real estate development⁹.

- 3.4.2 Eligible Experience in respect of each category shall be measured only for Eligible Projects.
- 3.4.3 For a project to qualify as an Eligible Project under Categories 1 and 2:
- (a) It should have been undertaken as a PPP project on BOT, BOLT, BOO, BOOT 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;
 - (b) the entity claiming experience should have held, in the company owning the Eligible Project, a minimum of 26% (twenty six per cent) equity during the entire year for which Eligible Experience is being claimed;
 - (c) the capital cost of the project should be more than **Rs. 10.30 Crore (Rupees Ten Crore and Thirty Lakh Only)**; and
 - (d) the entity claiming experience shall, during the last 10 (ten) financial years preceding the Application Due Date, have (i) paid for development of the project (excluding the cost of land), and/ or (ii) collected and appropriated the revenues from users availing of non-discriminatory access to or use of fixed project assets, such as revenues from highways, airports, ports and railway infrastructure, but shall not include revenues from sale or provision of goods or services such as electricity, gas, petroleum products telecommunications or fare/freight revenues and other incomes of the company owning the Project.
- 3.4.4 For a project to qualify as an Eligible Project under Categories 3 and 4, the Bidder should have paid for execution of its construction works or received payments from its client(s) for construction works executed, fully or partially, during the 10 (ten) financial years immediately preceding the Bid Due Date, and only the payments (gross) actually made or received, as the case may be, during such 10 (ten) financial years shall qualify for purposes of computing the Experience Score. However, payments/receipts of less than **Rs. 10.30 Crore (Rupees Ten Crore and Thirty Lakh Only)**; shall not be reckoned as payments/receipts for Eligible Projects. For the avoidance of doubt, construction works shall not include supply of goods or equipment except when such goods or equipment form part of a turn-key construction contract/ EPC contract for the project. Further, the cost of land shall not be included hereunder.
- 3.4.5 The Bidders shall quote experience in respect of a particular Eligible Project under any one category only, even though the Bidder (either individually or along with a member of the Consortium) may have played multiple roles in the cited project.

⁹ Real estate development shall not include residential flats unless they form part of a real estate complex or township which has been built by the Bidder.

Double counting for a particular Eligible Project shall not be permitted in any form.

- 3.4.6 A Bidder's experience shall be measured and stated in terms of a score (the "**Experience Score**"). The Experience Score for an Eligible Project in a given category would be the eligible payments and/or receipts specified in Clause 2.2.2 (A), divided by one crore and then multiplied by the applicable factor in Table 3.4.6 below. In case the Bidder has experience across different categories, the score for each category would be computed as above and then aggregated to arrive at its Experience Score.

Table 3.4.6: Factors for Experience across categories

	Factor
Category 1	1.25
Category 2	1.0
Category 3	0.75
Category 4	0.50

- 3.4.7 The Experience Score determined in accordance with Clause 3.4.6 in respect of an Eligible Project situated in a developed country which is a member of OECD shall be further multiplied by a factor of 0.5 (zero point five) and the product thereof shall be the Experience Score for such Eligible Project.
- 3.4.8 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.
- 3.4.9 (a) The Experience Score of the Bidder shall be computed as a weighted average of the Experience Score of a member and its proposed equity stake (%) in the Consortium,
- (b) Similarly, the Financial Score of the Bidder shall be computed as a weighted average of the Financial Score of a member and its proposed equity stake (%) in the Consortium

Provided that the financial strength or the experience score taken into assessment will be only of those who contribute a minimum 26% share to the Consortium.

Illustration:

For illustration and avoidance of any doubts, the following method is placed in clarification:

If Company A (Net-Worth: Rs 1000 crores) & Company B (Net-Worth: Rs 500 crores) in a Consortium with shareholding of A as 60% and B as 40% then the Weighted Financial Score of the Consortium shall be:

For Weighted Financial Score

$$1000 \times 60\% + 500 \times 40\% = 800 \text{ Crores}$$

For Weighted Experience Score

If Company A has been assessed to have an Experience Score of 1000 and Company B has been assessed to have an Experience Score of 500, in a Consortium with shareholding of A as 60% and B as 40%, then the Weighted Experience Score of the Consortium shall be

$$1000 \times 60\% + 500 \times 40\% = 800$$

3.5 Details of Experience

- 3.5.1 The Bidders should furnish the details of Eligible Experience for the last 10 (ten) financial years immediately preceding the Bid Due Date.
- 3.5.2 The Bidders must provide the necessary information relating to Technical Capacity as per format at Annex-II of Appendix-IA.
- 3.5.3 The Bidders 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-IA.

3.6 Financial information for purposes of evaluation

- 3.6.1 The Bids must be accompanied by the Audited Annual Reports of the Bidder (of each Member in case of a Consortium) for the last 10 (ten) financial years, preceding the year in which the Bid is made.
- 3.6.2 In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make the same 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 10 (ten) years preceding the year for which the Audited Annual Report is not being provided.
- 3.6.3 The Bidder must establish the minimum Net Worth specified in Clause 2.2.2 (B), and provide details as per format at Annex-III of Appendix-IA.
- 3.6.4 In case of foreign companies, a certificate from a qualified external auditor who audits the book of accounts of the Bidder or the Consortium Member in the formats provided in the country where the project has been executed shall be accepted, provided it contains all the information as required in the prescribed format of the RFP.

3.7 Opening and Evaluation of Financial Bids

The Authority shall inform the venue and time of online opening of the Financial Bids to the Technically responsive Bidders through e-procurement portal of Authority and e-mail. The Authority shall online open the Financial Bids on date and time to be informed in this clause in the presence of the authorised representatives of the Bidders who may choose to attend. The Authority shall publically announce the Premium quoted by each of the technically responsive Bidder. The Authority shall prepare a

record of opening of Financial Bids.

3.8 Selection of Bidder

Subject to the provisions of Clause 2.16.1, the Bidder whose Bid is adjudged as responsive in terms of Clause 3.2 and who quotes highest percentage of revenue offered as Premium to the Authority, the Bidder shall be declared as the selected Bidder (the "Selected Bidder") in pursuance to the procedure defined hereunder:

Among all the responsive bidder, whose Bid quote is the Highest in terms of Premium payable to the Authority shall be H1. The contract will be awarded to H1, the Selected Bidder.

- 3.8.1 In the event that two or more Bidders quote the same amount of Premium, as the case may be (the "**Tie Bidders**"), the Authority 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.
- 3.8.2 In the event that the Highest Bidder withdraws or is not selected for any reason, the Authority shall annul the Bidding Process and invite fresh Bids. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.
- 3.8.3 After selection, a Letter of Award (the "**LOA**") shall be issued, in duplicate, by the Authority 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, the Authority may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such bidder and suspend the bidder for participation in the tendering process for the works of Authority for a period of One Year from the bid due date of this work as Damages on account of failure of the Selected Bidder to acknowledge the LOA.
- 3.8.4 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.

3.9 Contacts during Bid Evaluation

Bids shall be deemed to be under consideration immediately after they are opened and until such time the Authority 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, the Authority and/ or their employees/ representatives on matters related to the Bids under consideration.

3.10 Correspondence with Bidder

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

- 3.11 Any information contained in the Bid shall not in any way be construed as binding on the Authority, 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.
- 3.12 The Authority 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.

SECTION-4

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, the Authority 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, if it determines that the Bidder, 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, the Authority shall be entitled to suspend the bidder for participation in the tendering process for the works of Authority for a period of One Year from the bid due date of this work and 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 the Authority under the Bidding Documents and/ or the Concession Agreement, or otherwise.
- 4.2 Without prejudice to the rights of the Authority under Clause 4.1 hereinabove and the rights and remedies which the 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 the 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, at the sole and absolute discretion of the Authority, shall not be eligible to participate in any tender or RFP issued by the Authority during a period of 2 (two) years from the date such Bidder, or Contractor, as the case may be, is found by the 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 the Authority 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 therefrom, 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 the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under the Clause 2.2.1(d) of this RFP, 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, 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 the Authority 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;
 - (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 the Authority 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.
- 4.4 Bidder shall comply with the provisions of Integrity Pact (IP), (format given in Appendix VI) shall be submitted by the Bidder along with the Bid duly signed by the authorised signatory of the Bidder and shall be deemed to be a part of the Concession Agreement.

SECTION-5

5. PRE-BID CONFERENCE

- 5.1 Pre-Bid conference of the Bidders shall be convened at the designated date, time and place. A maximum of two representatives of prospective Bidders shall be allowed to participate on production of authority letter from the Bidder.
- 5.2 During the course of Pre-Bid conference(s), the Bidders will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority 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.

SECTION-6

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 The Authority, 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) retain any information and/ or evidence submitted to the Authority by, on behalf of, and/ or in relation to any Bidder; and/ or
 - (d) 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 the Authority, 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, pursuant hereto and/ or in connection with the Bidding Process and waives, to the fullest extent permitted by applicable laws, any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

APPENDIX IA
LETTER COMPRISING THE TECHNICAL BID
(Refer Clause 2.1.5, 2.11 and 3.2)

The Deputy General Manager
Ropeways and Rapid Transport System
Development Corporation (RTDC),
US Club Shimla – 171001 (HP)

Sub: Bid for **Development, Operations and Maintenance of Passenger Ropeway from Narkanda to Hatu Peak, Distt. Shimla on Design, Build, Finance, Operate and Transfer (DBFOT) Mode**

Dear Sir,

1. With reference to your RFP document dated ___ __ __ __^{\$10}, 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 the Authority 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 a Concessionaire for the development, design, finance, construction, operation and maintenance of the aforesaid Project.
4. I/ We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Bid.
5. I/ We acknowledge the right of the Authority 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 RFP document, including any Addendum issued by the Authority.
 - (b) I/ We do not have any conflict of interest in accordance with Clauses 2.2.1(c) and

¹⁰ All blank spaces shall be suitably filled up by the Bidder to reflect the particulars relating to such Bidder

Development, Operations and Maintenance of Passenger Ropeway from Narkanda to Hatu Peak, Distt. Shimla on Design, Build, Finance, Operate and Transfer (DBFOT) Mode

2.2.1(d) of the RFP document; and

- (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 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 2.16.2 of the RFP document.
 9. I/ We believe that we/ our Consortium/ proposed Consortium satisfy(ies) the Net Worth criteria and meet(s) all the requirements as specified in the RFP document.
 10. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium submitting a Bid for this 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 further certify that we are qualified to submit a Bid in accordance with the guidelines for qualification of bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment issued by the GOI vide Department of Disinvestment OM No. 6/4/2001-DD-II dated 13th July, 2001 which guidelines apply mutatis mutandis to the Bidding Process. A copy of the aforesaid guidelines form part of the RFP at Appendix-VI thereof.
 15. 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 the Authority of the same immediately.

- (a) The Statement of Legal Capacity as per format provided at Annex-V in Appendix-IA 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 III and IV respectively of the RFP, are also enclosed.
 - (b) I/We hereby confirm that we will comply with the O&M requirements specified in draft Concession Agreement.
16. I/We acknowledge and undertake that our Consortium is qualified on the basis of Technical Capacity and Financial Capacity of those of its Members who shall, for the period of 1 (one) years from the date of the Project completion, hold equity share capital not less than: (i) 26% (twenty six percent) of the subscribed and paid up equity of the Concessionaire; and (ii) 5% (five percent) of the Total Project Cost specified in the Concession Agreement. We further agree and acknowledge that the aforesaid obligation shall be in addition to the obligations contained in the Concession Agreement in respect of Change in Ownership.
17. I/We acknowledge and agree that in the event of a change in control of an Associate whose Technical Capacity and/ or Financial Capacity shall be taken into consideration for the purposes of selection as Concessionaire under and in accordance with the RFP, I/We shall inform the Authority forthwith along with all relevant particulars and the Authority may, in its sole discretion, disqualify our Consortium or withdraw the Letter of Award, as the case may be. I/We further acknowledge and agree that in the event such change in control occurs after signing of the Concession Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed a breach thereof, and the Concession Agreement shall be liable to be terminated without the Authority being liable to us in any manner whatsoever.
18. 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.
19. 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 the Authority in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
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 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 highway and the traffic. 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 the Authority 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 **Rs. 2.06 Crore (Rupees Two Crores and Six Lakhs Only)** to the Authority in accordance with the RFP Document.
23. The Bid Security in the form of an Insurance Surety Bond/Account Payee Demand Draft/Fixed Deposit Receipt/Banker's cheque or Bank Guarantee (including e-Bank Guarantee) (strikeout whichever is not applicable) is attached.
24. The documents accompanying the Technical Bid, as specified in Clause 2.11.2 of the RFP, shall be submitted in a separate envelope and marked as "Enclosures of the Bid".
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 Premium 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 traffic 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 and undertake to abide by all the terms and conditions of the RFP document.
28. { We, the Consortium Members agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement till occurrence of Financial Close in accordance with the Concession Agreement. }
29. I/ We certify that in terms of the RFP, my/our Networth is Rs. (Rs. In words) and Experience Score is (number in words).
30. I/ We hereby agree to pay the **Project Development Fee (non-refundable) 50% of Project Development Fee** and the applicable GST to Authority in accordance with Clause 2.21, within 21 (twenty one) days of issuance of Letter of Award (LOA) or at the time of completion of Conditions Precedent, as the case may be.
31. I/We shall keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the RFP.
32. I/ We hereby submit our Bid as indicated in Financial Bid for undertaking the aforesaid Project in accordance with the Bidding Documents and the Concession Agreement
33. (a) The EPC contractor/s who would be executing EPC works of the Project are, and it is confirmed that these contractors meet the minimum criterion as set out in Clause 2.1.23 of the RFP.

(b) It is irrevocably agreed that the value of any contract for the EPC works awarded shall not be less than 20% of the Total Project Cost or 500 crore, whichever is less.

(c) It is also agreed that any change of EPC contractor(s) would with be prior written approval of the Authority. We agree that the Authority shall grant such permission only and only if the substitute proposed is of the required technical capability as applicable.

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

Yours faithfully,

Date:

(Signature of the Authorised signatory)

Place:

(Name and designation of the of the Authorised signatory)
Name and seal of Bidder/Lead Member

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

APPENDIX - IB
Letter comprising the Financial Bid
(Refer Clauses 2.1.5, 2.11.1 and 3.2)

(NOT TO BE SUBMITTED IN THE TECHNICAL Bid)

Dated:

The Deputy General Manager
Ropeways and Rapid Transport System Development Corporation (RTDC),
US Club Shimla – 171001 (HP)

SUB: Bid for Development, Operations and Maintenance of Passenger Ropeway from Narkanda to Hatu Peak, Distt. Shimla on Design, Build, Finance, Operate and Transfer (DBFOT) Mode

Dear Sir,

1. With reference to your RFP document dated *** **\$, I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.
2. I/ We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Concessionaire for the aforesaid Project, and we certify that all information provided in the Bid are true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their respective originals.
3. The Bid has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, Draft Concession Agreement and its Schedules, our own estimates of traffic and costs and after a careful assessment of the site and all own the conditions that may affect the Project traffic and cost and implementation of the Project.
4. I/ We acknowledge the right of the Authority 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.
5. 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 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.
6. I/ We shall keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the RFP.
7. I/ We hereby submit our Bid and offer: [a Premium in the form of revenue share at the rate of % (.....percent [in words]) of the Realizable Fee from the Project in the first year post Commercial Operations Date to the Authority, which shall be increased by 5% (five percent) of the Realizable Fee for every subsequent year for the remaining Concession Period for undertaking the aforesaid Project in accordance with the Bidding Documents and the Concession Agreement.

Yours faithfully,

Date: (Signature, name and designation of the

Place:

Authorised Signatory)

Name & seal of Bidder/Lead Member:

Class III DSC ID of Authorised Signatory :

Appendix IA
Annex-I

1. Details of Bidder
 - (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 the Authority:
 - (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 Joint Bidding Agreement, as envisaged in Clause 2.1.16 (g) should be attached to the Application.

- (c) Information regarding the role of each Member should be provided as per table below:

Sl.No.	Name of Member	Role* {Refer Clause 2.1.16(d)} ¹¹ \$	Percentage of equity in the Consortium {Refer Clauses 2.1.16(a), (c) & (g)}
1.			
2.			
3.			

* 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 ¹² 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) We certify that in the last two years, we/ any of the JV partners or members of the Consortium or/ and Associate have neither failed to perform for the works of Ropeways & Cable cars and other works, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitral award against us, nor been expelled or terminated by Central/ State Government, or its implementing agencies for breach on our part.
- (b) I/We certify that we/ any of the JV partners or Members of the Consortium or/ and Associates do not fall in any of the categories of being ineligible/ Non – Performing entity given at clause 2.1.17 of Section 2: Instructions to Bidders in the projects of Ropeways & Cable cars works and other works of Central and State Government implementing agencies and furnished the complete details.
- 7(a) I/We further certify that no investigation by a regulatory authority is pending either against us/any member of the Joint Venture/ Consortium or Associates or our sister concern or against our CEO or any of our directors/managers/employees.
- (b) I/We further certify that no investigation by an investigating agency in India or outside is pending either against us/any member of the Joint Venture/ Consortium or Associates or our sister concern or against our CEO or any of our directors/managers/employees.

¹¹ All provisions contained in curly parenthesis shall be suitably modified by the Bidder to reflect the particulars relating to such Bidder.

¹² or has been declared by the Authority as non performer/blacklisted.

A statement by Bidder and each of the members of its Consortium (where applicable) or any of their Associates disclosing material non – performance in past projects, contractual disputes and litigation/ arbitration in the recent past, as on bid due date is given below (attach extra sheets, if necessary) w.r.t. para 2.1.17.

Name of the Bidder/Member of JV/or Members of Consortium or Associate:

Sr no.	Categories of Non – Performer	Name of the Project(s)
i	Fails to set up institutional mechanism and procedure as per contract.	
ii	Fails to mobilize key construction equipment within a period of 4 months from the Appointed Date.	
iii	Fails to complete or has missed any milestone and progress not commensurate with contiguous unencumbered project length/ROW available even after lapse of 6 months from respective project milestone/Schedule Completion Date, unless Extension of Time has been granted due to Authority's Default or Force Majeure;	
iv	Fails to achieve progress commensurate with funds released from Escrow Account (Equity+Debt+Grant) in BOT or HAM project and variation is more than 25% in the last 365 days	
v	Fails to achieve the target progress or complete the project as per schedule agreed at the time of sanctioning of funds under One Time Funds Infusion (OTFI) or relaxations to contract conditions to improve cash flow solely on account of Concessionaire's/contractor's failure/default	
vi	Fails to complete rectification (excluding minor rectifications) as per time given in non-conformity reports (NCR) in design/completed works/maintenance or reported in Inspection Reports issued by Quality Inspectors deployed by the Authority or Officers of the Authority	
vii	Fails to complete minor rectifications exceeding 3 instances in a project as per time given in non- conformity reports (NCR) in design/completed works /maintenance.	
viii	Fails to fulfil its obligations to maintain a Project in a satisfactory condition in spite of two rectification notices issued in this regard.	
ix	Damages/penalties recommended by Independent/Authority's Engineer during O&M Period and remedial works are still not taken up.	
x	Fails to complete Punch list items even after lapse of time for completion of such items excluding delays attributable to the Authority	

xi	Occurrence of minor failure of structures/ infrastructure / system due to construction defect wherein no casualties are reported (casualties include injuries to human being / animals).	
xii	Occurrence of major failure of structures / infrastructure / system due to construction defect wherein no casualties are reported(casualties include injuries to human being / animals).	
xiii	Occurrence of major failure of structures / infrastructure / system due to construction defect leading to loss of human lives besides loss of reputation etc. of the authority.	
xiv	Fails to make premium payments excluding the current instalment in one or more projects;	
xv	Fails to achieve financial closure in two or more projects within the given or extended period (which shall not be more than six months in any case).	
xvi	Fails to submit the Performance Security within the permissible time period in more than one project.	
xvii	Rated as an unsatisfactory performing entity/non-performing entity by an independent third-party agency and so notified on the website of the Authority.	
xviii	Failed to perform for the works of Ropeways & Cable cars works, and any other works in the last 2(two) years, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitral award against the Bidder, including individual or any of its Joint Venture/ Consortium Member, as the case be.	
xix	Expelled from the contract or the contract terminated by the Central/ State Government, or its implementing agencies for breach by such bidder, including individual or any of its Joint Venture/ Consortium Member; Provided that any such decision of expulsion or termination of contract leading to debarring of the Bidder from further participation in bids for the prescribed period should have been ordered after affording an opportunity of hearing to such party.	
xx	Fails to start the works or causes delay in maintenance & repair/overlay of the project.	

I/We certify that the list is complete and covers all the projects of Ropeways & Cable cars and any other works of Central and State government implementing agencies and that we/any of the JV partners or Members of consortium or Associate do not fall in any of the above categories of being a Non-Performing entity.

Appendix IA**Annex-II****Technical Capacity of the Bidder@***(Refer to Clauses 2.2.2(A), 3.4 and 3.5 of the RFP)*

Bidder type #	Proposed Equity Shareholding in Consortium (%)	Member Code *	Project Code*	Category \$	Experience [¥] (Equivalent Rs. crore) ^{\$\$}			Experience Score [£]
					Payments made/received for construction of Eligible Projects in Categories 3 and 4	Payments made for development of Eligible Projects in Categories 1 and 2	Revenues appropriated from Eligible Projects in Categories 1 and 2	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Single entity Bidder			a					
			b					
			c					
			d					
Consortium Member 1			1a					
			1b					
			1c					
			1d					
Consortium Member 2			2a					
			2b					
			2c					
			2d					
Aggregate Experience Score =								

Appendix IA**Annex-II**

@ 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 2.1.19 and/ or by a project company eligible under Clause 3.4.3(b). In case of Categories 1 and 2, include only those projects which have an estimated capital cost exceeding the amount specified in Clause 3.4.3(c) and for Categories 3 and 4, include only those projects where the payments made/received exceed the amount specified in Clause 3.4.4. In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.1.22.

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 Member. In case of a Consortium, the row titled Single entity Bidder may be ignored. In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Bidder with such Associate, in terms of Clause 2.1.19, shall be provided.

* Member Code shall indicate NA for Not Applicable in case of a single entity Bidder. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member, OM means Other Member.

** Refer Annex-IV of this Appendix-IA. Add more rows if necessary.

\$ Refer Clause 3.4.1.

¥ In the case of Eligible Projects in Categories 1 and 2, the figures in columns 7 and 8 may be added for computing the Experience Score of the respective projects. In the case of Categories 3 and 4, construction shall not include supply of goods or equipment except when such goods or equipment form part of a turn-key construction contract/ EPC contract for the project. In no case shall the cost of land be included while computing the Experience Score of an Eligible Project.

\$\$ For conversion of any currency to Rupees, the rate of conversion shall be as on the last date of each Financial Year applicable for the Bidder, for the payment received by the Bidder. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date.

£ Divide the amount in the Experience column by one crore and then multiply the result thereof by the applicable factor set out in Table 3.4.6 and in case of a Consortium, further multiply the result thereof by the proposed equity shareholding of the applicable Member, to arrive at the Experience Score for each Eligible Project. In the case of an Eligible Project situated in an OECD country, the Experience Score so arrived at shall be further multiplied by 0.5, in accordance with the provisions of Clause 3.4.7, and the product thereof shall be the Experience Score for such Eligible Projects. Above all, the sum total of columns 6, 7 and 8, as the case may be, in respect of each Eligible Project shall be restricted to a ceiling equivalent to the Total Project Cost, as specified in Clause 3.4.8.

Appendix IA**Annex-III****Financial Capacity of the Bidder***(Refer to Clauses 2.2.2(B), 2.2.4 (ii) and 3.6 of the RFP)**(In Rs. crore^{\$\$})*

Bidder type [§]	Member Code [£]	Proposed Equity Shareholding in Consortium (%)	Net Cash Accruals					Net Worth [€]
			Year 1	Year 2	Year 3	Year 4	Year 5	Year 1
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	*9)
Single entity Bidder								
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-IA.

€The Bidder should provide details of its own Financial Capability or of an Associate specified in Clause 2.1.19.

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

Appendix IA
Annex-III

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. Net Cash Accruals shall mean Profit After Tax + Depreciation.
3. Net Worth shall mean aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write back of depreciation and amalgamation.
4. 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 Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.1.22.
5. In the case of a Consortium, a copy of the Joint Bidding Agreement shall be submitted in accordance with Clause 2.1.16 (g) of the RFP document.
6. The Bidder shall also provide the name and address of the Bankers to the Bidder.
7. The Bidder shall provide an Auditor's Certificate specifying the net worth of the Bidder and also specifying the methodology adopted for calculating such net worth in accordance with Clause 2.2.4 (ii) of the RFP document.

Appendix I

Annexure - IIIA

Statement of Undertaking Regarding Non-Performing Asset (NPA) / Corporate Debt Restructuring (CDR)/Strategic Debt Restructuring (SDR)

(Clause 2.2.2 (B))

The Deputy General Manager
Ropeways and Rapid Transport System
Development Corporation (RTDC),
US Club Shimla – 171001 (HP)

Sub: Bid for Development, Operations and Maintenance of Passenger Ropeway from Narkanda to Hatu Peak, Distt. Shimla on Design, Build, Finance, Operate and Transfer (DBFOT) Mode

Dear Sir,

We hereby confirm that we/ any members in the Consortium (constitution of which has been described in the Bid) are not in the list of NPA/CDR / SDR during the last three years preceding the Bid Due Date and have positive net cash accruals in the last three years preceding the Bid Due Date.

We also confirm that we / any member in the JV is not in the list of NPA/ CDR / SDR as on Bid Due Date.

Thanking you,

.....

Signature, name and designation of Authorised Signatory

For and on behalf of (Name of the Applicant)

.....

Name of the Statutory Auditor's firm:

Seal of the audit firm:

(Signature, name and designation and Membership No. of authorised signatory)

Note: This undertaking is to be signed by the Applicant / Lead Member of the JV and is to be countersigned by the Statutory Auditor.

Appendix I**Annex-IV****Details of Eligible Projects***(Refer to Clauses 2.2.2(A), 3.4 and 3.5 of the RFP)***Project Code:****Member Code:**

Item (1)	Refer Instruction (2)	Particulars of the Project (3)
Title & nature of the project		
Category	5	
Year-wise (a) payments received/ made for construction, (b) payments made for development of PPP projects and/ or (c) revenues appropriated	6	
Entity for which the project was constructed/ developed	7	
Location		
Project cost	8	
Date of commencement of project/ contract		
Date of completion/ commissioning	9	
Design Capacity, type of project terrain, length of project: in case of CPT project		
Equity shareholding (with period during which equity was held)	10	
Whether credit is being taken for the Eligible Experience of an Associate (Yes/ No)	16	

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 Clause 3.4.3 and 3.4.4 of the RFP, as the case may be. 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.

For claiming experience of Cable propelled Transit system bidder is expected to give additional information of Design threshold capacity and technology type.

2. For a single entity Bidder, the Project Codes would be a, b, c, d etc. In case the Bidder is a Consortium then for Member 1, the Project Codes would be 1a, 1b, 1c, 1d etc., for Member 2 the Project Codes shall be 2a, 2b, 2c, 2d etc., and so on.
3. A separate sheet should be filled for each Eligible Project.
4. Member Code shall indicate NA for Not Applicable in case of a single entity Bidder. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member; and OM means Other Member. In case the Eligible Project relates to an Associate of the Bidder or its Member, write "Associate" along with Member Code.
5. Refer to Clause 3.4.1 of the RFP for category number.
6. The total payments received/ made and/or revenues appropriated for each Eligible Project are to be stated in Annex-II of this Appendix-IA. The figures to be provided here should indicate the break-up for the past 10 (ten) financial years. Year 1 refers to the financial year immediately preceding the Bid Due Date; Year 2 refers to the year before Year 1, Year 3 refers to the year before Year 2, and so on (Refer Clause 2.1.22). For Categories 1 and 2, expenditure on development of the project and/or revenues appropriated, as the case may be, should be provided, but only in respect of projects having an estimated capital cost exceeding the amount specified in Clause 3.4.3(c). In case of Categories 3 and 4, payments made/ received only in respect of construction should be provided, but only if the amount paid/received exceeds the minimum specified in Clause 3.4.4. Payment for construction works should only include capital expenditure, and should not include expenditure on repairs and maintenance.
7. In case of projects in Categories 1 and 2, particulars such as name, address and contact details of owner/ Authority/ Agency (i.e. concession grantor, counter party to PPA, etc.) may be provided. In case of projects in Categories 3 and 4, similar particulars of the client need to be provided.
8. Provide the estimated capital cost of Eligible Project. Refer to Clauses 3.4.3 and 3.4.4
9. For Categories 1 and 2, the date of commissioning of the project, upon completion, should be indicated. In case of Categories 3 and 4, date of completion of construction should be indicated. In the case of projects under construction, the likely date of completion or commissioning, as the case may be, shall be indicated.
10. For Categories 1 and 2, 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 3.4.3).

11. 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.
12. Certificate from the Bidder's statutory auditor[§] 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.
13. If the Bidder is claiming experience under Categories 1 & 2[£], it should provide a certificate from its statutory auditor in the format below:

Certificate from the Statutory Auditor regarding PPP projects

Based on its books of accounts and other published information authenticated by it, this is to certify that(name of the Bidder/Member/Associate) is/ was an equity shareholder in (title of the project company) and holds/held Rs. cr. (Rupees..... crore) of equity (which constitutes%€ of the total paid up and subscribed equity capital) of the project company from (date) to..... (date)[¥]. The project was/is likely to be commissioned on.....(date of commissioning of the project).

We further certify that the total estimated capital cost of the project is Rs..... cr.

(Rupees crore), of which Rs. cr. (Rupeescrore) of capital expenditure was incurred during the past ten financial years as per year-wise details noted below:

We also certify that the eligible annual revenues collected and appropriated by the aforesaid project company in terms of Clauses 3.4.1 and 3.4.3 (d) of the RFP during the past ten financial years were Rs.....cr. as per year-wise details noted below:

Name of the audit firm:

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

Date:

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

£ Refer Clause 3.4.1 of the RFP.

□ Provide Certificate as per this format only. Attach Explanatory Notes to the Certificate, if necessary. Statutory auditor means the entity that audits and certifies the annual accounts of the company.

€ Refer instruction no. 10 in this Annex-IV.

¥ In case the project is owned by the Bidder company, this language may be suitably modified to read: "It is certified that..... (name of Bidder) constructed and/ or owned the(name of project) from (date) to (date)."

14. If the Bidder is claiming experience under Category 3 & 4[□], it should provide a certificate from its statutory auditors or the client in the format below:

Certificate from the Statutory Auditor/ Client regarding construction works[□]

Based on its books of accounts and other published information authenticated by it, { this is to certify that(name of the Bidder/Member/Associate) was engaged by (title of the project company) to execute..... (name of project) for (nature of project)}[□] The construction of the project commenced on..... (date) and the project was/ is likely to be commissioned on (date, if any). It is certified that..... (name of the Bidder/ Member/ Associate) received/paid Rs. cr. (Rupees..... crore) by way of payment for the aforesaid construction works.

We further certify that the total estimated capital cost of the project is Rs..... cr. (Rupees crore), of which the Bidder/Member/Associate received/paid Rs. cr. (Rupees..... crore), in terms of Clauses 3.4.1 and 3.4.4 of the RFP, during the past ten financial years as per year-wise details noted below:

{It is further certified that the payments/ receipts indicated above are restricted to the share of the Bidder who undertook these works as a partner or a member of joint venture/ Consortium.}[□]

Name of the audit firm:

Seal of the audit firm: _____ (Signature, name and designation of the

Date: _____ authorised signatory).

15. In the event that credit is being taken for the Eligible Experience of an Associate, as defined in Clause 2.1.19, the Bidder should also provide a certificate in the format below:

- Refer Clauses 3.4.1 and 3.4.4 of the RFP.
- Provide Certificate as per this format only. Attach Explanatory Notes to the Certificate, if necessary. Statutory auditor means the entity that audits and certifies the annual accounts of the company.
- In case the Bidder owned the Eligible Project and engaged a contractor for undertaking the construction

works, this language may be modified to read: “ this is to certify that...(name of Bidder/ Member/ Associate) held 26% or more of the paid up and subscribed share capital in the(name of Project

company) when it undertook construction of the (name of Project) through (name of the contractor).

□ This certification should only be provided in case of jobs/ contracts, which are executed as part of a partnership/ joint venture/ consortium. The payments indicated in the certificate should be restricted to the share of Bidder in such partnership/ joint venture/ consortium. This portion may be omitted if the contract did not involve a partnership/ joint venture/ consortium. In case where work is not executed by partnership/ joint venture/ consortium, this paragraph may be deleted.

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 Associate*) is held, directly or indirectly[£], by (*name of 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 2.1.18 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 in the Associate*}

Name of the audit firm:

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

§ 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% in order to establish that the chain of “control” is not broken.

16. 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 Experience Score[®].

® Refer Clause 3.4.6 of the RFP.

Appendix IA
Annex-V
Statement of Legal Capacity

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

Ref.

Date:

To,

The Deputy General Manager
Ropeways and Rapid Transport System
Development Corporation (RTDC),
US Club Shimla – 171001 (HP)

Sub: Bid for Development, Operations and Maintenance of Passenger Ropeway from Narkanda to Hatu Peak, Distt. Shimla on Design, Build, Finance, Operate and Transfer (DBFOT) Mode.

Dear Sir,

We hereby confirm that we/ our members in the Consortium (constitution of which has been described in the application) 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-IA

Annexure VI

Guidelines of the Department of Disinvestment

(Refer Clause 1.2.1)

No. 6/4/2001-DD-II

Government of India

Department of Disinvestment

Block 14, CGO Complex

New Delhi.

Dated 13th July, 2001.

OFFICE MEMORANDUM

Sub: Guidelines for qualification of Bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment

Government has examined the issue of framing comprehensive and transparent guidelines defining the criteria for bidders interested in PSE-disinvestment so that the parties selected through competitive bidding could inspire public confidence. Earlier, criteria like net worth, experience etc. used to be prescribed. Based on experience and in consultation with concerned departments, Government has decided to prescribe the following additional criteria for the qualification/ disqualification of the parties seeking to acquire stakes in public sector enterprises through disinvestment:

- (a) In regard to matters other than the security and integrity of the country, any conviction by a Court of Law or indictment/ adverse order by a regulatory authority that casts a doubt on the ability of the bidder to manage the public sector unit when it is disinvested, or which relates to a grave offence would constitute disqualification. Grave offence is defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of the offence would be taken on case to case basis after considering the facts of the case and relevant legal principles, by the Government of India.
- (b) In regard to matters relating to the security and integrity of the country, any charge-sheet by an agency of the Government/ conviction by a Court of Law for an offence committed by the bidding party or by any sister concern of the bidding party would result in disqualification. The decision in regard to the relationship between the sister concerns would be taken, based on the relevant facts and after examining whether the two concerns are substantially controlled by the same person/ persons.
- (c) In both (a) and (b), disqualification shall continue for a period that Government deems appropriate.
- (d) Any entity, which is disqualified from participating in the disinvestment process, would not be allowed to remain associated with it or get associated merely because it has preferred an appeal against the order based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.
- (e) The disqualification criteria would come into effect immediately and would apply to all bidders for various disinvestment transactions, which have not been completed as yet.

- (f) Before disqualifying a concern, a Show Cause Notice why it should not be disqualified would be issued to it and it would be given an opportunity to explain its position.
- (g) Henceforth, these criteria will be prescribed in the advertisements seeking Expression of Interest (EOI) from the interested parties. The interested parties would be required to provide the information on the above criteria, along with their Expressions of Interest (EOI). The bidders shall be required to provide with their EOI an undertaking to the effect that no investigation by a regulatory authority is pending against them. In case any investigation is pending against the concern or its sister concern or against its CEO or any of its Directors/ Managers/ employees, full details of such investigation including the name of the investigating agency, the charge/ offence for which the investigation has been launched, name and designation of persons against whom the investigation has been launched and other relevant information should be disclosed, to the satisfaction of the Government. For other criteria also, a similar undertaking shall be obtained along with EOI.

sd/-

(A.K. Tewari)

Under Secretary to the Government of India

APPENDIX – II
Bank Guarantee for Bid Security
(Refer Clauses 2.1.6 and 2.20.1)

B.G. No.

Dated:

1. In consideration of you, Ropeways and Rapid Transport System Development Corporation (RTDC), having its office at U.S Club, Shimla– 171001, (hereinafter referred to as the “Authority”, 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 Company registered under Companies Act, 1956/2013) and having its registered office at _____ (and acting on behalf of its 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 “**Development, Operations and Maintenance of Passenger Ropeway from Narkanda to Hatu Peak, Distt. Shimla on Design, Build, Finance, Operate and Transfer (DBFOT) Mode**” (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 Clause 2.1.7 read with Clause 2.1.8 of the RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment 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 the Authority an amount of **Rs. 2.06 Crore (Rupees Two Crores and Six Lakhs Only)** (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 fulfil or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by the Authority stating that the Bidder is in default of the due and faithful fulfilment 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 the Authority is disputed by the Bidder or not, merely on the first demand from the Authority stating that the amount claimed is due to the Authority by reason of failure of the Bidder to fulfil 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 **Rs. 2.06 Crore (Rupees Two Crores and Six Lakhs Only)**.

4. This Guarantee shall be irrevocable and remain in full force for a period of 120 (one hundred and twenty) days from the Bid Due Date and a claim period of 60 (sixty) days or for such extended period as may be mutually agreed between the Authority 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 the Authority shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment 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 the Authority that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Authority 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, the Authority shall be entitled to treat the Bank as the principal debtor. The Authority 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 fulfilment 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 the Authority, and the Bank shall not be released from its liability under these presents by any exercise by the Authority 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 the Authority or any indulgence by the Authority to the said Bidder or by any change in the constitution of the Authority 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 who shall be deemed to have been duly authorised to receive the said notice of claim.

It shall not be necessary for the Authority 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 the Authority 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.

10. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Authority in writing.
11. 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.
12. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to **Rs. 2.06 Crore (Rupees Two Crores and Six Lakhs Only)**. The Bank shall be liable to pay the said amount or any part thereof only if the Authority 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).
13. This guarantee shall also be operatable at our _____ Branch at _____, from whom, confirmation regarding the issue of this guarantee or extension/renewal thereof shall be made available on demand. In the contingency of this guarantee being invoked and payment thereunder claimed, the said branch shall accept such invocation letter and make payment of amounts so demanded under the said invocation.
14. The guarantor/Bank hereby confirms that it is on the SFMS (Structural Finance Messaging System) platform & shall invariably send an advice of this Bank Guarantee to the designated bank of RTDC Details, the details of which is given are as under follow:

S. No.	Particulars	Details
1.	Name of Beneficiary	Ropeways and Rapid Transport System Development Corporation Hp Ltd
2.	Name of Bank	ICICI The Mall Shimla
3.	Account No.	635301009485
4.	IFSC Code	ICIC0006353

Signed and Delivered by

Bank

By the hand of Mr./Ms ,

its and authorised official.

(Signature of the Authorised Signatory)

(Official Seal)

Appendix-III
Format for Power of Attorney for signing of Bid

(Refer Clause 2.1.9)

Know all men by these presents, We, *(name of the firm and address of the registered office)* do hereby irrevocably constitute, nominate, appoint and authorize 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, Operations and Maintenance of Passenger Ropeway from Narkanda to Hatu Peak, Distt. Shimla on Design, Build, Finance, Operate and Transfer (DBFOT) Mode** proposed or being developed by the Ropeways and Rapid Transport System Development Corporation (the “Authority”) including but not limited to signing and submission of all applications, bids and other documents and writings, participate in bidders’ and other conferences and providing information / responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the 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 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, 20.....

For
(Signature, name, designation and address) of person authorized by Board Resolution (in case of Firms/Company)/Partner in case of Partnership Firms

Witnesses:

- 1.
- 2.

Notarised

Notarised Person identified by me/personally appeared before me /signed before me/Attested/Authenticated*

(*Notary to specify as applicable) (Signature, Name and

Address of the Notary) Seal of the Notary Registration

Number of the Notary Date

Accepted

(Signature, name, designation 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-IV
Format for Power of Attorney for Lead Member of Consortium
(Refer Clause 2.1.10)

Whereas the Ropeways and Rapid Transport System Development Corporation (“the Authority”) has invited bids from interested parties for the **Development, Operations and Maintenance of Passenger Ropeway from Narkanda to Hatu Peak, Distt. Shimla on Design, Build, Finance, Operate and Transfer (DBFOT) Mode (the Project)**).

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 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 , and M/s. , having our registered office at , (hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorize 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”) and 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 submission of its bid for the Project, including but not limited to signing and submission of all applications, bids and other documents and writings, accept the Letter of Award, 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 the Authority, 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 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 20.....

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.*
- *Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a 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 V
Format for Joint Bidding Agreement for Consortium
(Refer Clause 2.1.10 & 2.1.16(g))
(To be executed on Stamp paper of appropriate value)

THIS JOINT BIDDING AGREEMENT is entered into on this the.....day of 20... **AMONGST** G. {...Limited, 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, having its registered office at..... } and (hereinafter referred to as the “**Second Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

3. {...Limited, 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)

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) THE ROPEWAYS AND RAPID TRANSPORT SYSTEM DEVELOPMENT CORPORATION, having its principal offices at U. S Club Shimla – 171001 (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited bids (the **Bids**”) by its Request for Proposal No. dated (the “**RFP**”) for award of contract for **Development, Operations and Maintenance of Passenger Ropeway from Narkanda to Hatu Peak, Distt. Shimla on Design, Build, Finance, Operate and Transfer (DBFOT) Mode** (the “**Project**”) through public private partnership.
- (B) 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
- (C) 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 Indian Companies Act 1956/2013 for entering into a Concession Agreement with the 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 Appointed 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 of the Consortium/
Operation and Maintenance Member/ Other Member of the Consortium; }

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, till such time as the Financial Close for the Project is achieved under and 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 first anniversary of the date of Project completion, be held by the Parties of the First, {Second and Third} Part whose experience and net worth have been reckoned for the purposes of qualification of the Bidder 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 date of the Project completion and the first anniversary thereof, hold subscribed and paid up equity share capital of SPV equivalent to at least 5% (five per cent) of the Total Project Cost.
- 6.4 The Parties undertake that they shall collectively hold at least 51% (fifty one percent) of the subscribed and paid up equity share capital of the SPV at all times until the first anniversary of the date of the Project completion.
- 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;
- (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 fulfilment 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 pre-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/selected or upon return of the Bid Security by the Authority 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 the Authority.

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

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of

LEAD MEMBER by:

SECOND PART

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of

For and on behalf of

THIRD PART

FOURTH PART

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of

For and on behalf of

FIFTH PART

SIX PART

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(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 VI Integrity pact

(To be executed on the plain paper and submitted along with Technical Bid/ Tender documents for tenders having a value of Rs. 5 crore or more. To be signed by the bidder and same signatory competent/ authorized to sign the relevant contract on behalf of the RTDC)

Tender No

This integrity Pact is made At _____ . on this ____ day of ____ 2025.

BETWEEN

THE ROPEWAYS AND RAPID TRANSPORT SYSTEM DEVELOPMENT CORPORATION (RTDC), which has been entrusted with the responsibility of development, maintenance and management of allied Ropeways and other infrastructure projects, having its office at U.S Club Shimla – 171001, hereinafter referred to as “The Principal”, which expression shall unless repugnant to the meaning or contract thereof include its successors and permitted assigns.

AND

_____ hereinafter referred to as “The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s)” and which expression shall unless repugnant to be meaning or context thereof include its successors and permitted assigns.

Preamble

Whereas, the Principal intends to award, under laid down organizational procedure, contract/s for **Development, Operations and Maintenance of Passenger Ropeway from Narkanda to Hatu Peak, Distt. Shimla on Design, Build, Finance, Operate and Transfer (DBFOT) Mode**. The Principal values full compliance with all relevant laws of the land, rules of land, regulations, economic use of resources and of fairness/ transparency in its relations with its Bidder(s) and for Contractor(s)/ Concessionaire(s)/ Consultant(s).

And Whereas in order to achieve these goals, the Principal will appoint an Independent External Monitors (IEMs), who will monitor the tender process and the execution of the contract for compliance with the Principles mentioned above.

And whereas to meet the purpose aforesaid, both the parties have agreed to enter into this Integrity Pact (hereafter referred to as Integrity Pact) the terms and conditions of which shall also be read as integral part and parcel of the Tender documents and contract between the parties.

Now, therefore, in consideration of mutual covenants stipulated in this pact, the parties hereby agree as follows and this pact witnesses as under:

Article- 1: Commitments of the Principal

1. The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles:-

(a) No employee of the Principal, personally or through family members, will in connection with the Lender for, or the execution of a Contract, demand, take a promise for or accept, for self, or third person, any material or immaterial benefit which the person is not legally entitled to.

(b) The Principal will, during the Tender process treat all Bidder(s) with equity and reason. The Principal will in particular, before and during the Tender process, provide to all Bidder(s) the same information and will not provide to any Bidder(s) confidential/ additional information through which the Bidder(s) could obtain an advantage in relation to the tender process or the contract execution.

(c) The Principal will exclude all known prejudiced persons from the process, whose conduct in the past has been of biased nature.

2. If the Principal obtains information on the conduct of any of its employees which is a criminal offence under the IPC/PC Act or any other Statutory Acts or if there be a substantive suspicion in this regard, the Principal will inform the Chief Vigilance Officer and in addition can initiate disciplinary actions as per its internal laid down Rules/Regulations.

Article- 2: Commitments of the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s).

The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) commit himself to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation in the tender process and during the contract execution.

(a) The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) will not, directly or through any other person or firm, offer, promise or give to any of the Principal's employees involved in the tender process or the execution of the contract or to any third person any material or other benefit which he/she is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the tender process or during the execution of the contract.

(b) The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) will not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contract, submission or non-submission or bids or any other actions to restrict competitiveness or to introduce cartelization in the bidding process.

(c) The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) will not commit any offence under the relevant IPC/PC Act and other Statutory Acts; further the Bidder(s)/Contractor(s)/Concessionaire(s)/Consultant(s) will not use improperly, for purposes of completion or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.

(d) The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) of foreign origin shall disclose the name and address of the Agents/ Representatives in India, if any. Similarly, the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) of Indian Nationality shall furnish the name and address of the foreign principals, if any. Further, details as mentioned in the 'Guidelines on Indian Agents of Foreign Suppliers' shall be disclosed by the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s). Further, all the payments made to the Indian Agent / Representative have to be Indian Rupees only.

(e) The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) will, when presenting his bid, disclose any and all payments he has made, is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract. He shall also disclose the details of services agreed upon for such payments.

(f) The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) will not instigate third persons to commit offences outlined above or be an accessory to such offences.

(g) The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) will not bring any outside influence through any Govt. bodies/quarters directly or indirectly on the bidding process in furtherance of his bid.

(h) The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) who have signed a Integrity pact shall not approach the court while representing the matter to IEMs and shall wait for their decision in the matter

Article- 3 Disqualification from tender process and exclusion from future contracts.

1. If the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s), before award or during execution has committed a transgression through a violation of any provision of Article 2, above or in any other form such as to put his reliability or credibility in question, the Principal is entitled to disqualify the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) from the tender process.
2. If the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) has committed a transgression through a violation of Article-2 such as to put his reliability or credibility into question, the Principal shall be entitled to exclude including blacklist and put on holiday the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) for any future tenders/ contract award process. The imposition and duration of the exclusion will be determined by the severity of the transgression. The severity will be determined by the Principal taking into consideration the full facts and circumstances of each case particularly taking into account the number of transgressions, the position of the transgressors within the company hierarchy of the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) and the amount of the damage. The exclusion will be imposed for a minimum period of 6 months and maximum period of 2 years.
3. A transgression is considered to have occurred if the Principal after due consideration of the available evidence concludes that "On the basis of facts available there are no material doubts".

The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) with its free consent and without any influence agrees and undertakes to respect and uphold the Principal's

absolute rights to resort to and impose such exclusion and further accepts and undertakes not to challenge or question such exclusion on any ground, including the lack of any hearing before the decision to resort to such exclusion is taken. This undertaking is given freely and after obtaining independent legal advice.

4. The decision of the Principal to the effect that a breach of the provisions of this Integrity Pact has been committed by the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) shall be final and binding on the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s), however, the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) can approach IEM(s) appointed for the purpose of this Pact.
5. On occurrence of any sanctions/ disqualification etc arising out from violation of integrity pact, the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) shall not be entitled for any compensation on this account.
6. Subject to full satisfaction of the Principal, the exclusion of the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) could be revoked by the Principal if the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) can prove that he has restored/ recouped the damage caused by him and has installed a suitable corruption prevention system in his organization.

Article- 4: Compensation for Damages.

1. If the Principal has disqualified the Bidder(s) from the tender process prior to the award according to Article-3, the Principal shall be entitled to suspend the bidder for participation in the tendering process for the works of RTDC for a period of One Year from the bid due date of this work and forfeit the Earnest Money Deposit/Bid Security or demand and recover the damages equivalent to Earnest Money Deposit/Bid Security apart from any other legal right that may have accrued to the Principal.
2. In addition to 1 above, the Principal shall be entitled to take recourse to the relevant provisions of the contract related to Termination of Contract due to Contractor/ Concessionaire/Consultant's Default. In such case, the Principal shall be entitled to forfeit the Performance Bank Guarantee of the Contractor/ Concessionaire/ Consultant and/ or demand and recover liquidated and all damages as per the provisions of the contract/concession agreement against Termination.

Article- 5: Previous Transgressions

1. The Bidder declares that no previous transgressions occurred in the last 3 years immediately before signing of this Integrity Pact with any other Company in any country conforming to the anti Corruption/ Transparency International (TI) approach or with any other Public Sector Enterprise/ Undertaking in India or any Government Department in India that could justify his exclusion from the tender process.
2. If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process or action for his exclusion can be taken as mentioned under Article-3 above for transgressions of Article-2 and shall be liable for compensation for damages as per Article-4 above.

Article- 6: Equal treatment of all Bidders/ Contractors/ Concessionaires/ Consultants/ Subcontractors.

1. The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) undertake(s) to demand from all sub-contractors a commitment in conformity with this Integrity Pact, and to submit it to the Principal before contract signing.
2. The Principal will enter into agreements with identical conditions as this one with all Bidders/ Contractors/ Concessionaires/ Consultants and subcontractors.
3. The Principal will disqualify from the tender process all Bidders who do not sign this Pact or violate its provisions.

Article-7: Criminal charges against violating Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s)/ Sub-contractor(s).

If the Principal obtains knowledge of conduct of a Bidder/ Contractor/ Concessionaire/ Consultant or subcontractor, or of an employee or a representative or an associate of a Bidder/ Contractor/ Concessionaire/ Consultant or Subcontractor, which constitutes corruption, or if the Principal has substantive suspicion in this regard, the Principal will inform the same to the Chief Vigilance Officer.

Article- 8: Independent External Monitor (IEM)

1. The Principal appoints competent and credible Independent External Monitor for this Pact. The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.
2. The Monitor is not subject to instructions by the representatives of the parties and performs his functions neutrally and independently. He reports to the Director, RTDC.
3. The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) accepts that the Monitor has the right to access without restriction to all project documentation of the Principal including that provided by the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s). The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to the project. The Monitor is under contractual obligation to treat the information and documents of the Bidder(s)/Contractor(s) with confidentiality.
4. The Principal will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the Principal and the Bidder/Contractor/ Concessionaire/ Consultant. The parties offer to the Monitor the option to participate in such meetings.
5. As soon as the Monitor notices, or believes, to notice any transgression as given in Article-2, he may request the Management of the Principal to take corrective action, or to take relevant action. The monitor can in this regard submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.

6. The Monitor will submit a written report to the Director, RTDC within 8 - 10 weeks from the date of reference or intimation to him by the Principal and, should the occasion arise, submit proposals for correcting problematic situations.
7. If the Monitor has reported to the Chairman, RTDC, a substantiated suspicion of an offence under relevant IPC/PC Act or any other Statutory Acts, and the Director, RTDC has not, within the reasonable time taken visible action to proceed against such offence or reported it the Chief Vigilance Officer, the Monitor may also transmit this information directly to the Central Vigilance Commissioner.
8. The word 'Monitor' would include both singular and plural.

Article — 9 Pact Duration

This Pact begins when both parties have signed it (in case of EPC i.e. for projects funded by Principal and consultancy services). It expires for the Contractor/ Consultant 12 months after his Defect Liability Period is over or 12 months after his last payment under the contract whichever is later and for all other unsuccessful Bidders 6 months after this Contract has been awarded. (In case BOT Projects) It expires for the concessionaire 24 months after his concession period is over and for all other unsuccessful Bidders 6 months after his Contract has been awarded. Any violation of the same would entail disqualification of the bidder and exclusion from future dealings.

If any claim is made/ lodged during this time, the same shall be binding and continue to be valid despite the lapse of this pact as specified above, unless it is discharged determined by Chairman of RTDC.

Article - 10 Other Provisions.

1. This pact is subject to Indian Law, Place of performance and jurisdiction is the Registered Office of the Principal, i.e. Shimla.
2. Changes and supplements as well as termination notices need to be made in writing.
3. If the Bidder/Contractor/Concessionaire/Consultant is a partnership or a Consortium, this pact must be signed by all partners or Consortium members.
4. Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid, In this case, the parties will strive to come to an agreement to their original intentions.
5. Issue like warranty / Guarantee etc. shall be outside the purview of IEMs.
6. In the event of any contradiction between the Integrity Pact and its Annexure, the clause in integrity pact shall prevail.
7. Any disputes/ differences arising between the parties with regard to term of this pact, any action taken by the Principal in accordance with this Pact or interpretation thereof shall not be subject to any Arbitration.
8. The actions stipulated in the Integrity Pact are without prejudice to any other legal

action that may follow in accordance with the provision to the extent law in force relating to any civil or criminal proceedings. In witness whereof the parties have signed and executed this Pact at the place and date first done mentioned in the presence of following witnesses:-

For & on behalf of the Principal

For & on behalf of Bidder/ Contractor/

Concessionaire/ Consulting

(Office seal)

Place

Date

Witness 1:

(Name & Address)

Witness 2:

(Name & Address)

Appendix-VII

Certificate regarding Compliance with Restrictions under Rule 144 (xi) of the General Financial Rules (GFRs)

The Deputy General Manager

Ropeways and Rapid Transport System
Development Corporation (RTDC),
US Club Shimla – 171001 (HP)

Sub: Bid for **Development, Operations and Maintenance of Passenger Ropeway from Narkanda to Hatu Peak, Distt. Shimla on Design, Build, Finance, Operate and Transfer (DBFOT) Mode.**

Dear Sir,

With reference to your RFP document dated *** **\$, I/we, having examined the Bidding Documents and understood their contents, hereby undertake and confirm as follows:

I/We have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries;

I certify that this Bidder is not from such a country or, if from such a country, has been registered with the Competent Authority and will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority.

I hereby certify that this bidder fulfils all requirements in this regard and is eligible to be considered.

Yours faithfully,

Date:

(Signature of the Authorised signatory)

Place:

(Name and designation of the of the Authorised signatory)

Name and seal of Bidder/Lead Member

Notes:

{ Where applicable, evidence of valid registration by the Competent Authority shall be attached }

In case the above certification is found to be false, this would be a ground for immediate rejection of Bid/termination and further legal action in accordance with law.

APPENDIX - VIII**Surety Bond for Bid Security
(Refer Clauses 2.1.7 and 2.20.1)**

S.B. No. Dated:

1. In consideration of you, Ropeways and Rapid Transport System Development Corporation, having its office at U. S Club, Shimla – 171001 (hereinafter referred to as the "Authority", 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 Company registered under Companies Act, 1956/2013) and having its registered office at _____, (and acting on behalf of its 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 **Development, Operations and Maintenance of Passenger Ropeway from Narkanda to Hatu Peak, Distt. Shimla on Design, Build, Finance, Operate and Transfer (DBFOT) Mode** (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 Surety Insurer*) having our registered office at and one of its branches at..... (hereinafter referred to as the "Surety Insurer *"), at the request of the Bidder, do hereby in terms of Clause 2.1.7 read with Clause 2.1.8 of the RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment 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 the Authority an amount of **Rs. 2.06 Crore (Rupees Two Crores and Six Lakhs Only)** (hereinafter referred to as the "Surety Bond") as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder, if the Bidder shall fail to fulfil or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by the Authority stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the surety Insurer.
3. We, the Surety Insurer do hereby unconditionally undertake to pay the amounts due and payable under this Surety Bond 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 the Authority is disputed by the Bidder or not, merely on the first demand from the Authority stating that the amount claimed is due to the Authority by reason of failure of the Bidder to fulfil 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 Surety Insurer shall be conclusive as regards amount due and payable by the Surety Insurer under this Surety Bond, However, our liability under this Surety Bond shall be restricted to an amount not exceeding **Rs. 2.06 Crore (Rupees Two Crores and Six Lakhs Only)**.
4. This Surety Bond shall be irrevocable and remain in full force for a period of 120 (one hundred and twenty) days from the Bid Due Date and a claim period of 60 (sixty) days or for such extended period as may be mutually agreed between the Authority and the

- Bidder, and agreed to by the Surety Insurer, and shall continue to be enforceable till all amounts under this Surety Bond have been paid.
5. We, the Surety Insurer, further agree that the Authority shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment 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 the Authority that the bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Authority and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other Authority.
 6. The Surety Bond shall not be affected by any change in the constitution or winding up of the Bidder or the Surety Insurer or any absorption, merger or amalgamation of the Bidder or the Surety Insurer with any other person.
 7. In order to give full effect to this Surety Bond, the Authority shall be entitled to treat the Surety Insurer as the principal debtor. The Authority shall have the fullest liberty without affecting in any way the liability of the Surety Insurer under this Surety Bond 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 fulfilment 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 the Authority, and the Surety Insurer shall not be released from its liability under these presents by any exercise by the Authority 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 the Authority or any indulgence by the Authority to the said Bidder or by any change in the constitution of the Authority 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 Surety Insurer 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 Surety Insurer and sent by courier or by registered mail to the Surety Insurer 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 Surety Insurer along with branch address and delivered at our above branch who shall be deemed to have been duly authorised to receive the said notice of claim.
 10. It shall not be necessary for the Authority to proceed against the said Bidder before proceeding against the Surety Insurer and the Surety Bond herein contained shall be enforceable against the Surety Insurer, notwithstanding any other security which the Authority may have obtained from the said Bidder or any other person and which shall,

at the time when proceedings are taken against the Surety Insurer hereunder, be outstanding or unrealised.

11. We, the Surety Insurer, further undertake not to revoke this Surety Bond during its currency except with the previous express consent of the Authority in writing.
12. The Surety Insurer declares that it has power to issue this Surety Bond and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Surety Bond for and on behalf of the Surety Insurer.
13. For the avoidance of doubt, the Surety Insurer's liability under this Surety Bond shall be restricted to **Rs. 2.06 Crore (Rupees Two Crores and Six Lakhs Only)**. The Surety Insurer shall be liable to pay the said amount or any part thereof only if the Authority serves a written claim on the Surety Insurer in accordance with paragraph 9 hereof, on or before [*** (indicate date falling 180 days after the Bid Due Date)]
14. This Surety Bond shall also be operatable at our..... Branch at , from whom, confirmation regarding the issue of this Bond or extension / renewal thereof shall be made available on demand. In the contingency of this Bond being invoked and payment thereunder claimed, the said branch shall accept such invocation letter and make payment of amounts so demanded under the said invocation.
15. The Insurance Surety Bond shall be verified from the specific portal created for this purpose.

Signed and Delivered by..... Company

By the hand of Mr. /Ms , itsand authorised official

(Signature of the Authorised Signatory)
(official seal)



Ropeways and Rapid Transport System Development Corporation



Development, Operations and Maintenance of Passenger Ropeway from Narkanda to Hatu Peak, Distt. Shimla on Design, Build, Finance, Operate and Transfer (DBFOT) Mode

DRAFT CONCESSION AGREEMENT

VOLUME-2

February 2025



**ROPEWAYS AND RAPID TRANSPORT
SYSTEM DEVELOPMENT CORPORATION
H.P. Ltd. (RTDC)**

U.S. Club, Shimla, Himachal Pradesh

Draft Concession Agreement

Part I
Preliminary

CONCESSION AGREEMENT

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

BETWEEN

1 The Governor of Himachal Pradesh represented by ROPEWAYS AND RAPID TRANSPORT SYSTEM DEVELOPMENT CORPORATION H.P. Ltd. (“**RTDC**”), an autonomous body promoted by the Government of Himachal Pradesh and having its Head Office at U.S. Club, Shimla, Himachal Pradesh – 171001 (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 }*, 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 had entrusted to the Authority the Development, Operations and Maintenance of Passenger Ropeway from Narkanda to Hatu Peak, Distt. Shimla on PPP Mode in the State of Himachal Pradesh on DBFOT mode.
- (B) The Authority had accordingly adopted a single stage two envelope bidding process and accordingly invited proposals by its Request for Proposal dated *** (the “**Request for Proposal**” or “**RFP**”) for qualification and short listing of bidders for construction, operation and maintenance of the above referred Ropeway Project from Narkanda to Hatu Peak, Distt. Shimla in the State of Himachal Pradesh on DBFOT mode.
- (C) The Authority had prescribed the technical and commercial terms and conditions in the RFP and invited bids comprising technical and financial bids from the bidders for undertaking the Project.
- (D) After evaluation of the bids received, the Authority had technically qualified certain bidders including, inter alia, the {the selected bidder/ consortium comprising,,, and (collectively the “**Consortium**”) with as its Lead Member} and accepted the financial 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.

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

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- (E) {The selected bidder/ Consortium has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 1956/2013, 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 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.}
- (G) 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.

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

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 45) 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, survey and investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning of the Project, including maintenance during the Construction Period, removing of defects, if any, and other activities incidental to the construction, and “**construct**” or “**build**” shall be construed accordingly;

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- (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 the State 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

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or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;

- (t) any agreement, consent, approval, authorisation, notice, communication, information, report or any other correspondence 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 and the Request for Proposal (“RFP”) 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, Provisions or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisions and Schedules of or to this Agreement, and references to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs and reference to Paragraph shall be subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of this Agreement or of the Schedule or Annex 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

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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) design and construction of the Project 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 Project in accordance with the provisions of this Agreement and in conformity with the requirements set forth in Schedule-E; 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.

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 design, construct, operate and maintain the Project (the “**Concession**”) for a period of

- (i) 1095 days from the Appointed Date, i.e., Construction Period; and
- (ii) Operation Period of 40 (Forty) years commencing from the Commercial Operation Date (COD),

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:

(i) and (ii) collectively referred to as 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, design and construct the Project;
- (c) manage, operate and maintain the Project and regulate the use thereof by third parties, wherever applicable;
- (d) demand, collect and appropriate Fee from Users liable for payment of Fee for using the Project or any part thereof and refuse entry of any user if the Fee due is not paid;
- (e) perform and fulfil all of the Concessionaire’s obligations including, but not limited to, the safety trials, Safety audits, Rescue Services etc. under and in accordance with this Agreement;
- (f) to let out on lease or license or on franchise basis any portion of the built up space at the Terminal Stations, subject to terms of this Agreement, for commercial use in consonance with the terms of this Agreement and for duration which shall always be conterminous with this Agreement;
- (g) undertake and implement the augmentation of the Project in accordance with Schedule “B” and terms and conditions of this Agreement;
- (h) bear and pay all costs, expenses and charges in connection with or

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incidental to the performance of the obligations of the Concessionaire under this Agreement; and

- (i) 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 Project nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement.
- (j) Appoint Sub-contractors on its behalf, to the extent permissible in terms hereof, to assist the Concessionaire in fulfilling its obligations in relation to the Project;
- (k) Hand over the Project and the Project Assets, including the land, if any, owned by the Concessionaire and related to the operations and maintenance of the Project to the Authority or its nominated agency on the Transfer Date;

3.2 Actions in Support of Concession

- (a) The Authority accepts and agrees that the route alignment of the aerial Ropeway, fixed on the basis of topographical & engineering surveys at Lower Terminal Point (LTP), Intermediate Terminal Point (ITP) and Upper Terminal Point (UTP) specified in Schedule - B, forms the basic core of the Project and agrees and undertakes not to change it in any manner whatsoever during the term of this Agreement, including extension thereof, if any, unless in exceptional scenarios wherein the alignment needs to be changed considering the safety aspect / statutory requirement
- (b) The Authority acknowledges that the location of the total Project Area (as defined in Schedule B) is of fundamental importance to the Project and agrees that that the same shall not be changed during the Concession Period
- (c) The Authority shall facilitate the concessionaire for maintaining the approach roads, as defined under the terms of this Agreement, to the Project Area and to keep the roads open throughout the year on a best effort basis.
- (d) The Authority shall render such assistance to the Concessionaire as may be reasonable and feasible for the Authority or the State Government, from time to time, for availing of formal permissions & approvals for completion of formalities relating to the Project, however the sole responsibility and obligation for obtaining and maintaining all required permissions and approvals shall be of the Concessionaire alone.

In consideration of the mutual covenants by the Authority and other good and valuable consideration expressed herein, the Concessionaire hereby accepts the Concession and agrees and undertakes to implement the Project / provide facilities and to perform/ discharge all of its obligations in accordance with the provisions hereof.

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 180 (one hundred and eighty) 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 180 (one hundred and eighty) days of the notice, or such longer period not exceeding 365 (three hundred sixty five) 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) provided to the Concessionaire the Right of Way to the Site in accordance with the provisions of Clause 10.3.2;
- (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 in respect land forming part of the Right of Way under Clause 10.3.1 and 10.3.2;
- (e) procured forest clearance for and in respect land forming part of the Right of Way under Clause 10.3.1 and 10.3.2, save and except permission for cutting trees;
- (f) procured wildlife clearances, wherever applicable and;
- (g) appointed the Independent Engineer within 180 (one hundred eighty) days of this Agreement.

Provided that the Authority at its discretion may waive the Condition Precedent in Clause 4.1.2 (b) till 6 months prior to Scheduled Completion Date as provided in Schedule G; and Clause 4.1.2 (d), (e) and (f) for a maximum period of 365 days. All other Condition Precedents shall have to be satisfied prior to declaration of Appointed Date.

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

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.

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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 including the details as per format prescribed at Schedule Z, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model, which is workable, formulae linked and interactive, in MS Excel version or any substitute thereof, which is acceptable to the Authority containing financials as appraised and adopted by Senior Lenders;
- (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;
- (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; and
- (i) satisfy himself about the availability of minimum 90% of the Construction Zone as per joint memorandum signed in accordance with clause 10.3.1 and 10.3.2, subject to the condition that the available Construction Zone shall be sufficient for achievement of COD
- (j) New Added – Design validation /obligations

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.

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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 20% (twenty 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 365 (three hundred sixty five) 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 20% (twenty per cent) of the Performance Security, provided further that such Damages for delay by the Concessionaire for non-fulfilment of Conditions Precedent shall be payable within 15 (fifteen) days of achievement of fulfilment of Conditions Precedent.

4.4 Deemed Termination upon Delay

Without prejudice to the provisions of Clause 4.2 and 4.3, and subject to the provisions of Clause 9.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, before the 1st (first) anniversary of the date of this Agreement or the extended period provided in accordance with this Agreement, 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.

Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Concessionaire, the Performance Security of the Concessionaire shall be encashed and appropriated by the Authority to the extent of an amount calculated as 1% (one per cent) of the Total Project Cost and in the event the non-occurrence of the Appointed Date is for reasons attributable to the Concessionaire (including for reasons under clause 4.3 above), the Performance Security of the Concessionaire shall be encashed and appropriated by the Authority as Damages thereof.

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 cost and expense procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Project 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 Save and except as otherwise provided in this Agreement or Applicable Laws, as the case may be, the Concessionaire shall, in discharge of all its obligations under this Agreement, conform with and adhere to Good Industry Practice at all times..
- 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) submit a detailed Project construction completion schedule with clearly defined milestones, construction methodology and technology proposed to be deployed along with capacity augmentation details (in terms of this Agreement) to the Authority on or before the Appointed Date. However the Authority upon written request from the Concessionaire may allow the Concessionaire, subject to such terms and conditions as it specify, submission of detailed completion schedule later than the Appointed Date but not later than 60 days from the Appointed Date, in any case;
 - (c) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the Project;
 - (d) perform and fulfil its obligations under the Financing Agreements;
 - (e) 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;
 - (f) upon written request from the Authority, make reasonable efforts to facilitate the acquisition of land and procuring of environmental and forest clearances required for the purposes of the Agreement;

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- (g) 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;
- (h) In implementing the Project, the Concessionaire shall ensure compliance by itself and Persons claiming through or under it with all Applicable Laws, including environmental laws and laws relating to pollution, and the terms of Applicable Permits and the Concessionaire shall be entirely liable for any violations or breaches thereof and indemnify and keep indemnified the Authority from and against all liabilities and costs in this behalf
- (i) always act in a manner consistent with the provisions of this Agreement and not cause or fail to not do or omit to do any act, deed or thing, whether intentionally or otherwise, which may in any manner be violative of any of the provisions of this Agreement;
- (j) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
- (k) procure that all facilities and amenities within the Project are operated and maintained in accordance with Good Industry Practice and the Users have non-discriminatory access for use of the same;
- (l) design, construct, operate and maintain the Ropeway System considering operations for the entire year, unless the Authority explicitly directs the Concessionaire to design the Ropeway System considering a fixed operation period, i.e., months in which the Ropeway System shall remain functional and a fixed duration of operation, i.e., number of hours of operation per day;
- (m) support, assist, cooperate with and facilitate the Authority and other Government Instrumentality in the implementation and operation of the Project in accordance with the provisions of this Agreement including securing full and complete compliance with directives & guidelines issued by the Authority / State Government of Himachal Pradesh or any other authority having jurisdiction in the matter relating to the directives & guidelines issued;
- (n) transfer the Project to the Authority upon Termination of this Agreement, in accordance with the provisions thereof.
- (o) propagate, advertise, publicize the Project in compliance with Clause 5.7
- (p) facilitate for enabling of mobile connectivity along the Project to the Project Users including Wi-Fi at Terminal Stations, wherever deemed necessary by the Authority.
- (q) conduct regular and timely audit to ensure safety of passengers as detailed in Clause 5.1.11 and Clause 5.1.12 and audits of passenger

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convenience as detailed in Clause 19.7.1

- (r) comply with the deployment of additional cable cars at any point of time, during the Concession Period, if required in compliance with this Agreement
- (s) The Concessionaire is required to keep a provision of minimum of 1 hr for storage of fuel at any point of time to cater peak and average hours. However, the developer shall ensure such that the operations of the ropeway system is not affected due to the shortage of supply of fuel.
- (t) ensure that the Concessionaire and its Sub-contractors comply with the safety and welfare measures for labour in accordance with the Applicable Laws and Good Industry Practice;
- (u) keep, on Site, a copy of this Agreement, publications named in this Agreement, the Drawings, Documents relating to the Project, and Change of Scope orders and other communications given under this Agreement. The Independent Engineer and its authorised personnel shall have the right of access to all these documents at all reasonable times;
- (v) cooperate with other contractors employed by the Authority and personnel of any public authority; and
- (w) not interfere unnecessarily or improperly with the convenience of the public, or the access to and use and occupation of all roads and footpaths, irrespective of whether they are public or in the possession of the Authority or of others.

5.1.5 The Concessionaire shall undertake all necessary superintendence to plan, arrange, direct, manage, inspect and test the Works. The Concessionaire shall provide all necessary superintendence of the Works for the proper fulfilling of the Contractor's obligations under the Agreement. Such superintendence shall be given by competent person having adequate knowledge of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents) for the satisfactory and safe execution of the Works.

5.1.6 The Concessionaire shall obtain and maintain a project related bank account operational at site where all transactions related to the payment of work will be done. The Concessionaire shall submit a monthly account statement and a detailed report on utilization of funds transferred to this project related bank account to Independent Engineer.

Notwithstanding anything contrary to this agreement, the authority, in the interest and to ensure timely completion of the work, reserves the right to audit such bank accounts to ensure that there is no diversion of funds from this project specific account to any other project being implemented by the Concessionaire.

5.1.7 The Concessionaire shall provide the documents of the Concessionaire specified in the Agreement, and all Contractors' personnel; Goods, consumables and other

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things and services, whether of a temporary or permanent nature, required in and for the execution, completion of Works and remedying defects.

- 5.1.8 The Concessionaire shall perform the Works in conformity with the Project requirements and other requirements and standards prescribed under or pursuant to the Agreement.
- 5.1.9 The Concessionaire shall carry out such work incidental and contingent to the original Scope of the Project to comply with Good Industry Practices.
- 5.1.10 The Concessionaire shall maintain required staff and necessary Contractor's equipment and materials within the reach of the Site during the Concession Period so that any defects arising are promptly attended.
- 5.1.11 The Concessionaire shall throughout the Concession Period, on a regular basis, carry out and undertake regular inspection of the Site to secure and prevent against any encroachment's or any deterioration of land condition and ensure safety of the Project by taking preventive measures. The scope, protocol and schedule of inspection, maintenance and the remedial measures, if any required to be undertaken, shall be discussed and finalized by the Concessionaire with the Authority each year in advance. For avoidance of doubt, the onus of regular inspection of the Site and undertaking preventive measures shall lie with the Concessionaire;
- 5.1.12 During the Concession Period, the Concessionaire shall ensure that the safety of the passengers shall not be compromised in any manner by taking all precautionary measures to prevent any breakdowns of the cable propelled system, effects from adverse climatic condition, protection from landslides, rock-sliding, snow-avalanche, floods, earthquakes, cyclones/ tornedos/storms, etc.
- 5.1.13 The Concessionaire shall, at least 30 days prior to the COD or Partial COD, wherever applicable of the Project in consultation with the Authority decide and finalize the operating schedule of the Ropeway Project and shall revise the same, as and when required, only in consultation with the Authority. The Concessionaire agrees and acknowledges that the recommendations of the Authority in this regard shall be binding on the Concessionaire.
- 5.1.14 The Concessionaire shall comply with all requirements of the Escrow Bank in order to provide to the Authority the facility for online viewing and downloading the account statement of Escrow Account at all times during the Concession Period.

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.

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- 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 30 (thirty) 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 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 Due.
- 5.2.4 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.
- 5.2.5 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that selection or replacement of an EPC Contractor and an O&M Contractor and execution of the EPC Contract and O&M Contract shall be subject to the 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 selection or contract without 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

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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 or its Contractors from any liability or obligation under this Agreement.

5.3 Obligations relating to Change in Ownership

5.3.1 The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior approval of the Authority and subject to following conditions.

- (i) no objections from the Senior Lenders.
- (ii) The eligibility condition for Change in Ownership request will be issuance of COD and completion of Punch List items excluding the Punch List items pending due to the reasons attributable to the Authority.
- (iii) The concessionaire shall not be in default of
 - a. Paying Concession Fee to the Authority, if applicable
 - b. O&M obligations

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

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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 situate 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 15% (fifteen 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 subcontractors 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 be responsible for the employment of adequate number of all personnel / staff members required for the day-to-day operations and maintenance of the Project. For the avoidance of doubt, the Authority shall not provide any manpower / personnel to the Concessionaire.

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.

The Concessionaire shall ensure that the personnel's employed by it or through any contractor are trained and proficient in their respective areas of responsibilities and conversant with all the Standard Operating Procedures including the emergency response procedures and are deputed to attend refresher courses from time to time.

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5.6 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.

5.7 Branding of Project

The Project 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 the Project 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 Project shall be known, promoted, displayed and advertised by the name of **“Development, Operations and Maintenance of Passenger Ropeway from Narkanda to Hatu Peak, Distt. Shimla on Design, Build, Finance, Operate and Transfer (DBFOT) Mode”**.

5.8 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 Project.

5.9 Obligations relating to Local Content

The Concessionaire [Class I Local Supplier/ Class II Local Supplier/ Non Local Supplier] undertakes to ensure minimum Local Content in the Project of at least [50%/20%] duly complying with the provisions of Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India Order No. P-45021/2/2017-PP (BE- II) dated September 16, 2020, as amended or modified till Bid Due Date and the provisions under Rule 144(xi) of GFR, 2017.

5.10 Obligations relating to operations of Stations & Ropeway:

The obligations relating to design, construction, operation and maintenance of the Stations shall be, including but not limited to, in compliance with Article 44:

- (a) The Concessionaire shall provide adequate number of ticket vending machines and ticket counters to handle the traffic volumes as detailed in Schedule C, such that waiting time³ for the Users shall not exceed 5 (five) minutes and shall ensure usage of such design and modern technology which would enable efficient and comfortable boarding / de-boarding of passengers;

³ waiting time for the User will vary depending on the peak and non-peak hours, capacity of the cable cars, lag time, headway, etc.
Development, Operations and Maintenance of Passenger Ropeway from Narkanda to Hatu Peak, Distt. Shimla on Design, Build, Finance, Operate and Transfer (DBFOT) Mode

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- (b) in case of Emergency, evacuation from any point on the platform of Station to a point of safety in an open space within or outside the Station shall not exceed 200 (two hundred) meters;
- (c) make arrangements for the public announcements system at the platforms and communication facility between the Station control room and ropeway cable cars for use including Emergency;
- (d) deploy trained marshals at the Project Facilities to guide and assist the Users and visitors to the Project Facility or any part of the Site
- (e) The Concessionaire shall establish a cloak room at the terminal buildings station areas with adequate number of lockers for visitors and tourists who avail the ropeway facilities. The notification of locker fee shall be issued by the Concessionaire itself and fixed and modified by the Concessionaire according to market demand and the locker fee rate (including any revision therein) shall be intimated to Authority forthwith. Additionally, the Concessionaire may also provide mobile charging stations at the cloak rooms for usage visitors and tourists.
- (f) The Concessionaire shall itself carry out O&M by their own manpower, provided manpower is certified by OEM to carry out O&M activities or engage O&M contractor having experience of atleast 05 years in carrying out maintenance of Ropeway System of technology adopted in the project. The O&M shall be carried out strictly in accordance with codal provisions throughout the Concession Period;
- (g) The Concessionaire shall deploy suitable instrumentations and equipment to measure the efficiency as detailed in Schedule - D and any fault in the entire cable propelled system round-the-clock during the operational and non-operational hours during the entire Concession Period;
- (h) Provide space for setting up and maintaining tourist information and assistance kiosks to be manned by certified tourist agencies of State and / or Central Government;
- (i) The Concessionaire shall ensure that the Project Facilities are primarily meant for the use of the public and their accompanying luggage permitted as detailed in Schedule - D, wherever applicable, for transit between the originating and destination station and shall not be allowed to be used for transportation of goods and materials on commercial basis (except where expressly provided and only in the manner specified), save and except for in the case of emergency situations requiring speedy transportation of relief materials, evacuation & rescue materials and equipment including medical aid supplies;
- (j) The Concessionaire shall not make or permit any alterations or additions to the approved designs and drawings relating to the Project, without obtaining the previous consent, in writing, of the Authority.
- (k) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in

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connection with the performance of its obligations under this Agreement.

5.11 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 Site equipped to render first aid and to assist in accessing emergency medical aid from hospitals/ clinics in the vicinity.

5.12 Obligations relating to basic amenities

The Concessionaire shall install necessary fixtures, furnishing and equipment, through development of warm-shells for installation of basic amenities, in adequate numbers in accordance with Good Industry Practice for non-discriminatory use by the Users of the Project. These amenities shall include drinking water facilities, sanitation facilities, toilets, telephone and communication facilities, eateries and canteens as per Schedule - D.

5.13 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 neighborhood.

5.14 Obligations relating to aesthetic quality of the Project

The Concessionaire shall maintain a high standard in the appearance and aesthetic quality of the ropeway and achieve integration of the Project with the character of the surrounding landscape through both appropriate design and sensitive management of all visible elements, including the design of facade. The Concessionaire shall engage professional architects and town planners of repute for ensuring that the design of the Project meets the aforesaid aesthetic standards.

5.15 Obligations relating to fulfilling Key Performance Indicators

The Concessionaire shall operate the Project such that it achieves or exceeds the performance indicators specified in this Article 44 (the “Key Performance Indicators”) and the Project is always operated and maintained as per best industry standards and safety measures.

5.16 Obligation relating to environmental safety

The Concessionaire shall make provisions for proper, timely and efficient, handling, collection, segregation and scientific disposal of bio-degradable waste and other solid wastes in accordance with the Solid Waste Management Rules 2016 and such other local guidelines as may be issued from time to time.

5.17 Obligation relating to lighting and signages

The Concessionaire shall ensure that the lighting arrangement with adequate power back up facility is provided at the Site. The Concessionaire shall also ensure that the lighting facility do not cause any inconvenience to any Users of

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the facility and / or neighboring facilities.

Additionally, the Concessionaire shall provide proper design branding material for signages / totem / Logo etc. as approved by the Authority. The signages used for display of User Fee shall also be legible and available in at-least 2 languages, i.e. English and Hindi.

5.17 Encumbrances and Encroachments

- (a) Not place or create nor permit or suffer any Contractor or other Person claiming through or under the Concessionaire to create or place any Encumbrance over all or any part of the Project Assets or the Project area, or on any rights of the Concessionaire therein, save and except as expressly set forth in this Agreement.
- (b) Ensure that the Project area remains free from all encroachments during the Concession Period and subject to Applicable Laws take all steps necessary to remove encroachments, if any.

5.18 Development of Commercial Space:

- (a) The Concessionaire shall be entitled to, as a part of the development program, to plan, design, construct and operate or lease out or grant on license or franchise basis any portion of the built up space only within or at the Terminal Station for the purpose of undertaking commercial activity relating to or incidental to the Project activities or for the convenience of the Users (including for setting up of counters, vending machines and kiosks for sale of eatables, beverages, travel accessories, books and periodicals, tourist guidance desk etc.).
- (b) The total area proposed to be utilized for commercial activities shall not exceed 25% percent of the total floor area of the Terminal Station for which the Concessionaire shall procure prior written approval from the Authority.;
- (c) The commercial activities may be undertaken or performed by the Concessionaire itself or by any third party appointed for this purpose by the Concessionaire on lease or license or franchise basis and the Concessionaire shall at all times be liable and responsible for the conduct, operation, maintenance and adherence to the terms of this Agreement by the operator(s) of such commercial activities and the same shall be undertaken, performed and conducted in such manner that the operation and maintenance of the ropeway operations is not hindered or obstructed or the free movement of the Users is in any manner impaired. The Concessionaire further agrees and acknowledges that any and all arrangements with respect to the commercial activities shall be in compliance with this Agreement;
- (d) All contractual arrangements made or entered into by the Concessionaire for the operation, performance and maintenance of the commercial activities at the Project with any third-party entities, a copy of the same duly authenticated by the authorized officer of the Concessionaire shall be provided to the Authority by the Concessionaire forthwith upon the

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execution thereof. The Concessionaire shall also ensure that no covenant of any such arrangement shall contain any condition or obligation which is, or can be, construed to be inconsistent with the terms of this Agreement or in any manner, by implication or otherwise, puts any responsibility, liability or obligation on the Authority;

In case where any utilities or facilities, for the Project, are procured and provided at no cost basis to the Concessionaire by the Authority or in respect of any utility or facility the cost and charges in respect of the same are in any manner reimbursed or subsidized by the Authority then to the extent such utility or facility is utilized by the Concessionaire / third party operator for the performance of the commercial activity the same shall be duly metered and proportionate cost thereof, on actual consumption basis, or on fixed slab basis depending on the area covered by the commercial activity, as may be decided by the Authority in its sole discretion, shall be reimbursed by the Concessionaire to the Authority on periodical basis at such intervals as instructed by the Authority;

- (e) The entire pre-tax gross revenue (including any non-refundable deposits or advances or premiums etc.) earned by the Concessionaire from the commercial activities undertaken at the Project shall be properly accounted and audited and a statement in respect of the same shall be provided by the Concessionaire to the Authority on half yearly basis. The Concessionaire shall pay to the Authority NIL percentage of the total pre-tax gross revenue (including income accrued but not collected) in each quarter from all the commercial activities undertaken at the Project as defined in Clause 29.2 (“**Revenue Share**”).

The Concessionaire should not charge more than the Maximum Retail Price (MRP) for any consumable product sold at any commercial facility operated by it, including but not limited to the Food and Beverage shops, canteens, etc. The Authority shall also have a right, by itself or through any person authorized by it in this regard, to inspect and audit the books of accounts of the Concessionaire to determine revenues earned from the commercial activities;

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 by making all the required applications and submissions to concerned authorities.
 - (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, during the Operation period, no barriers are erected or placed by any Government Instrumentality on the project, except for reasons of Emergency, national security, law and order or collection of inter-state taxes. The Authority shall also make best endeavors 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 Project that may cause a material adverse effect on the flow of traffic to and from the Project.
 - (d) subject to and in accordance with the Applicable Laws, grant to the Concessionaire the authority to regulate traffic on the Project, use of project and related associated facilities and amenities provided by Concessionaire.
 - (e) assist the Concessionaire in procuring Police assistance for regulation of traffic, removal of trespassers and security on or at the Project;
 - (f) 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;
 - (g) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement; and

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- (h) 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 discharging their respective obligations by the Concessionaire or its Contractors under this Agreement and the Project Agreements respectively.
- (i) Subject to and in accordance with Applicable Laws, as defined in clause 5.1.11, grant to the Concessionaire the authority to carry out regular inspections of the land area beneath the aerial ropeway lines or land adjacent to the Station buildings and prevent, remove or cause to be removed any illegal obstruction or encroachment which may or has the potential to adversely affect the safe operations of the Project, however this shall not cover or deemed to cover any right, power or authority in favor of the Concessionaire to undertake cutting of any trees in the Project area.

6.2 Obligations relating to refinancing

Upon request made by the Concessionaire to this effect, the Authority shall, in conformity with any regulations or guidelines that may be notified by the Government or the Reserve Bank of India, as the case may be, permit and enable the Concessionaire to secure refinancing, in whole or in part, of the Debt Due on such terms as may be agreed upon between the Concessionaire and the entity providing such refinancing; provided, however, that the refinancing hereunder shall be utilized for the Project purpose only and shall always be subject to the prior approval of the Authority, which shall not be unreasonably withheld. For the avoidance of doubt, the tenure of debt refinanced hereunder may be determined mutually between the Senior Lenders and the Concessionaire, but the repayment thereof shall be completed no later than 1(one) year prior to the expiry of Concession Period.

6.3 Maintenance obligations relating to Last Mile Connectivity

During the Concession Period, the Authority shall provide and maintain last mile connectivity by constructing an approach road, as detailed in Schedule – D, in such a manner so as to ensure that the quality of service and safety are maintained. For the avoidance of doubt, even in the event of any material deterioration or damage other than normal wear and tear, including damages due to unforeseen circumstances like extreme floods or landslides, etc., damaging the substantial road portion, as determined by the Independent Engineer, the Authority shall undertake repair thereof at its own cost and expense.

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

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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 each Consortium Member whose technical and financial capacity was evaluated for the purposes of pre-qualification and short-listing in response to the Request for Proposal shall hold at least 26% (twenty six per cent) of such Equity, which shall also be not less than 5% (five per cent) of the Total Project Cost during the Construction Period and one year thereafter. The period of 1 year will be reckoned from date of completion of Punch List excluding the Punch List items pending due to the reasons attributable to the Authority.

Provided further that any such request made under Clause 5.3, shall at the option of the Authority, may be required to be accompanied by a suitable no objection letter from Senior Lenders.

- (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 or registration, as the case may be, and has requested the Authority to enter into this Agreement with {itself/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 Project 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

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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;
- (q) all information provided by the (selected bidder/ Consortium Members) in response to the Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects; and
- (r) all undertakings and obligations of the Concessionaire arising from the Request for Proposals or otherwise shall be binding on the Concessionaire as if they form part of this Agreement.

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 the 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 Project up to the Appointed Date;
- (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.

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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 Proposals, Scope of the Project, Specifications and Standards of design, construction, operation and maintenance, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, traffic volumes, suitability and availability of access routes to the Site 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 30 (thirty) days from the date of this Agreement, in the form of Insurance Surety Bond (issued by Insurance Company authorized by Insurance Regulatory and Development Authority of India in the form set forth in Annexure I of Schedule – F), Account Payee Demand Draft, Fixed Deposit Receipt, Banker’s Cheque or an irrevocable and unconditional e- bank guarantee from a Bank for a sum equivalent to Rs. **** crore (Rupees **** only)⁴ 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 30 (thirty) 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 15 (fifteen) 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 34. Provided that upon appropriation on account of Concessionaire’s Default the Concessionaire shall replenish the Performance Security. 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 120 (one hundred and twenty) days for remedying the Concessionaire Default or to meet any Condition Precedent, save and except as provided in Clause 4.5 of this Agreement, and in

⁴ Calculated @ 2% (three per cent) of Estimated Project Cost as specified in the RFP.

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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 34.

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 30% (thirty per cent) of the Total Project Cost; 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 Project shall comprise 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 Project as set forth in Schedule-A.

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 anyway 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 The licence, access and Right of Way granted by this Agreement to the Concessionaire shall always be subject to existing rights of way and the Concessionaire shall perform its obligations in a manner that an alternative thereof are open to traffic at all times during the Construction Period.

10.2.4 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 license in respect of the Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement. For the avoidance of doubt, the Parties expressly agree that

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notwithstanding any temporary or permanent structures erected on the Site by the Concessionaire or its sub-licensees, the license 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 its 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 usufructuary 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, the Independent Engineer 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 for minimum 90% of the Construction Zone, so that on completion of work in this granted RoW access shall be sufficient to construct and achieve COD of the Project. The Appendix shall not include more than 10% (ten per cent) of the remaining parts of the Construction Zone required and necessary for construction. Further, in the event Financial Close is delayed solely on account of delay in grant of such vacant access and balance Construction Zone, 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

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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 180 (one hundred eighty) 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 beyond 180 days, the works corresponding to RoW in the Appendix not provided shall be deemed to be removed from the Scope of the Project and provisions of Clause 16.6.1 shall apply in case of such works.
- 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 180 (One hundred and eighty) days of the Appointed Date shall be completed before Project Completion Date.
- 10.3.6 The Concessionaire shall, if so required by the Authority, procure on behalf of the Authority, on the terms and to the extent specified by the Authority, the additional land required for stations and related offices, ancillary buildings, storage and maintenance depots, electric substation, ticket plaza, Traffic Aid Posts, Medical Aid Posts, under passes and over passes or for construction of works specified in Change of Scope Order issued under Article 16, in accordance with this Agreement and upon procurement, such land shall form part of the Site and vest in the Authority; provided that the Concessionaire may, by notice given to the Authority no later than 60 (sixty) days from the Appointed Date or the date of Change of Scope Order, as the case may be, require the Authority to initiate and undertake proceedings for acquisition of such land and the Authority shall take all such steps as may be reasonably necessary for such land acquisition forthwith; provided further that the cost of land acquired under this Clause 10.3.6 shall be borne by the Authority; provided also that the land to be acquired by the Authority hereunder, as a part of the site prior to the Appointed Date, shall be deemed to be included in the Appendix referred to in this Clause 10.3 and dealt with in accordance with the provisions thereof. For the avoidance of doubt, it is agreed that the minimum area of land to be acquired for the stations and related offices, ancillary buildings, storage and maintenance depots, electric substation, ticket plaza, Traffic Aid Posts, Medical Aid Posts and approach roads thereof shall conform to the provisions of Schedule - B and Schedule - C. It is further agreed that the Authority may, at any time after the Bid Date, *suo moto* acquire the land required hereunder.
- 10.3.7 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

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Concessionaire shall seek prior consent of the Authority to connect any Additional Facility to the Project and such consent shall not be unreasonably withheld. Provided that cost of procuring such land for construction of additional facilities shall not be the part of Financial Package and the Financial Model.

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 and disposal of Construction waste

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 Project and the performance of its obligations under this Agreement.

All debris and construction and building materials (sand, gravel, stone, rock, loose earth etc.) lying at the Site area or generated during the construction or implementation of the Project may be used by the Concessionaire for implementing the Construction Works. The Concessionaire may use or shall dispose of at its cost all unused debris and construction and building materials in accordance with the written instructions issued from time to time by the Authority or its authorized representative.

10.7 Access to the Authority and Independent Engineer

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 the Independent Engineer and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

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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 authorized 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 licence 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 Government shall procure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period.

10.9 Carbon Credit

During the term of the Concession, any and all carbon credits—whether generated directly or indirectly from the Project—shall be the exclusive property of RTDC, and the Concessionaire hereby irrevocably assigns all rights, title, and interest in such credits to RTDC, agreeing to execute any necessary documents to perfect this assignment, with this provision surviving the termination or expiration of the Concession.

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, walking trails 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, walking trails or utility. In case unidentified utilities, other than the utilities mentioned in the Technical Schedules are encountered by the Concessionaire during the course of execution of project, the Concessionaire shall remove the same and in such case Change of Scope (CoS) shall be allowed to the Concessionaire.

11.2 Shifting of obstructing utilities

11.2.1 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 such utility or obstruction adversely affects the Construction, Operations or Maintenance of the Project as per the scope given in Schedule B and in accordance with applicable standards and specifications of concerned utility owning entity. Cost of shifting utilities not included in the Schedule-B, if any, shall be treated as Change of Scope. The Authority will provide assistance to the Concessionaire for obtaining the estimates for shifting of such utilities from the entity owning such electric lines, water pipes or telephone cables, as the case may be. The Concessionaire shall execute such utility shifting works under the supervision of utility owning agency and Independent Engineer (IE) in accordance with the provision of agreement. The supervision charges only shall be paid by the Authority to the utility owning entity. In the event of any delay in shifting thereof, the Concessionaire shall be responsible for failure to perform any of its obligations here under if such failure is not as 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.

The dismantled material/scrap of existing Utility to be shifted/dismantled shall be taken into account while obtaining the estimate.

The work of shifting of utilities can be taken up by the Concessionaire any time after signing of the Agreement, provided further and without prejudice to anything stated in this Article 11, all shifting of utilities prior to the Appointed Date shall be undertaken by the Concessionaire subject to prior written concurrence of the Authority and in accordance with conditions and directions, if any, specified by the Authority

11.2.2 In case Appointed Date is not achieved and the Concession Agreement is terminated prior to achievement of Appointed Date, the Concessionaire shall be

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reimbursed the cost of utility shifting carried out during Development Period by the Authority after due certification by the Authorized Representative of the Authority. For the purpose of such reimbursement, the rates in the approved estimates by the concerned utility department shall be paid as per actual work carried out at site. For the avoidance of doubt, the Concessionaire would be reimbursed the cost of utility shifting only in case of termination prior to Appointed Date and only if it carries out the utility shifting as envisaged as per the terms of this Agreement (applicable only in case if existing utilities are to be shifted the concessionaire).

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, internet cables, mobile network towers, or other public utilities. However the erection and installation of all mobile service towers or any other similar structure shall be made in such manner that it shall not interfere with the operations, maintenance of the Ropeway Project (including the emergency situations). 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 Project in accordance with this Agreement and any damage caused by such use shall be restored forthwith.

In case where the Concessionaire has set up any new utilities after the Appointed Date for Projects captive consumption or for public use as a part of corporate social responsibility measure, it shall provide all details thereof, as may be reasonably required, to the relevant department / agency under the Government owning and maintain similar utilities in the vicinity.

11.3.2 The Authority may by notice require the Concessionaire to connect, through a paved road or FoB, any adjoining transport facility, or any other public facility or amenity to the Project, whereupon the connecting portion shall be constructed and maintained by the Concessionaire upon advance payment of the cost to be made by the beneficiary entity in accordance with the amount and period as determined by the Independent Engineer. For the avoidance of doubt, any connecting infrastructure like FoB, paved road etc. from the adjoining public facility to the Project which was developed prior to the Appointed Date shall be maintained by the Concessionaire upon advance payment to be made by the beneficiary entity in accordance with the provisions of this Clause.

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 Project. 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

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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.

11.5 Dismantling of structures

The Concessionaire shall at its own cost dismantle the structures in the acquired lands including those on patta lands, abadi lands, assigned lands, etc. the compensation for which, was paid by the Authority to the landowners or belongs to the State Govt. / Forest Department and the lands were handed over to the Concessionaire. The Concessionaire shall, at its own cost, dispose of the dismantled material in its sole discretion as deemed appropriate, while complying with all environmental guidelines and regulations and clear the Site for undertaking construction.

11.6 Installation of Material Ropeways

The Concessionaire shall, subject to Applicable Laws undertake installation of material ropeways, if required, in accordance with applicable standards and specifications. The erection of material ropeway shall be supervised by Independent Engineer (IE) in accordance with the provision of Agreement. The work of erection of material ropeways can be taken up by the Concessionaire any time after signing of the Agreement.

ARTICLE 12
CONSTRUCTION OF THE PROJECT

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 authorized to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement;
- (c) appoint a design director (the “Design Director”) who will head the Contractor’s design unit and shall be responsible for surveys, investigations, collection of data, and preparation of preliminary and detailed designs;
- (d) 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
- (e) make its own arrangements for quarrying and procurement of materials needed for the Project under and in accordance with the Applicable Laws and Applicable Permits.

12.2 Drawings

In respect of the Concessionaire’s obligations with respect to the Drawings of the Project 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, 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 the 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

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Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the 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 the 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 not 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 Project, 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; and
- (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 its editable digital format or in such other medium as may be acceptable to the Authority, reflecting the Project as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of Project Facilities.

12.3 Construction of the Project

- 12.3.1 On or after the Appointed Date, the Concessionaire shall undertake construction of the Project as specified in Schedule-B and Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D. The Concessionaire shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works. The **1095th (One Thousand Ninety Fiftieth)** day from the Appointed Date shall be the scheduled date for completion of the project, (the “Scheduled Completion Date”) and the Concessionaire agrees and undertakes that the Project shall be completed on or before the Scheduled Completion Date.

The Concessionaire shall design and construct the Ropeway System to handle the traffic volumes, as defined by the Authority in Schedule – B. All equipment

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procured by the Concessionaire, including cable cars, etc. shall be deployed and maintained considering the traffic volumes, as defined by the Authority in Schedule – B;

- 12.3.2 The Concessionaire shall construct the Project 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 Completion 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 Completion 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 Project is not completed and COD does not occur within 270 (two hundred and seventy) days from the Scheduled Completion 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, Lenders' Representative and the Independent Engineer a monthly report on physical and financial progress of the Construction Works and shall promptly give such other relevant information as may be required by the Independent Engineer. The Concessionaire shall also submit a detailed report (along with each monthly report) indicating the locations and movements of all construction vehicles by way of installing a functional Global Positioning System (GPS) in each vehicle, which shall include, but not limited to, the following information:

- i. Real- time location data of each construction vehicle.
- ii. Timestamps indicating the start and end times of vehicle movements.
- iii. Mileage covered by each vehicle.

The Concessionaire shall be responsible for ensuring the accuracy and integrity of the GPS tracking data.

13.2 Inspection

During the Construction Period, the Independent Engineer shall inspect the Project at least once a month and make a report of such inspection (the "Inspection Report") 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 Authority on a written request from the Lenders' Representative shall be obliged to provide a copy of the such Inspection Report.

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 size of sample for such tests shall, to the extent possible, not exceed 10% (ten per cent) of the quantity and/or number of tests prescribed by IRC and/or MORTH for the construction works undertaken by the Authority through their contractors. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests in

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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 the 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 the project is not likely to be achieved by the Scheduled Completion 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 submit a revised schedule as provided in accordance with Clause 12.1 (a) for achieving the Project Milestones or Project Completion Date, as the case may be.

Further, if the Independent Engineer reports that the progress achieved in any continuous three months is less than 75% as per the revised schedule, the Authority may invoke termination as per Clause 35.1.1 of this Agreement..

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, workers, surrounding areas and pedestrians. Provided, however, that in case of an emergency, the Authority may suo motu issue the notice referred to hereinabove.

- 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

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secure the safety of suspended works and the Users, workers and surrounding area including any affected party / property or structure. 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 31.7, 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 Completion 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 Completion Date.

13.6 Video recording

During the Construction Period, the Concessionaire shall provide to the Authority for every calendar month, a video recording through drone feed, wherever possible, which will be compiled into a 3 (three) hour digital video disc or any substitute thereof, covering the status and progress of Construction Works in that month. 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 month. Such video recording shall be carried out along with the authorized representative of the Authority. Independent Engineer shall ensure that the features and quality of drone video is acceptable and video is not distorted/tampered with. Independent Engineer shall analyse these drone videos and give their comments in its digital MPRs covering inter-alia but not limited to the encumbrances/lands not available, sites of COS demands, progress of project, mobilisation of plant & equipment, mobilisation of camp sites, progress on rectification of NCRs etc. along with the proposed action plan. Authority shall cross-check drone videos during the monthly physical inspections and notify the discrepancies noticed, if any, between drone video, on Independent Engineer comments and ground reality. The discrepancies shall be examined and addressed through joint site inspections.

Authority should plan biannually drone based video recording during O&M Period in such a manner so that there is no overlap and digital data of O&M Period

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is available in regular intervals (monthly) through drone videography.

Notwithstanding anything to the contrary contained in this document, the Concessionaire shall also develop a Project specific website which shall be accessible to the public and upload the time stamp pictures of the development of the Project each week regarding progress. The website must be accessible to the public. In addition, Authority shall also undertake need based drone videography as and when required. Authority shall ensure development of a project specific website by the Concessionaire. In case of default on this account, the Authority shall withhold an amount equivalent to Rs. 5 Lacs plus (drone rate X length of project X no. of defaulting week) from the dues to the Concessionaire. The Parties further agree that such video recording shall constitute evidence of the status and condition of the Project Area as on the date of such recording.

ARTICLE 14
COMPLETION CERTIFICATE

14.1 Tests

- 14.1.1 At least 30 (thirty) days prior to the likely completion of the Project, the Concessionaire shall notify the Independent Engineer of its intent to subject the Project 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 not less than 10 (ten) days notice to the Independent Engineer.
- 14.1.2 All Tests shall be conducted in accordance with Schedule-I. The Independent Engineer shall observe, monitor and review the results of the Tests to determine compliance of the Project 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 Project 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 Project 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-J (the “**Completion Certificate**”).

14.3 Provisional Certificate

- 14.3.1 Subject to the provisions of Clause 14.3.2, the Independent Engineer may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Schedule-J (the “**Provisional Certificate**”) if the Tests are successful and the Project can be safely and reliably placed in commercial operation though certain works or things 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

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due to is attributable to the Authority; provided further that the Punch List shall also include the cost of completion for each of the outstanding items.

- 14.3.2 The Parties hereto expressly agree that a Provisional Certificate under this Clause 14.3 may, upon request of the Concessionaire to this effect, be issued for operating part of the Project, if the Concessionaire has completed construction of 100% (Hundred per cent) of the Site made available to it up to 180 days from the Appointed Date. Upon issue of such Provisional Certificate, the provisions of Article 15 shall apply to such completed part, and the rights and obligations of the Concessionaire for and in respect of such completed part of the Project shall be construed accordingly.
- 14.3.3 In case the Authority requests the Concessionaire to operationalize different Ropeway Section of the Project separately, as defined in Schedule – B, a Provisional Certificate under this Clause 14.3 may, upon request of the Concessionaire to this effect, be issued for concerned Ropeway Section of the Project if the Concessionaire has completed commissioning of the Ropeway Section. Upon issue of such Provisional Certificate, the provisions of Article 15 shall apply to such completed Ropeway Section, and the rights and obligations of the Concessionaire for and in respect of such completed Ropeway Section of the Project shall be construed accordingly.

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 at its discretion to get the Punch List items completed at the risk and cost of the Concessionaire or to terminate this Agreement.

14.5 Withholding of Provisional or Completion Certificate

- 14.5.1 If the Independent Engineer determines that the Project or any part thereof does

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not conform to the provisions of this Agreement and cannot be safely and reliably placed in commercial operation, it shall forthwith make a report in this behalf and send copies thereof to the Authority and the Concessionaire within 15 (fifteen) days of conducting such tests. Upon receipt of such a report from the Independent Engineer and after conducting its own inspection, if the Authority is of the opinion that the Project is not fit and safe for commercial service, it shall, within 30 (thirty) days of receiving the aforesaid report, notify the Concessionaire of the defects and deficiencies in the Project and direct the Independent Engineer to withhold issuance of the Provisional Certificate or Completion Certificate, as the case may be. Upon receipt of such notice, the Concessionaire shall remedy and rectify such defects or deficiencies and thereupon Tests shall be undertaken in accordance with this Article 14. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.

14.5.2 Notwithstanding anything to the contrary contained in Clause 14.5.1, the Authority may, at any time after receiving a report from the Independent Engineer under that Clause, direct the Independent Engineer to issue a Provisional Certificate or Completion Certificate under Clause 14.3 or 14.2 respectively, and such direction shall be complied forthwith.

14.6 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)

- 15.1.1 The Project shall be deemed to be complete when the respective 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 (the “COD”). The Project 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.
- 15.1.2 Notwithstanding anything to the contrary contained in this Agreement, in case the Authority requests the Concessionaire to undertake partial operations for different Ropeway Section of the Project, as defined in Schedule - B the Concessionaire shall request for Provisional Certificate, as per Clause 14.3, for the Ropeway Section deemed to be operationalized. Post issuance of Provisional Certificate by Independent Engineer and as per the provisions given in respective Aerial Ropeway Act of the respective State Government or issuance of Safety Certificate by nominated State Technical Committee, the Ropeway Section of the Project deemed to be operationalized shall receive a “**Partial COD**”. This shall enable the Concessionaire to commence the commercial operations for the proposed Ropeway Section. However, the Concessionaire shall receive a COD only post completion and operationalization of all Ropeway Sections together of the Project.

15.2 Damages for Delay

Subject to the provisions of Clause 12.3, if COD or Partial COD does not occur prior to the 91st (ninety first) day after the Scheduled Completion 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 or Partial 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 or to make modifications/ alternations in the scope of works (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, which shall be final and binding

16.1.3 Any works or services which are provided under and in accordance with this Article 16 shall form part of the Project 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**”).

16.2.2 Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Authority and also to Independent Engineer such information as is necessary, together with detailed proposal 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 the following details:
 - i. break-up of the quantities, unit rates and cost for different items of work; and
 - ii. proposed design for the Change of Scope;
 - iii. proposed modifications, if any, to the Scheduled

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For the avoidance of doubt, the Parties expressly agree that subject to the provisions of Clause 16.1.2, the Change of Scope Order shall be issued for such Change of Scope of works of the Project.

- (c) The parties agree that costs and time for implementation of the proposed Change of Scope shall be determined as follows: -
 - (i) For items of works where schedule of rates of state's public works department prevailing on the date of Change of Scope Order are available, the same shall be applicable for determination of costs. In case of non-availability of schedule of rates for year of the prevailing date, the available schedule of rates shall be applied by updating the same based on yearly WPI.
 - (ii) For item of works not included in schedule of rates as mentioned in sub-para (i) above, the cost shall be derived on the basis of CPWD/ HP PWD and the rates given in applicable schedule of rates failing which the prevailing market rates. For any item in respect of which CPWD/HPPWD standard data book does not provide the requisite details, the Independent Engineer shall determine the rate in accordance with Good Industry Practice.
 - (iii) The costs of existing works or items, which are being changed/ modified shall also be valued as per above procedure and only net cost shall be considered.
 - (iv) The design charges shall be considered @ 1% (one per cent) of cost of COS. However, if COS is on net cost basis, the design charges @1% of negative COS shall not be deducted.
 - (v) The reasonable time for completion of works to be taken under Change of Scope shall be determined by the Independent Engineer on the basis of Good Industry Practice and if such time exceeds the Scheduled Completion Date, the issue of Completion Certificate shall not be affected or delayed on account of construction of Change of Scope items/ works remaining incomplete on the date of Tests.

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 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.

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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 as are certified by the Independent Engineer as reasonable and 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 Restriction 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 Project; 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 the Project 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

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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 Project. 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 (a) If the Concessionaire shall have failed to complete any Construction Works as specified in the Punch List items in accordance with Clause 14.4 and works deemed to be descope/ removed as per Clause 10.3.4, the cost of such works shall be determined as on the Bid Due Date as per the methodology provided in Clause 16.2.2 (c). Such cost shall be further multiplied by a factor of 1.30 and divided by Total Project Cost to arrive at the percentage (rounded upto two decimals) of incomplete works. The Concessionaire shall be liable to pay to the Authority such percentage of the Realisable Fee every month till completion of such works, in the form of an additional Concession Fee.

For the avoidance of doubt, the Total Project Cost to be reckoned for the purposes of this Clause shall include Equity, if applicable.

(b) without prejudice to the above, in case there is any reduction in effective length of the Project due to such incomplete work on account of Force Majeure or for reasons solely attributable to the Authority, the shortfall in Realisable Fee on this account shall be reimbursed by the Authority every month as if it would have enjoyed had such work been completed.

The Punch List items shall be reviewed quarterly and on completion of all or any of the Punch List items, the percentage of incomplete work and effective length shall be revised accordingly.

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 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 Project 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 Project to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform Specification and Standards and to Good Industry Practice. The obligations of the Concessionaire hereunder shall include:

- (a) permitting safe, smooth and uninterrupted use of the Project during normal operating conditions;
- (b) collecting and appropriating the Fee;
- (c) minimising disruption in the event of accidents or other incidents affecting the safety and use of the Project by providing a rapid and effective response and maintaining liaison with emergency services of the State;
- (d) carrying out periodic preventive maintenance of the Project;
- (e) undertaking routine maintenance including prompt repairs of Ropeway system, structures, markings, lighting, signages and other traffic control devices;
- (f) undertaking the preventive and major maintenance and overhaul works such as repair at the stations, systems and equipment installation, ropeway and passenger cable cars, rescue and evacuation equipment, safety audits etc.;
- (g) preventing, with the assistance of concerned law enforcement agencies, any unauthorised use of the Project or attempt to damage or harm any equipment, system, or structures;
- (h) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on or unauthorized entry to the Project or Project Area;
- (i) protection of the environment and provision security to equipment and materials therefore;
- (j) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Project and for providing safe, smooth and uninterrupted use of Project;
- (k) maintaining a public relations unit to interface with and attend to suggestions from the Users, government agencies, media and other agencies; and

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- (l) complying with Safety Requirements in accordance with Article 18.
- (m) As a part of the annual operation and maintenance schedule, the Concessionaire shall plan and schedule safety audits of the Project, its plant, machinery and equipment including operating conditions, contingency plans to handle any emergency situations etc. (“Safety Audit”). The Safety Audit shall be conducted at least twice a year with a gap not exceeding six (06) months between any two audits and shall be conducted and undertaken by an independent external agency qualified and equipped to handle such audits and to be selected by the Authority from the list of eligible and competent agencies submitted by the Concessionaire on or before the COD of the Project. The fee payable to the external agency for conducting the Safety Audit shall, initially, be borne by the Concessionaire and 50% (fifty percentage) of the same shall be reimbursed by the Authority to the Concessionaire along with the following installment of the O&M payment. The list of eligible and competent agencies shall be updated periodically, every 03 years, by the Concessionaire. The scope of Safety Audit and the terms of reference thereof shall be jointly settled by the Concessionaire and the Authority, who shall have a right to seek advice from the Independent Engineer or the Safety Consultant (appointed in terms of Article 18) on the same.
- (n) Procuring and maintaining throughout the Concession Period satisfactory contractual arrangements with Original Equipment Manufacturer (OEM), for the regular maintenance of critical equipment and for supply of spares including up-gradation and modernization of the systems and equipment installed from time to time;
- (o) The Concessionaire shall provide, free of charge and in accordance with Good Industry Practice, office space and other facilities to security and other government agencies, if any, as the case may be, for discharging their statutory functions;
- (p) Concessionaire shall operate and provide a comprehensive range of auxiliary services as part of the Project and provide the services efficiently to meet the demands of the Users at all times and comparable to the quality of service provided at other similar international locations outside India.
- (q) Provide traffic management to Project Facilities ensuring access to the Project Facilities at all times;
- (r) The Concessionaire shall regulate the use of the Station building by third parties and provide non-discriminatory access to all Users in accordance with the provisions of this Agreement
- (s) **Signages:** The Concessionaire shall maintain illuminated signage’s in accordance with applicable codes and standard;
- (t) **Lighting:** Adequate lighting system in the Station, in accordance with applicable standards and codes. The entry and exit areas of the Project shall be provided with auxiliary emergency lighting system

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17.1.2 The Concessionaire shall remove promptly from the Project 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 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 (to be decided in consultation with the Independent Engineer)

17.2 Maintenance Requirements

The Concessionaire shall procure that at all times during the Operation Period, the Project conforms to the maintenance requirements set forth in Schedule-K (the "Maintenance Requirements").

17.3 Maintenance Manual

17.3.1 Not later than 180 (one hundred and eighty) days prior to the Scheduled Completion Date, the Concessionaire shall, in consultation with the Independent Engineer, evolve a repair and maintenance manual (the "Maintenance Manual") for the regular and preventive maintenance of the Project 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 as agreed between the Authority and the Concessionaire and the provisions of this Clause 17.3 shall apply, mutatis mutandis, to such revision.

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 or Partial COD, whenever applicable and no later than 45 (forty five) days prior to the beginning of each Accounting Year during the Operation Period, as the case maybe 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. Such Maintenance Programme shall include:

- (a) preventive maintenance and overhaul 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 Project;

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- (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, closures, diversions, breakdowns and accidents, it shall follow the relevant operating procedures including the setting up of temporary lights, safety apparatuses, rescue and retrieval equipment 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 Project shall be limited to an initial response to any particular incident and shall be limited to getting the passengers safely to the nearest Station for disembarkation. The technology provider shall define standard operating procedure 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, shall be deployed forthwith.

The competent authority shall promptly take charge of the rescue operations and the Concessionaire shall render all assistance and co-operation to the competent authority as may be required and shall promptly ensure removal of vehicles or debris or any other obstruction, which may endanger or interrupt the rescue operations or the use of the Project. For this purpose, it shall maintain and operate a round-the-clock rescue post with equipment in accordance with Good Industry Practice.

17.6 Stoppage due to Emergency

17.6.1 If, in the reasonable opinion of the Concessionaire, there exists an Emergency which warrants stoppage and closure of the whole or any part of the Project, the Concessionaire shall be entitled to stop and close the whole or any part of the Project for so long as such Emergency and the consequences thereof warrant; provided that such stoppage 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.

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- 17.6.2 The Concessionaire shall resume the operations of the Project or the affected part thereof as quickly as practicable after the circumstances leading to its stoppage and closure have ceased to exist or have so abated as to enable the Concessionaire to resume the operations of the Project and shall notify the Authority of the same without any delay.
- 17.6.3 Any stoppage or closure of any part of the Project and the resuming of operations thereof shall, as soon as practicable, be brought to the notice of affected persons by means of public announcements/notice.

17.7 Project closure

- 17.7.1 The Concessionaire shall not close any part of the Project for undertaking maintenance or repair works not forming part of the Maintenance Program, except with the prior written approval of the Independent Engineer. Such approval shall be sought by the Concessionaire through a written request to be made to the Independent Engineer, and a copy thereof furnished to the Authority, at least 7 (seven) days before the proposed closure of such lane and shall be accompanied by particulars thereof. Within 3 (three) days of receiving such request, the Independent Engineer shall grant permission with such modifications as it may deem reasonable and necessary in conformity with the Maintenance Manual and Maintenance Program and a copy of such permission shall be sent to the Authority.
- 17.7.2 The provisions of Clause 17.7.1 shall not apply to de-commissioning under Clause 17.6.1 or to closure for a period not exceeding 2 (two) hours in a day at any time of the day and 6 (six) hours in a day at a time specified by the Independent Engineer as off-peak hours when usage of the Project is comparatively lower.
- 17.7.3 Upon receiving the permission pursuant to Clause 17.7.1, the Concessionaire shall be entitled to close the designated part of the Project for the period specified therein, and in the event of any delay in re-opening such part, the Concessionaire shall pay Damages to the Authority calculated at the rate of 0.1% (zero point one per cent) of the Average Daily Fee for every section of the Project, or part thereof, for each day of delay until the Project has been reopened for Users.

17.8 Damages for breach of maintenance obligations

- 17.8.1 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.

Notwithstanding anything contained in this agreement, should the actual traffic exceed the design capacity, during any year or part thereof and 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

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deemed to be in breach of this Agreement and the Authority shall be entitled, from such date, to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the higher of (a) 5% (five per cent) of Average Daily Fee, and (b) 1% (one per cent) of the cost of such repair or rectification as estimated by the Independent Engineer, for the balance period of the concession.

Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

17.8.2 The Damages set forth in Clause 17.8.1 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.

17.9 Authority's right to take remedial measures

17.9.1 In the event the Concessionaire does not maintain and/or repair the Project 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 17.9.1 shall be without prejudice to its rights and remedies provided under Clause 17.8.

17.9.2 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 17.9.1 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 17.9.2 and debit the same to O&M Expenses under para 4.1.1 (h) and 4.2 (d) of the Escrow Agreement.

17.10 Overriding powers of the Authority

17.10.1 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.

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17.10.2 In the event that the Concessionaire, upon notice under Clause 17.10.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Clause 17.10.2 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 17.9 along with the Damages specified therein.

17.10.3 In the event of a national emergency, civil commotion or any other act specified in Clause 31.3, 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 Project 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, the consequences of such action shall be dealt in accordance with the provisions of Article 31. 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 17.10, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

17.11 Restoration of loss or damage to the Project

Save and except as otherwise expressly provided in this Agreement, in the event that the Project 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 Project conforms to the provisions of this Agreement.

17.12 Modifications to the Project

The Concessionaire shall not carry out any material modifications to the Project save and except where such modifications are necessary for the Project 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 the Specifications and Standards, Applicable Laws and the provisions of this Agreement.

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17.13 Excuse from performance of obligations

The Concessionaire shall not be considered in breach of its obligations under this Agreement if any part of the Project is not available to the users 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 Project 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 Project.

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

17.14 Barriers and diversions

The Authority shall procure that during the Operation Period, no barriers are erected or placed by any Government Instrumentality on the Project access roads, 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 Project that may cause a material adverse effect on the flow of traffic to and from the Project.

17.15 Advertising on the Site

(a) The Concessionaire shall not undertake or permit any form of commercial advertising, display or hoarding at any place on the Site if such advertising, display, or hoarding shall diminish the aesthetic quality of the Project or violates Applicable Laws. The Concessionaire shall ensure that all advertising related activities are restricted within the premises / built-up area of the Project. All advertising on the Project 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.

(b) The Concessionaire shall ensure that all advertising related activities are restricted within the premises / built-up area of the Project. Any damages suffered or caused to any of the structures at the Project Area shall be restored and repaired to the original condition by the Concessionaire at its own cost & expenses;

(c) Further any or all advertisement hoardings or banners shall be so placed that they do not obstruct the operations or visibility of the operators at Project Facilities, Station control rooms, affect or obstruct the lighting equipment installed, signage's etc.

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17.16 Installation and operation of CCTV and Control Center

The Concessionaire shall install and operate a closed circuit television system to monitor such parts of the Project as may be necessary and expedient for a safe, secure and smooth operation thereof. All live feed from the CCTVs shall be made available in a control center, which shall be accessible to the Authority and concerned representatives.

17.17 Operation of Ropeway Cable cars:

The Project shall be operated for 10 hours operation time per day. The start and ending of the operation time shall be intimated to the Concessionaire on or before the appointed date.

17.18 Operation of Stations

(i) The Concessionaire shall be entirely responsible for the O&M of the Stations and all the ancillary offices, amenities and facilities during the entirety of the Concession Period, in terms of this Agreement. As mentioned in Article 5.8, the Concessionaire shall operate and maintain amenities, in adequate numbers in accordance with Good Industry Practice for non-discriminatory use by the Users of the Project. The amenities shall include drinking water facilities, sanitation facilities, toilets, locker facility, and telephone and communication facilities. The Concessionaire shall also ensure that the eateries, canteens, if any, within the premises of the Terminal Stations shall be hygienic and safe, in accordance with Good Industry Practice.

(ii) The Concessionaire shall provide and maintain an adequate supply of efficient baggage trolleys / wheel chairs (for senior citizens or for persons requiring any special assistance) within easy reach of the platform areas and at the entry point of the Terminal Station.

(iii) Users who require special assistance:

The Concessionaire shall procure that the Terminal Station shall meet the travelling needs of elderly persons and differently abled Users, including the provision of ramp ways, modified toilets, wheelchairs, and earmarked places slots in conformity with Specifications and Standards and Good Industry Practice, and at no extra cost to such Users. The Concessionaire shall also procure provision of childcare room and facilities within the Terminal Station building, at no additional cost to User. The Concessionaire shall operate and maintain the Project in accordance with Good Industry Practices, in compliance with safety, environmental and other applicable laws, maintenance manual and Article 38.

**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 and the surrounding areas and structures and hereditaments thereon. In particular, the Concessionaire shall develop, implement, and administer a surveillance and safety programme for providing a safe environment on or about the Project, and shall comply with the safety requirements set forth in Schedule-L (the “**Safety Requirements**”).
- 18.1.2 The Authority shall appoint, at its own cost, an experienced and qualified firm or organisation (the “**Safety Consultant**”) for carrying out safety audit of the Project in accordance with the Safety Requirements and shall take all other actions necessary for securing compliance with the Safety Requirements.
- 18.1.3 Without prejudice to clause 18.2 hereof, the Authority shall, if required under special circumstances at its own cost and expense, provide or cause to be provided security within the limits of the Project for the prevention of terrorism, hijacking, sabotage and/or similar acts or occurrences; provided that the Authority and the Concessionaire may at any time mutually enter into an agreement to jointly provide security services for the Project. Notwithstanding anything to the contrary contained herein the Concessionaire shall be responsible for the security arrangements within the Site in order to maintain orderly conduct of its business and the security thereof;

Further the Authority agrees that it shall, at the request of the Concessionaire, procure and provide the services of security forces of the Authority. The Authority shall ensure and procure that the personnel of the Concessionaire and all its Contractors, suppliers, sub-contractors and the Users of the Project are allowed free ingress and egress from the limits of the Project without any unreasonable interference by the personnel of the Authority but subject to adherence of the security protocol, including the security personnel employed by or on behalf of the Authority.

- 18.1.4 The Concessionaire shall abide by and implement any instructions of the Authority for enhancing the security within and around the Project. The Concessionaire shall not be entitled to any compensation for disruption of its operations or loss or damage resulting from the Authority’s actions or the actions of any organization permitted by the Authority other than those resulting from willful or grossly negligent acts or omissions of such organizations. The Authority agrees that it shall cause the relevant organizations to take such actions as reasonably deemed necessary by them, without unduly or unreasonably disrupting the operations of the Project or interfering with the exercise of rights or fulfillment of obligations by the Concessionaire under this Agreement. The Concessionaire agrees that it shall extend its full support and cooperation to the Authority and to the other organizations permitted by the Authority in the discharge of their obligations there under.

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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.

18.3 Safety Manual:

The Authority shall lay emphasis on aspects of User safety, system reliability and availability for the Project and require the Concessionaire to submit a safety manual (the “**Safety Manual**”) no later than 180 (one hundred and eighty) days prior to the Scheduled Date which shall be in compliance with the requirements specified in Schedule –L.

18.4 Enquiry and Investigation

18.4.1 Without prejudice to the provision of clause 19.6 Report of Unusual Occurrence in any unfortunate event of any accident or mishap or any unusual event occurring during the operation and maintenance of the Project leading to any significant loss or damage to any property or structure the Concessionaire shall within 03 (three) days of the incident submit a report of the same to the Authority with detailed reasons causing such accident or mishap and remedial measure taken along with the current status of the same. For the purpose hereof any loss or damage which requires an expense of more than Rupees 1,00,000/- (One Hundred Thousand) for restoring the damaged / lost property to its original condition shall be deemed to be a “significant loss or damage”.

Further if any such incident leads to any loss of life or any grievous bodily injury (i.e. injury which requires hospitalization for more than 48 hours) or requires suspension of ropeway operations for 03 (three) hours or more during the working hours on any day, the same shall reported forthwith to the Authority the same day.

18.4.2 The Authority, upon perusal of the incident report, may at its discretion direct an enquiry / investigation into the matter through the Safety Consultant or any Government Instrumentality to investigate the cause leading to such incident. It is clarified that the objective of the enquiry / investigation shall be for understanding the reasons and circumstances leading such accident, mishap, or unusual occurrence and to avoid its repletion in future through remedial measures.

18.4.3 However the Concessionaire further explicitly and unconditionally agrees & acknowledges that all or any liability or responsibility or accountability resulting from or arising out of such accident or mishap, or unusual occurrence shall, subject to Applicable Laws, be the sole responsibility of the Concessionaire and

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the Concessionaire shall keep the Authority (including its officers and representatives) fully indemnified and protected against any such liability or claim. The Concessionaire shall in accordance with the Good Industry Practice procure and keep in place, at all times during the Concession Period, sufficient insurance cover, from a reputed insurance company, against any claim for damage or loss to property.

ARTICLE 19

MONITORING OF OPERATION AND MAINTENANCE

19.1 Monthly status reports

19.1.1 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 Project 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.

19.1.2 During Operation Period, the Concessionaire shall, no later than 10 (ten) days after the close of each month, furnish a monthly management report which shall include a summary of:

- (a) key performance indicators achieved in the month, along with an analysis of reasons for failures, if any, and proposals to remedy the same;
- (b) key operational hurdles and deliverables anticipated in the succeeding month along with strategies for addressing the same and for otherwise improving the Project's operational performance; and
- (c) key financial parameters for the month, as benchmarked against the monthly budget and the reasons for shortfall, if any, and proposals to remedy the same.

19.2 Inspection

The Independent Engineer shall inspect the Project at least fortnightly. 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. The Authority on a written request from the Lenders’ Representative shall be obliged to provide a copy of the such O&M Inspection Report.

19.3 Tests

For determining that the Project conforms to the Maintenance Requirements, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Independent Engineer and furnish the results of such tests forthwith 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.

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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 Project into compliance with the Maintenance Requirements and the procedure set forth in this Clause 19.4 shall be repeated until the Project 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-M (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 Project relating to the safety and security of the Users and Project. A weekly and monthly summary of such reports shall also be sent within 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 Project shall include:

- (a) death or injury to any person;
- (b) damaged or dislodged fixed equipment;
- (c) any obstruction on the Project, 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 Project;
- (f) smoke or fire;
- (g) project disruption due to natural calamity;
- (h) Broken or cracked ropes

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- (i) Obstruction in opening/closing of doors of doors of a cable car; and
- (j) such other relevant information as may be required by the Authority or the Independent Engineer.

19.7 Traffic & Service Quality Survey and Operations Data Collection:

19.7.1 Traffic & Service Quality Survey:

The Authority may require the Concessionaire to conduct, during each year of the Concession Period, a detailed traffic survey and service quality survey inter-alia focusing on the comfort and convenience of the Users of the Project, at such frequency and on such days as the Authority may specify, provided that the cumulative period of such survey shall not exceed 7 (seven) days in a year. The Concessionaire shall, at its own cost, cause to be carried out through an external agency, the survey's in the form and manner reasonably specified by the Authority and furnish a report, in the prescribed format, thereof within 07 (seven) days of the completion of each survey.

For the avoidance of doubt, the Authority may also at its cost, independently, conduct traffic surveys and /or service quality survey in such manner as it deems fit, through any external agency designated by it for this purpose.

19.7.2 Operations Data

The Concessionaire shall install and maintain an automated fare collection system (AFC System) which would help in collating and maintaining electronic/computerized User data and control the entry and exit of users with a valid ticket/pass holders; with the objective of, inter-alia collection, storage of data in a manner capable of being retrieved and analyzed relating to the number of Users visiting the Project, distance travelled, seasonal variations and capacity utilization of the Project, and average travel time per round trip. Data in respect of customer grievance handling system, notices from local authorities or regulatory authorities, if any, in relation to any breach or violation or threatened breach / violation or in relation to any environmental concerns shall also be maintained by the Concessionaire in a manner capable of be retrieved and analyzed as and when required by the Authority.

A statement of such data shall be compiled and furnished by the Concessionaire to the Authority as part of the Monthly Progress Report to be submitted by the Independent Engineer. The Concessionaire shall also provide viewing access to the Database Server of the AFC system. The system would have following components:

- Level 0 (User Level): QR codes printed on ticket / NCMC
- Level 1 (Terminal Level): Turnstile Gates, Handheld ticket validation machines, QR code printer and readers, POS machines, NCMC reader, Computer, Cash drawers, Ticket vending machines
- Level 2: Servers for App, Database and Website
- Level 3: Website for online purchase of tickets with Payment gateway integration

**ARTICLE 20
TRAFFIC REGULATION**

20.1 Traffic regulation by the Concessionaire

The Concessionaire shall regulate traffic on the Project in accordance with the Applicable Laws, and subject to the supervision and control of the State authorities or a substitute thereof empowered in this behalf under the Applicable Laws.

20.2 Police assistance

For regulating the use of Project in accordance with the Applicable Laws and this Agreement, the Authority shall assist the Concessionaire in procuring police assistance from the State Police Department or a substitute thereof. The police assistance shall include setting up of a traffic aid post (the “**Traffic Aid Post**”) at each of the stations with a mobile Police squad for round-the-clock patrolling of the part or full Project Area.

Though the Concessionaire shall be primarily responsible for ensuring the safety of the Users and Project Facility and shall accordingly put in place an adequate security, safety and surveillance arrangement, however, and without any prejudice to the provisions of Clause 18, if the Authority is of the opinion or is requested by the Concessionaire to make provision of additional security through state law enforcement agencies in view of any specific threat or under any other circumstances requiring state law enforcement agencies intervention, the Authority shall, in consultation with concerned Government Instrumentalities and Concessionaire, make suitable security arrangements at its own cost.

20.3 Recurring expenditure on Police assistance

On or before the Scheduled Completion Date or whenever required, the Concessionaire shall provide to the State Police Department or a substitute thereof one Jeep or similar vehicle in good working condition along with chauffeurs for round-the-clock patrolling as set forth in Clause 20.2 and shall meet the operating costs of such vehicle including the salaries and allowances of the chauffeurs. - For the avoidance of doubt, it is agreed that the Concessionaire shall not be liable for any other expenditure incurred by the State Police Department or a substitute thereof.

20.4 Developer is required to make a provision for 1 (One) room of 15ftx15ft for medical aid & 1 (One) room of 15 ft x 15 ft police beat each in all the Station buildings.

20.5 Buildings for helping / information desks

The Concessionaire shall construct, at its own cost and expense, helping and / or information desks at entry and exit points within the Terminal Station premises to assist / aid the passengers for any information that they may require about the Ropeway System. The Concessionaire shall also deploy its own manpower to man the helping / information desk at its own cost.

ARTICLE 21

EMERGENCY MEDICAL AID

21.1 Medical Aid Posts

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 stations with round-the-clock ambulance services for victims of accidents on the Project.

21.2 Buildings for Medical Aid Posts / Nursing Staff Facility

The Concessionaire shall, at its cost and in accordance with the type designs prescribed for such buildings by the State Medical Department (or a substitute thereof to be designated by the Authority), construct an aid post and 2 (two) residential quarters, and hand them over to the Authority, not later than 30 (thirty) days prior to Scheduled Completion date. The Medical Aid Post(s) shall be deemed to be part of the Site and shall vest in the Authority.

The Concessionaire shall also provide a medical room with nursing staff facilities to assist in the first aid for any immediate assistance. To account for any major injury / accident incurred to the passengers, the Concessionaire shall, in advance, tie up with the nearest hospital, in case of any immediate need of hospitalization. The Concessionaire should also ensure a live feed, round-the-clock to the Independent Engineer, Authority and any other entity that Authority may specify.

21.3 Recurring expenditure on Medical Aid Posts

On or before COD, the Concessionaire shall provide to the State Medical Department or a substitute thereof to be designated by the Authority one ambulance in good working condition along with chauffeurs for round-the-clock ambulance services as set forth in Clause 21.1 and meet the operating costs of such ambulance including the salaries and allowances of the chauffeurs. The Concessionaire shall also reimburse to the State Medical Department (or a substitute thereof to be designated by the Authority) the actual expenditure incurred by it in each Accounting Year on the medical equipment, and the pay and allowances of up to 2 (two) medical personnel deployed exclusively for the Medical Aid Posts and ambulance, and shall maintain the Medical Aid Post buildings in accordance with Good Industry Practice. For the avoidance of doubt, it is agreed that the Concessionaire shall not be liable for any other expenditure incurred by the State Medical Department or a substitute thereof to be designated by the Authority.

ARTICLE 22

TRAFFIC CENSUS

22.1 Traffic census

The Concessionaire shall install, maintain, and operate electronic / computerized counters at each of the Stations and collect data relating to the number of users using the Project. A weekly statement of such data shall be compiled and furnished forthwith by the Concessionaire to the Authority substantially in the form specified in Schedule-N.

22.2 Computer systems and network

The Concessionaire shall install, operate and maintain a computer system with round-the-clock connections to the networks of the Authority and other related entities for exchange of data and information useful or necessary for efficient and transparent regulation and management of traffic. For this purpose, it shall follow such protocol for Electronic Data Interchange (the “EDI”) as the Authority may specify. For the avoidance of doubt, it is agreed that the form specified in Schedule-N may be modified by the Authority from time to time for conforming to the requirements and output of EDI.

ARTICLE 23

INDEPENDENT ENGINEER

23.1 Appointment of Independent Engineer

The Authority shall appoint a consulting engineering firm substantially in accordance with the selection criteria set forth in Schedule-P, to be the independent consultant under this Agreement (the “**Independent Engineer**”). The appointment shall be made no later than 180 (one hundred eighty) days from the date of this Agreement and shall be for a period of 5 (five) years. On expiry or termination of the aforesaid period, the Authority may in its discretion renew the appointment, or appoint another firm to be the Independent Engineer for a term of 5 (five) years, and such procedure shall be repeated after expiry of each appointment during the Concession Period.

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-Q.

23.2.2 A 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.

23.2.3 A 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.

23.2.4 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, substantially in the format prescribed at Appendix – IV^{††*}.

23.3 Remuneration

The remuneration, cost and expenses of the Independent Engineer shall be paid by the Authority and subject to the limits set forth in Schedule-P, 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.

^{††} A sample format enclosed at Appendix – IV in clause 23.2.4 and Schedule Q. The format may be modified as per requirement of the project

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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.

23.7 Interim arrangement

In the event that the Authority does not appoint an Independent Engineer, or the Independent Engineer so appointed has relinquished its functions or defaulted in discharge thereof, the Authority may, in the interim, designate and authorize any person to discharge the functions of the Independent Engineer in accordance with the provisions of this Agreement, save and except that such person shall not exercise any functions relating to review, comment, approval or inspection as specified in this Agreement for and in respect of the Independent Engineer, and such functions shall be discharged as and when an Independent Engineer is appointed in accordance with the provisions of this Agreement. Provided, however, that nothing contained in this Clause 23.7 shall in any manner restrict the rights of the Authority to enforce compliance of the provisions of this Agreement.

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 365 (three hundred and sixty five) 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, or for a further period not exceeding 200 (Two Hundred) days, subject to payment of Damages specified in Clause 4.3; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 365 (three hundred and sixty five) 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 31.6.1, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 24.1.1, 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.

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, 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 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

PREMIUM

25.1 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, 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 26.3.

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. 1 (Rupee one) 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 immediately after the first (1st) anniversary year of COD, a premium (the “**Premium**”) in the form of an additional Concession Fee for every year of the remaining Concession Period, to be calculated on total Realisable Fee in the manner stated in this clause. The Premium to be paid for the 2nd year of the COD shall equal to (..... percent) of the total Realisable Fee during that year. For all subsequent years, the Premium shall be determined on the total Realisable Fee in the respective year at the percentage to be arrived at by increasing the percentage of Premium by 5% (five percent) as compared to the immediately preceding year.

For the avoidance of doubt, and by way of illustration, if the Premium for the 1st year after COD is 1.0% (one per cent), then the Premium for the 2nd year shall be equal to 1.05% (one point zero five per cent) of the total Realisable Fee for that year.

26.2.2 The Premium payable under Clause 26.2.1 and payment payable under Clause 16.6.1 (a) by the Concessionaire shall be deemed to be part of the Concession Fee for the purposes of this Agreement.

26.3 Payment of Concession Fee

The Concession Fee payable under the provisions of this Article 26 shall be due and payable in monthly instalments, within 7 (seven) days of the close of each month.

26.4 Verification of Realisable Fee

26.4.1 The Authority may, in order to satisfy itself that the Concessionaire is reporting its Realisable Fee honestly and faithfully, depute its representatives to the station(s) and the offices of the Concessionaire, and undertake such other measures and actions as it may deem necessary, to ascertain the actual Fee revenues.

26.4.2 The Parties hereto agree that if the average daily Fee revenue determined under this Clause exceeds the average daily Realisable Fee reported by the Concessionaire during the preceding month by 1% (one percent) thereof, the difference between such Fee revenue and Realisable Fee shall be multiplied by

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180 (one hundred and eighty) and the product thereof shall be paid as Damages by the Concessionaire to the Authority, and in the event of any Dispute relating to the traffic sampling, the Dispute Resolution Procedure shall apply. For the avoidance of doubt, it is agreed that seasonal variations in traffic volume shall be determined by the Independent Engineer on the basis of past trends and other relevant information, and due weightage shall be assigned to such variations in computing the Realisable Fee under this Clause 26.4.2.

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 this Agreement; provided that for ease of payment and collection, such Fee shall be rounded off to the nearest 5 (five) rupees; provided further that the Concessionaire may determine and collect Fee at such lower rates as it may, by public notice to the Users, specify in respect of all or any category of Users.
- 27.1.2 The Parties acknowledge that a notification for levy and collection of Fee shall be issued by the State Govt. as per the relevant State Aerial Ropeway Act and Rules (the “**Fee Notification**”) within 90 (ninety) days hereof substantially in the form set forth in Schedule-R.
- 27.1.3 The Concessionaire acknowledges and agrees that upon payment of Fee, any User shall be entitled to use the Project 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.
- 27.1.4 The Concessionaire acknowledges and agrees that any User who is not liable for payment of the Fee shall be entitled to use the Project without any restrictions, except to the extent specified in any Applicable Law, Applicable Permit, or the provisions of this Agreement. For the avoidance of doubt, the Concessionaire hereby acknowledges that exempted users are not liable to payment of Fee.

27.2 Revision of Fee

- 27.2.1 The concessionaire has the authority to set and revise the User Fees for the ropeway project at its own discretion, depending on the business model.

27.3 User Fee Collection Contractor

The Concessionaire may appoint a User Fee Collection Contractor or any other person to collect the Fee for and on behalf of the Concessionaire, provided that notwithstanding such appointment, the Concessionaire shall be and remain solely liable and responsible for the collection of Fee in accordance with this Agreement and its deposit into the Escrow Account and for compliance with the provisions of this Agreement.

27.4 Fee collection points

Fee shall ordinarily be collected from Users at the Ticket Counters at Ropeway Stations and Ticket Vending Machines for using the whole or part of the Project; provided that for preventing evasion of Fee by any User. To cater to the increased flow of traffic, the Concessionaire shall be entitled to set up at its own risk and cost, and in consultation with the Independent Engineer, its temporary or permanent User Fee collection booths, as may reasonably be necessary.

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27.5 Additional charge for evasion of Fee

In the event that any user uses the Project without payment of Fee due, the Concessionaire shall be entitled to determine and collect from such user the Fee due and an equivalent amount towards predetermined liquidated damages for attempt to make unauthorised use of the Project; provided that the determination and collection of such liquidated damages shall be at the risk and cost of the Concessionaire and the Authority shall not in any manner be liable on account thereof; provided that upon failure of the user to pay Fee, the Concessionaire may prevent such user from using the Project and may have such user removed therefrom.

27.6 Display of Fee rates

27.6.1 The Concessionaire shall conspicuously display the Fee structure at each of the Terminal Stations of the Project using signages at least in English, Hindi and vernacular language.

27.6.2 The Concessionaire shall, from time to time, 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 revision of Fee under and in accordance with this Agreement.

27.6.3 The Concessionaire shall not revise, display, or collect any amounts in excess of the rates as notified by the State Govt. In the event any excess amounts are collected by or on behalf of the Concessionaire or collect Fee during periods when it is not entitled to do so, it shall, upon receiving a notice to this effect from the Authority, deposit with the Authority such excess amounts to the Authority along with Damages equal to 200% (two hundred percent) thereof.

27.7 Fee collection

The Concessionaire agrees and undertakes to collect, as its own cost and expense, by various means such as cash, UPI, Net Banking or any other modes acceptable by users and devices as the Authority may determine from time to time.

27.8 Real time data for user fee collection

The Concessionaire shall install appropriate mechanism to ensure that a real time data of user count and corresponding revenue collection shall be shared with the Authority at all times during the Operations period.

ARTICLE 28
ESCROW ACCOUNT

28.1 Escrow Account

- 28.1.1 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.
- 28.1.2 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.
- 28.1.3 The Escrow Bank shall also provide to the Authority the facility for online viewing and downloading the account statement of Escrow Account at all times during the Concession Period.

28.2 Deposits into Escrow Account

The Concessionaire shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account from COD or partial COD, wherever applicable on a monthly basis:

- (a) all funds constituting the Financial Package;
- (b) all Fee and any other revenues from or in respect of the Project, including the proceeds of any rentals, license fees, deposits, capital receipts or insurance claims or any compensation amount received; 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.

28.3 Withdrawals during Concession Period

- 28.3.1 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 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 Project;
 - (b) all payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;

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- (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; 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 Clause 17.9.2 and debit the same to O&M Expenses.
- (h) monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- (i) any reserve requirements set forth in the Financing Agreements; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire.

28.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Clause 28.3.1, except with the prior written approval of the Authority.

28.4 Withdrawals upon Termination

28.4.1 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 Project;
- (b) outstanding Concession Fee;
- (c) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire and any claims in connection with or arising out of Termination;

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 Clause 17.9.2 and debit the same to O&M Expenses.

- (e) retention and payments relating to the liability for defects and

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deficiencies set forth in Article 36;

- (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 this Agreement; and
- (j) 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 28.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of Article 34.

28.4.2 The provisions of this Article 28 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 29.4.1 have been discharged.

ARTICLE 29

INSURANCE

29.1 Insurance during Concession Period

The Concessionaire shall effect and maintain at its own cost, during the Construction Period and the Operation Period, such insurances for such maximum sums not less than the engineering, procurement and construction cost 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.

Without prejudice to the above provisions, the Concessionaire shall, after the COD, procure and maintain Insurance Cover including but not limited to the following:

- (a) Loss, damage or destruction of the Project Assets, including assets handed over by the Authority to the Concessionaire, at replacement value;
- (b) Comprehensive third-party liability insurance including injury to or death of personnel of the Authority or others caused by the Project;
- (c) The Concessionaire's general liability arising out of the Concession;
- (d) Liability to third parties for goods or property damage;
- (e) Workmen's compensation insurance; and
- (f) passenger accident insurance for the passengers on-board the ropeway project having a valid ticket. For the avoidance of doubt, the Concessionaire shall procure an insurance equivalent to at least Rs.10 lakhs in case of any fatality and at least Rs.2 lakhs in case of any type of injury; 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

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29.2 Notice to the Authority

Not 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 30. 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.

29.3 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 29 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.

29.4 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.

29.5 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 29 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.

29.6 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

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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.

29.7 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 28.3, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

ARTICLE 30

ACCOUNTS AND AUDIT

30.1 Audited accounts

30.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including all Realisable Fees and other revenues derived/collected by it from or on account of the Project 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 180 (one hundred and eighty) 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.

30.1.2 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.

30.1.3 On or before the 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 traffic count of Passengers using the Project and liable for payment of Fee therefor, (b) Fee charged and received, Realisable Fee and other revenues derived from the Project, and (c) such other information as the Authority may reasonably require.

30.2 Appointment of auditors

30.2.1 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.

30.2.2 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.

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30.2.3 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**”) as may be decided by the Authority 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.

30.2.4 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**”) as may be decided by the Authority to undertake concurrent audit of the Concessionaire’s accounts.

30.3 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 or any periodic information in pursuance of the provisions of this agreement, save and except where such certification is expressly provided.

30.4 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.

30.5 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 31
FORCE MAJEURE

31.1 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 31.2, 31.3 and 31.4 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.

31.2 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 Project 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 31.3;
- (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.

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31.3 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.
- (g) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible
- (h) failure of the Authority to permit the Concessionaire to continue its Construction Works, with or without modifications, in the event of stoppage of such works after discovery of any geological or archaeological finds or for any other reason;

31.4 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) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;
- (b) 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;
- (c) 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

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such Contractor; or

- (d) any event or circumstance of a nature analogous to any of the foregoing.

31.5 Duty to report Force Majeure Event

31.5.1 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 31 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.

31.5.2 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 not 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.

31.5.3 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 31.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

31.6 Effect of Force Majeure Event on the Concession

31.6.1 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.

31.6.2 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 collection is less than 90% (ninety per cent)

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of the Average 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 Fee for four days shall entitle the Concessionaire to extension of one day in the Concession Period.

31.7 Allocation of costs arising out of Force Majeure

31.7.1 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.

31.7.2 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, upon occurrence of a Force Majeure Event after the Appointed Date till achievement of COD, Force Majeure Costs may include interest payments on Debt Due and all other costs directly attributable to the Force Majeure Event, but shall not include loss of Fee revenues or debt repayment obligations, and such Force Majeure Costs shall be determined as under.

- i) escalation on value of incomplete work to be determined on the basis of variation in WPI from the initial date set forth for the Scheduled Completion Date in Schedule G till achievement of COD, proportionately for the period of delay attributable to the Force Majeure Event;
- ii) prolongation costs equal to 8% of value of incomplete work multiplied by the period of delay attributable to the Force Majeure Event divided by the period specified in Clause 12.3.1;
- iii) interest on Debt Due for the period of delay attributable to the Force Majeure Event;

For the avoidance of doubt, the incomplete work shall mean the incomplete work attributable only to the Force Majeure Event. The value of such work shall be assessed as on the Bid Due Date by Independent Engineer as per the methodology provided in Clause 16.2.2 (c).

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Provided, upon occurrence of a Force Majeure Event after the COD till Transfer Date, Force Majeure Costs may include (a) interest on Debt Due and (b) O&M expenses as determined from original Financing Agreements.

31.7.3 Save and except as expressly provided in this Article 32, 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.

31.8 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 32, 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.

31.9 Termination Payment for Force Majeure Event

31.9.1 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.

31.9.2 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.

31.9.3 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 34.3.2 as if it were an Authority Default.

31.10 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.

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31.11 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 32

COMPENSATION FOR BREACH OF AGREEMENT

32.1 Compensation for default by the Concessionaire

Subject to provisions of Clause 32.5 and 34.5, in the event of the Concessionaire being in material default or breach 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 default or breach, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 32.1 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.

32.2 Compensation for default by the Authority

Subject to provisions of Clause 32.5 and 34.5, in the event of the Authority being in material default or breach of this Agreement at any time after the Appointed Date till achievement of COD, it shall pay to the Concessionaire by way of compensation, for the direct costs suffered or incurred by the Concessionaire and loss of Fee revenues but shall not include debt repayment obligations as a consequence of such material default or breach 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 directly attributable to such material breach shall be worked out as under.

- i) escalation on value of incomplete work to be determined on the basis of variation in WPI from the initial date set forth for the Scheduled Completion Date in Schedule G till achievement of COD, proportionately for the period of delay attributable to the Authority.
- ii) prolongation costs equal to 8% of value of incomplete work multiplied by the period of delay attributable to the Authority divided by the period specified in Clause 12.3.1.
- iii) loss of Fee revenues for the period of delay attributable to the Authority arrived at by multiplying such period with 90% of Average Daily Fee of one year period immediately following the COD. This amount, without any interest, shall be payable within 60 days from end of one year period following the COD.

For the avoidance of doubt, the incomplete work shall mean the incomplete work attributable only to the Authority. The value of such work shall be assessed as on the Bid Due Date by the Independent Engineer as per the methodology provided in Clause 16.2.2 (c).

Provided however, in the event of the Authority being in material default or breach of this Agreement at any time after the achievement of COD, the provision of Clause 32.3 shall be applicable.

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32.3 Compensation and extension of Concession Period for default by the Authority

Subject to the provisions of Clause 32.5, in the event a material default or breach of this Agreement at any time after achievement of COD leads to suspension of or reduction in collection of Fee, as the case may be, the Authority shall, in addition to payment of compensation for such period of suspension or reduction, comprising of (a) interest on Debt Due and (b) O&M expenses as determined from the original Financing Agreements, extend the Concession Period. Such extension being equal in duration to the period for which the collection of Fee remained suspended on account thereof; 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, 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.

32.4 Compensation to be in addition

Compensation payable under this Article 32 shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any.

32.5 Mitigation of costs and damages

The Party not in breach shall make all reasonable effort to mitigate or limit the costs and damage arising out of or as a result of breach of Agreement by the other Party.

ARTICLE 33

SUSPENSION OF CONCESSIONAIRE'S RIGHTS

33.1 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.

33.2 Authority to act on behalf of Concessionaire

33.2.1 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 29.3.

33.2.2 During the period of Suspension hereunder, all assets and liabilities in relation to the Project shall continue to vest in the Concessionaire 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 33.1 to use during Suspension, all intellectual property belonging to or licenced to the Concessionaire with respect to the Project and its design, engineering, construction, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the agreement.

33.3 Revocation of Suspension

33.3.1 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

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hereunder.

33.3.2 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.

33.4 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 33.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

33.5 Termination

33.5.1 At any time during the period of Suspension under this Article 33, 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 33.4, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 34.

33.5.2 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 33.1, 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 34
TERMINATION

34.1 Termination for Concessionaire Default

34.1.1 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 Project without the prior written consent of the Authority;
- (e) Project Completion Date does not occur within the period specified in Clause 12.3;
- (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

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the Concessionaire fails to cure the default within the Cure Period specified in 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

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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.
- (x) the Concessionaire fails in achieving the rate of progress as per revised schedule in accordance with Clause 13.4 of this Agreement.

34.1.2 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 34.1.3.

34.1.3 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 34.1.2 to inform the Lenders' Representative and grant 30 (thirty) 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

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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.

34.2 Termination for Authority Default

34.2.1 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;
- (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; or
- (d) the State commits a material default in complying with the provisions of the State Support Agreement if such default has a Material Adverse Effect on the Concessionaire and the breach continues for a period of 90 (ninety) days from the date of notice given in this behalf by the Concessionaire to the Authority.
- (e) The Authority fails to provide, within a period of 180 (one hundred and eighty days) from the Appointed Date, statutory clearances required for construction of the Project despite Concessionaire meeting all eligibility requirements and having fulfilled all application requirements and documentation satisfactorily and not being in breach of any condition for grant of relevant clearance; or
- (f) Any defect in the title, ownership and possession of the Authority with respect to the Site area that has a Material Adverse Effect on the Project as certified by the Independent Auditor;
- (g) A breach of any express representation or warranty by the Authority which has a Material Adverse Effect and such breach is not remedied within 120 days of receipt of written notice from the Concessionaire specifying such breach and requiring the Authority to remedy the same;
- (h) The Authority fails to provide Right of Way, under the terms of Article 10

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34.2.2 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 30 (thirty) days to the Authority to make a representation, and may after the expiry of such 30 (thirty) days, whether or not it is in receipt of such representation, issue the Termination Notice.

34.3 Termination Payment

34.3.1 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 90% (ninety per cent) of the 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. The Concessionaire hereby acknowledges that no Termination Payment shall be due or payable on account of a Concessionaire Default occurring prior to COD save and except in accordance with Clause 34.8.

34.3.2 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; and
- (b) 150% (one hundred and fifty per cent) of the Adjusted Equity.

Provided that the Termination Payment shall not be less than an amount equal to the product of 6 (six) and the average monthly Fee actually realised 12 (twelve) months prior to the Transfer Date.

34.3.3 Termination Payment shall become due and payable to the Concessionaire within 30 (thirty) 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.

34.3.4 The Concessionaire expressly agrees that Termination Payment under this Article 34 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 it shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

34.4 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 Project forthwith;

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- (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 35.1; 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.

34.5 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of clause 34.3.4, 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.

34.6 Limitation of Liability

Neither Party shall be liable to the other for any loss of profit, loss of business, loss of production, loss of contracts or for any indirect or other consequential loss or damage whatsoever that may be suffered by the other Party, except to the extent that such consequential loss or damage is attributable to gross negligence, deliberate default, fraud, fraudulent misrepresentation or wilful misconduct by the defaulting Party, its personnel or agents.

The aggregate liability of either Party, under or in connection with the Agreement other than those provided under Clause 34.7 and 34.8 of this Agreement, shall not exceed one hundred percent (100%) of the Total Project Cost. Provided however, the aggregate liability of the Authority under Clause

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34.3 of this Agreement, shall not exceed one hundred fifteen percent (115%) of the Total Project Cost.

34.7 Mutual Foreclosure

34.7.1 Without prejudice to any provision of this Agreement, the Authority and Concessionaire may foreclose this Agreement by mutual consent in circumstances which does not constitute any Party's default. Such a foreclosure can occur in any of the following 2 (two) categories as per the mutual consent of the Authority and the Concessionaire:

- a. Type A Foreclosure: Foreclosure with mutual consent without any liability or consequential future liability for either Party
- b. Type B Foreclosure: Foreclosure with mutual consent with compensation to the Concessionaire including any pending settlements / claims as per the provisions under Clause 34.7.2

34.7.2 Should a Party intend to foreclose this Agreement by mutual consent, the intending Party shall issue a notice to the other Party and upon issuance of such notice, the other Party may within a reasonable time-frame either agree to such foreclosure or raise objection(s) to the same by intimating either of the two possible positions to the intending Party in writing.

34.7.3 In either case of the other Party agreeing to the proposed foreclosure or otherwise, and with prior written approval of the Lenders' Representative, the Parties may negotiate the terms and conditions of the Mutual Foreclosure Agreement and this Agreement shall stand terminated upon execution of the Mutual Foreclosure Agreement

34.7.4 In the event the Parties mutually agree to foreclose this Agreement as a Type B Foreclosure under Clause 34.7.1, the Authority shall be liable to compensate the Concessionaire as per the provisions under Clause 44.7.3.

34.7.5 Any attempt or endeavour for foreclosure by mutual agreement under this clause shall, subject to the rights and obligations of the Parties surviving under this Clause, be without prejudice to the rights and obligations of the Parties herein and the factum of such an attempt or exercise shall not stop either of the Parties from discharging their contractual obligations under this Agreement. For the avoidance of doubt, it is agreed by the Concessionaire that all its the rights, and claims, and obligations of either party arising under this Agreement shall cease upon execution of the Mutual Foreclosure Agreement hereunder.

34.7.6 For the avoidance of doubt, it is clarified that such foreclosure shall not affect the Concessionaire in any way if it wishes to bid in future projects of the Authority.

34.8 Upon Termination on account of Concessionaire Default occurring prior to COD, no Termination Payment shall be due and payable if Physical Progress is less than 40% (forty per cent), and in the event of Physical Progress exceeding 40% (forty per cent), the provisions of Clause 34.3.1 shall, to the extent applicable to Debt Due, apply in respect of the expenditure exceeding 40% (forty per cent) of Total Project Cost. For the avoidance of doubt and by way of

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illustration, the Parties agree that if the total expenditure incurred prior to Termination is 90% (ninety per cent) of the Total Project Cost, the expenditure eligible for computation of Termination Payment hereunder shall be 50% (fifty per cent) of the Total Project Cost and the Termination Payment due and payable in such event shall not exceed 45% (forty five per cent) of the Total Project Cost. The Parties further agree that for the purposes of this Clause 34.8, Total Project Cost shall mean the amount specified in Sub-clause (c) of the definition of Total Project Cost in Clause 45.1. The Parties also agree that for determining the Termination Payment under this Clause 34.8, the expenditure comprising the latest Payment Milestone shall also be reckoned.

34.9 Continuity upon Termination

In case of Termination under Clause 37 and notwithstanding pendency of any judicial/quasi-judicial proceedings, the Authority, in accordance with its responsibility of developing and maintaining Ropeways may appoint/engage another contractor to execute or complete the Project with or without appropriate changes or modifications. Such an appointment or engagement shall be without prejudice to Concessionaire's liabilities and obligations under this Agreement and similar such clauses. In case termination of this Agreement is found to be invalid or untenable pursuant to legal or quasi-judicial proceedings, the Authority shall put the Concessionaire to the same financial position as if such termination had never happened.

ARTICLE 35

DIVESTMENT OF RIGHTS AND INTEREST

35.1 Divestment Requirements

35.1.1 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 Project, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;
- (c) cure all Project Assets, of all defects and deficiencies so that the Project 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 Project 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 Project 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 Project Assets, 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 Project, free from all Encumbrances, absolutely unto the Authority or to its nominee.

35.1.2 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

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giving of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

35.2 Inspection and cure

Not earlier than 90 (ninety) days before Termination but not later than 15 (fifteen) days prior to the 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 36 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 35.

35.3 Cooperation and assistance on transfer of Project

35.3.1 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.

35.3.2 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.

35.3.3 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 35.1.1 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.

35.4 Vesting Certificate

The divestment of all rights, title and interest in the Project 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-U (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 Project, 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

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or interpreted as restricting the exercise of any rights by the Authority or its nominee on, or in respect of, the Project on the footing that all Divestment Requirements have been complied with by the Concessionaire.

35.5 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.

35.6 Divestment costs etc.

35.6.1 The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project Assets 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.

35.6.2 In the event of any dispute relating to matters covered by and under this Article 35, the Dispute Resolution Procedure shall apply.

ARTICLE 36

DEFECTS LIABILITY AFTER TERMINATION

36.1 Liability for defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Project 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 Project 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 Project 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 funds retained in the Escrow Account or from the Performance Guarantee provided thereunder. For the avoidance of doubt, the provisions of Article 36 shall not apply if the termination occurs prior to COD.

36.2 Retention in Escrow Account

36.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 36.2.3, a sum equal to 5% (five per cent) of the total Realisable Fee 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 36.1.

36.2.2 Without prejudice to the provisions of Clause 36.2.1, the Independent Engineer shall carry out an inspection of the Project 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 Project is such that a sum larger than the amount stipulated in Clause 36.2.1 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.

36.2.3 The Concessionaire may, for the performance of its obligations under this Article 36, provide to the Authority in the form of Insurance Surety Bond (issued by Insurance Company authorized by Insurance Regulatory and Development Authority of India in the form set forth in Annexure I of Schedule – F), Account Payee Demand Draft, Banker's Cheque or e-bank guarantee from a Bank for a sum equivalent to the amount determined under Clause 36.2.1 or 36.2.2, 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

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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 36. Upon furnishing of a Performance Guarantee under this Clause 36.2.3, the retention of funds in the Escrow Account in terms of Clause 36.2.1 or 36.2.2, as the case may be shall be dispensed with.

Part VI
OTHER PROVISIONS

ARTICLE 37

ASSIGNMENT AND CHARGES

37.1 Restrictions on assignment and charges

37.1.1 Subject to Clauses 37.2 and 37.3, 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.

37.1.2 Subject to the provisions of Clause 37.2, 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.

37.2 Permitted assignment and charges

The restraints set forth in Clause 37.1 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 Project;
- (b) mortgages/pledges/hypothecation of goods/assets other than Project Assets, and their related documents of title, a charge on the Escrow Account, arising or created in the ordinary course of business of the Project, and a charge on Receivables of the Concessionaires as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project;
- (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.

37.3 Substitution Agreement

37.3.1 The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire or the Selected Bidder/Consortium Members of 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-V.

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37.3.2 Upon substitution of the Concessionaire or the Selected Bidder/Consortium Members of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire or the Selected Bidder/Consortium Members of 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.

37.4 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 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 38

LIABILITY AND INDEMNITY

38.1 General indemnity

38.1.1 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.

38.1.2 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.

38.2 Indemnity by the Concessionaire

38.2.1 Without limiting the generality of Clause 38.1, 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.

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38.2.2 Without limiting the generality of the provisions of this Article 38, 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 Project, 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.

38.3 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 38 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 30 (thirty) 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.

38.4 Defence of claims

38.4.1 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 38, 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

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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.

38.4.2 If the Indemnifying Party has exercised its rights under Clause 38.3, 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).

38.4.3 If the Indemnifying Party exercises its rights under Clause 38.3, 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 38.4.3 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.

38.5 No consequential claims

Notwithstanding anything to the contrary contained in the Article 38, 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.

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38.6 Survival of Termination

The provisions of this Article 38 shall survive Termination.

ARTICLE 39

RIGHTS AND TITLE OVER THE SITE

39.1 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 Project by third parties in accordance with and subject to the provisions of this Agreement.

39.2 Access rights of the Authority and others

39.2.1 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 Project 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.

39.2.2 The Concessionaire shall, for the purpose of operation and maintenance of any utility or road specified in Article 11, allow free access to the Site at all times for the authorised persons and vehicles of the controlling body of such utility or road.

39.3 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. For the avoidance of doubt, the Parties agree that stamp duties, if any, due and payable on the grant of license comprising this Agreement shall be paid by the Authority. Provided, however, that the Authority may require the Concessionaire to pay such stamp duties, which shall be reimbursed by the Authority to the Concessionaire within 15 (fifteen) days of receiving the demand thereof.

39.4 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 Project.

However, the Concessionaire, subject to the limitations & restrictions and the terms and conditions of Clause 5.18 herein before, shall be allowed to grant on license or lease or on franchise basis any built up space located within the Terminal Stations or part thereof for undertaking and carrying out any activities

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permitted under this Agreement and subject to the Applicable Laws provided always that any and all such arrangements shall be subject to and in conformity with the terms of this Agreement and shall always be coterminous with this Agreement. Further any such license or lease shall not allow or permit creation of any sub-lease or sub-license or any sub-delegation of franchise rights.

ARTICLE 40
DISPUTE RESOLUTION

40.1 Dispute resolution

40.1.1 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 40.2.

40.1.2 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.

40.2 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 40.1.1 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 40.3.

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40.3 Arbitration

- 40.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Article 40.2, the parties shall submit such dispute for arbitration by Principal Secretary, Department of Transport, Government of Himachal Pradesh as the Sole Arbitrator. The proceeding shall be conducted as per the Arbitration and Conciliation Act, 1996. The venue of such arbitration shall be Shimla, and the language of arbitration proceedings shall be English.
- 40.3.2 The Sole Arbitrator shall make a reasoned award (the “Award”). Any Award made in any arbitration held pursuant to this Article 40 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Concessioning Authority agree and undertake to carry out such Award without delay.
- 40.3.3 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.
- 40.3.4 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.

40.4 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 40.3, 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 41
DISCLOSURE

41.1 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 Site and Concessionaire’s Registered Office. The Concessionaire shall prominently display at the Site, public notices stating the availability of the Specified Documents for such inspection and shall make copies of the same available to any person upon payment of copying charges on a ‘no profit no loss’ basis.

41.2 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 Project, 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.

41.3 Notwithstanding the provisions of Clauses 41.1 and 41.2, 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 Clause 41.1 and 41.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

ARTICLE 42

REDRESSAL OF PUBLIC GRIEVANCES

42.1 Complaints Register

- 42.1.1 The Concessionaire shall maintain a public relations office at the Site 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 the Site so as to bring it to the attention of all Users.
- 42.1.2 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.
- 42.1.3 Without prejudice to the provisions of Clauses 42.1.1 and 42.1.2, the Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto. The Concessionaire shall also maintain an accurate record of the entries in the Complaint Register in an electronic form along with response / remedial measures taken.

42.2 Redressal of complaints

- 42.2.1 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.
- 42.2.2 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 43

MISCELLANEOUS

43.1 Governing law and jurisdiction

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

43.2 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).

43.3 Depreciation and Interest

43.3.1 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.

43.3.2 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.

43.4 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 4% (four 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.

43.5 Waiver

43.5.1 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.

43.5.2 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 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.

43.6 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 Project 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.

43.7 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.

43.8 Survival

43.8.1 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.

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

43.9 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 Proposals, as the case may be, shall be deemed to form part of this Agreement and treated as such.

43.10 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.

43.11 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.

43.12 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.

43.13 Successors and Assigns

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

43.14 Notices

Any notice or other communication to be given by one contracting 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;

{ Attention:
Designation:
Address:
Fax No:
Email ;}

in the case of the Authority, 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 Concessionaire;

{ Attention:
Designation:
Address:
Fax No:
Email ;} and

- (b) any notice or communication by one contracting 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.

43.15 Supplementary Agreement

The Parties agree that the Parties may execute a Supplementary Agreement novating any terms and conditions of this Agreement.

43.16 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.

43.17 Counterparts

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

43.18 Memorandum of Understanding

A draft of the Memorandum of Understanding with the brief roles and responsibilities of Authority is provided in Schedule – Y.

ARTICLE 44

KEY PERFORMANCE INDICATORS

Without prejudice to the obligations specified in this Agreement, the Concessionaire shall operate the Projects such that it achieves or exceeds the performance indicators specified in this Article 44 (the “**Key Performance Indicators**”)

44.1 Operation of Ropeway Cable cars

Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire shall at all times ensure as under:

- (a) the ropeway cable cars are clean, hygienic, and free of odor; and
- (b) there is adequate lighting and alarm bell system within the passenger cable cars in conformity with the Specifications and Standards
- (c) the number of passengers shall not exceed the design capacity of the passenger cable cars
- (d) 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
- (e) design, procure and install and keep in ready operational mode an automatic power back up system to meet any contingency of power failure or malfunction (including any variations in the voltage) for a duration of at least 45 minutes (forty-five) minutes or at least the time necessary to disembark all the in-transit passengers, whichever is longer. The contingency power back system shall include mechanism for load forecast for on next 24 hours basis during the Operations Period.
- (f) Install and maintain in good working conditions all required safety measures and facilitators for the safe and convenient boarding and de-boarding of the Users (including minors, senior citizens and persons requiring special assistance);
- (g) Concessionaire shall not hold or allow any person to store, bring transport, transfer at Site or allow any person to carry any prohibited material or substance in the ropeway cable cars;
- (h) Concessionaire shall ensure and provide, at all times professional, efficient and prompt, polite and courteous services to all Users without discrimination whatsoever and in an honest and businesslike manner and shall improve the standard of services offered if deemed unsatisfactory by Authority.

- (i) Concessionaire shall appoint a functionally qualified and experienced manager who shall represent the Concessionaire on a full-time basis and be available on a full-time basis during the operational and maintenance hours to ensure the safe, smooth and efficient operation of the Project. The concerned manager shall liaise with the Authority to ensure efficient service delivery.
- (j) Concessionaire shall employ only well-trained and healthy persons of good character and integrity after carrying out proper security verification acceptable to Authority and to ensure that they are attired in uniforms, bearing name tags or other identification badges approved by Authority. The persons employed by the Concessionaire should reasonably be able to understand and converse/communicate, among other, in English and Hindi language

44.2 Design and Construction of the stations:

Notwithstanding anything to the contrary contained in this Agreement, the design and construction of the stations shall be such that, in compliance with:

- (a) a User alighting at the platform should be able to reach a point outside the station in not more than 10 (ten) minutes of brisk walking and a User crossing the fee collection point should be able to reach the platform in not more than 5 (five) 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 200 (two hundred) meters
- (c) the station area should have enough seats in the waiting area to accommodate at least 100 passengers at a time.

44.3 Operation of Stations

Notwithstanding anything to the contrary contained in this Agreement. The Concessionaire shall at all times ensure as under:

- (a) the Stations and its toilets are clean, hygienic and free of odor including all the counters, fixtures, signboards, lighting and all additions thereto, clean and in good condition and to do all repairs and works, necessary to put and keep them in such repair and good condition, and to maintain a high standard of cleanliness as per international standards.
- (b) there is adequate lighting within the Stations in conformity with the Specifications and Standards;

- (c) all lifts, escalators, walkalators, train information systems, public address systems and lighting systems function efficiently, and their availability is no less than 95% in a month; and
- (d) 90% (percent) of all phone calls relating to the Project are answered within 30 (thirty) seconds.
- (e) Proper security mechanism for the safety and protection of the Users, employees of the Concessionaire / Contractors, visitors to the Project and for the safety and protection of the Project and its assets is set in place on 24x7 basis with CCTV coverage of all vital areas of the Project in place.
- (f) The response time to any call for rescue and retrieval or in case of any Emergency of any kind shall be equivalent to the best industry norms and practices with the helpline numbers displayed prominently at prominent locations at the Stations and inside the cable cars.
- (g) The Concessionaire shall on regular basis keep a record of all such calls with details of response time and action taken. Such record shall be available for inspection of the Authority and the Independent Engineer.
- (h) The Concessionaire shall in collaboration with the concerned authorities on a regular basis, at least once in 06 (six) undertake, undertake security and evacuation drills for the training of its staff.
- (i) Concessionaire shall comply with Fire & Safety norms as specified by Authority / concerned department of the State
- (j) Concessionaire shall review operational time table of the ropeway cable cars on a regular basis to minimize queuing at the platform or outside the Terminal Station. The Concessionaire on need basis shall deploy additional manpower in order to facilitate smoother movement of Users and vehicles.
- (k) Concessionaire shall except for the priority and preferential use that may be authorized in terms of guidelines issued by the relevant authorities / emergency circumstances, manage and operate the Project Facilities and services on a first come - first serve, common-user basis, open to any and all Users, and refrain from indulging in any unfair or discriminatory practice against any user or potential User thereof
- (l) maintain the CCTV's for entire Project Area to give an overall view of Project Area, entry and exit points and security systems (if applicable) etc.
- (m) create, operate an app where users can rate their experience in terms of hygiene, service quality and safety. The feedback from the customers will be recorded on

an online server to be maintained at the authority premise. The Concessionaire shall endeavor to minimize negative feedback through measures to improve service quality. The data on the customer reviews shall be consolidated in the monthly reports to be submitted by the Independent Engineer

44.4 Monthly status report

During the 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 44 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 Project.

44.5 Penalty for shortfall in performance

The Concessionaire shall ensure and procure compliance of each of the Key Performance Indicators specified in this Article 44 and for any shortfall in performance it shall pay Damages as per Clause 44.8 (Table- A) which shall be recovered from the Performance Guarantee furnished and after the release of the Performance Guarantee the amount of the damages incurred shall be recovered from the Revenue payments collected from the ropeway operations.

The Damages due and payable under this Clause 44.5 shall be determined at the rates mentioned under clause 44.8 for every shortfall in any single performance indicator specified in this Article 44; provided, however, that the Authority may, upon a representation made by the Concessionaire on this account with all reasonable evidences in support, 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.

44.6 ISO certification

- 44.6.1 The Concessionaire shall, within 6 (six) months from COD, achieve and thereafter maintain throughout the Concession Period, ISO 9001:2015 certification or a substitute thereof for all the facilities at the Project, and shall provide a certified copy thereof to the Authority forthwith.
- 44.6.2 In the event of default in obtaining the certification specified in Clause 44.6.1, the Concessionaire shall, within 15 (fifteen) days thereof, submit to the Authority an action plan that sets out the actions proposed to be taken by the Concessionaire for rectifying its deficiencies and obtaining such certification for all facilities at the Project.
- 44.6.3 If the period of default in obtaining the ISO certification under this Clause 44.6 shall exceed a continuous period of 3 (three) months, the Concessionaire shall thereafter pay Damages to the Authority in an amount equal to 2% (two per cent) of the total Realizable Fee for every 1 (one) day of default.

44.7 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-X The Concessionaire shall at all times be accountable and liable to Users in accordance with the provisions of the Passenger Charter and Applicable Laws.

44.8 Damages for Performance Shortfall:

Without prejudice to the any other provisions and covenants of the Agreement, inter-alia relating payment of penalties or damages for breach or default in performance, the Damages in respect of the performance shortfall as mentioned **Table -A** below shall be computed and be payable by the Concessionaire to the Authority , inter-alia, in terms as mentioned therein. For the avoidance of doubt in case of any penalty incurred by the Concessionaire due to shortfall in performance, as defined in Clause 44.8, the amount to be paid by the Concessionaire will be deducted as follows:

i. Till the Performance Security is active:

Amount calculated as damages to be deducted from the Performance Security. The Concessionaire shall replenish the Performance Security as per the terms of this Agreement.

ii. After Performance Security expires:

1. During the Construction Period: Amount calculated as damages to be paid directly by the Concessionaire.
2. During the Operation Period: Amount calculated as damages shall be paid directly from the realizable Fee by the Concessionaire to the Authority.

Table –A – Key Performance Area

#	Performance Area	Measurement of KPI	Cure Period	Damages for Shortfall
1. Ropeway / Cable cars				
1	Not keeping a record of all emergency calls with details of response time and action taken including accidents / unscheduled breakdowns	Through system or physical verification by IE or as captured through CCTV by IE	Earliest resolution ¹	1% of Performance Security (<i>Penalty to be levied per instance of default</i>)
2	Initial response time for rescue and evacuation to handle any emergencies exceeds 10 (ten) minutes and total rescue time exceed more than 3 (three) hours	Through system or physical verification by IE or as captured through CCTV by IE	Earliest resolution ³	2% of Performance Security (<i>Penalty to be levied per instance of default</i>)
3	Non-availability of facilitators for the safe and convenient boarding and de-boarding of the Users (including minors, senior citizens and persons requiring special assistance);	Through system or physical verification by IE or as captured through CCTV by IE	5 days ³	0.2% of Performance Security per day
4	Ropeway cable cars are kept unclean for more than 4 (four) hours in a day (within the operational hours)	Through physical verification by IE or as captured through CCTV by IE	2 days ²	Rs. 10,000 per day
5	Non-availability of standby arrangement for non-interruption of Ropeway operations	Through physical verification by IE or as captured through CCTV by IE	1 day ³	0.2% of Performance Security per day
6	Non-availability of emergency power back-up arrangements in place with inadequate quantity of diesel stored in a safe manner, for a duration of at least 60 minutes (sixty) minutes or at least the time necessary to disembark all the in-transit passengers, whichever is longer	Through physical verification by IE or as captured through CCTV by IE	1 day ³	0.2% of Performance Security per day

¹ Authority shall issue an immediate termination notice to the Concessionaire in case of non-resolution of the issue within the Cure Period defined in Table-A, Clause 44.8

² Authority may provide an additional cure period, in addition to the Cure Period defined in Table-A, Clause 44.8, in consultation with the Independent Engineer, for resolution of the issue, on a case-to-case basis

7	Non-availability of a functionally qualified and experienced manager who shall represent the Concessionaire on a full-time basis during operational and maintenance hours	Through system or physical verification by IE	14 days ³	0.2% of Performance Security per day
8	Non-availability of experienced and trained staff	Through system or physical verification by IE or as captured through CCTV by IE	1 day ⁵	0.1% of Performance Security per day
9	Not adhering to the O&M schedule mentioned in the O&M manual for all components of the Ropeway System for regular maintenance & service	Through physical verification by IE or as captured through CCTV by IE	1 day ⁵	0.1% of Performance Security per day
2. Stations				
10	Insufficiently equipped or staffed Medical Aid Post / Traffic Aid Post (non-compliance with standards mentioned in the Contract Agreement / Maintenance Manual)	Through physical verification by IE or as captured through CCTV by IE	5 days ³	0.2% of Performance Security per day
11	Non-coverage of Stations of the Project through CCTV & non-availability of CCTV footage 24x7	Through physical verification by IE or as captured through CCTV by IE	5 days ³	0.2% of Performance Security per day
12	Non-compliance with Fire & Safety norms as per the codal requirement by concerned department of the State (non-compliance with standards mentioned in the Contract Agreement/ Maintenance Manual)	Through physical verification by IE or as captured through CCTV by IE	1 day ³	0.1% of Performance Security per day
13	Station including any utilities / amenities area kept unclean for more than 1 day (within the operational hours)	Through physical verification by IE or as captured through CCTV by IE	Earliest resolution ⁵	Rs. 10,000 per day
14	Station including any utilities / amenities area kept non-functional for more than 6 hours (within the operational hours), which hinders the operations of the Ropeway System	Through physical verification by IE or as captured through CCTV by IE	1 day ⁵	Rs. 10,000 per day
15	Public announcement system nonfunctional or defective voice relay for more than 1 day (non-compliance with	Through physical verification by IE or as captured	5 days ⁵	Rs. 5000 per day

	standards mentioned in the Contract Agreement/ Maintenance Manual)	through CCTV by IE		
16	Poor or inadequate lightning arrangement at Station, entry / exit point near the Terminal building (non-compliance with standards mentioned in the Contract Agreement / Maintenance Manual)	Through physical verification by IE or as captured through CCTV by IE	1 day ⁵	Rs. 10,000 per day
17	Inadequate security or trained marshals deployment at platform, help-desk etc. (non-compliance with standards mentioned in the Contract Agreement / Maintenance Manual)	Through physical verification by IE or as captured through CCTV by IE	5 days ³	0.1% of Performance Security per day
18	All lifts, escalators, walkalators, function efficiently, and their availability is not less than 95% during operating hours (except scheduled shutdown and on standby power arrangement)	Through physical verification by IE or as captured through CCTV by IE	30 days ⁵	0.1% of Performance Security per day
19	Signage's and notice boards are not properly placed and are un-clear and illegible (non-compliance with standards mentioned in the Contract Agreement/ Maintenance Manual)	Through physical verification by IE or as captured through CCTV by IE	1 day ⁵	Rs. 5000 per day
20	Temperature in retail and commercial areas is below/ above the prescribed limit (non- compliance with standards mentioned in the Contract Agreement/ Maintenance Manual)	100 no. of user complaints / 1,00,000 passengers	1 day ⁵	Rs. 10,000 per day
3. Overall Project Area				
21	Inadequate security / surveillance arrangement in the Project Area including poor lightning arrangements in areas outside the Station but still under the obligation of the Concessionaire (non-compliance with standards mentioned in the Contract Agreement)	Through physical verification by IE or as captured through CCTV by IE	5 days ³	Rs. 10,000 per day
22	Unauthorized constructions / installations made by the Concessionaire in areas under the obligation of the Concessionaire	Through physical verification by IE or as captured through CCTV by IE	Earliest resolution ⁵	0.2% of Performance Security per day
23	No scientific arrangement for collection, segregation and disposal of waste material in accordance with MSW collection & disposal guidelines /	Through physical verification by IE or as captured through CCTV by IE	5 days ⁵	0.2% of Performance Security per day

	conditions issued by the local authorities & Statutory bodies			
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ARTICLE 45

DEFINITIONS

45.1 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 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;

“**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 0.40% (zero point four zero per cent) 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;

For the avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the Concession Period is extended, but the revision on

account of WPI shall continue to be made;

“**Affected Party**” shall have the meaning set forth in Clause 31.1;

“**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 Project during the subsistence of this Agreement;

“**Appointed Date**” means the date of fulfilment of all Conditions Precedents, to be declared by the Authority with the consent of the Concessionaire 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 prior to the Appointed Date, save and except those specified in Clause 4.1.2 (b) and Clause 4.1.2 (d), which may be waived by the Authority for the purpose of declaration of Appointed Date.;

“**Arbitration**” shall have the meaning set forth in Clause 40.3;

“**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 Default**” shall have the meaning set forth in Clause 34.2.1;

“**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 Realisable Fee of the immediately preceding Accounting Year by number of operational days, 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, and in the event that the Fee payable by any segment of traffic has not been realised for any reason, an assessment thereof shall be made by the Independent Engineer to form part of the Average Daily Fee for such period;

“**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 Proposals in accordance with the provisions thereof and “Bids” shall mean the bids submitted by any and all prequalified bidders;

“**Bid Security**” means the security provided by the Concessionaire to the Authority along with the Bid in a sum of **Rs. 2.06 Crore (Rupees Two Crores and Six Lakhs Only)**, in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security;

“**Bus**” means any passenger motor vehicle with a registered carrying capacity exceeding 32 (thirty two) excluding the driver;

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

“**Car**” means and includes any mechanical vehicle being alight motor vehicle, car, jeep, van, omnibus, or three-wheeled motor vehicle with a Gross Vehicle Weight not exceeding 7,500 (seven thousand five hundred) kilograms or a registered carrying capacity not exceeding 12 (twelve) excluding the driver, but does not include a Motor Cycle, Tractor or road roller;

“**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 51% (fifty one per cent) thereof during Construction Period and one year thereafter; 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 completion of a period one year from the date the project achieves / is granted completion certificate, 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 34.1.1;

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

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

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

“**Construction Period**” means the period beginning from the Appointed Date and ending on the Project Completion Date

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

“**Construction Zone**” consists of the Main Alignment, RoU, areas for Station Buildings and Towers, and a parallel working space for accommodating Material Ropeway, if any.

“**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 Project or matters incidental thereto, and shall include any person engaged by the Authority for rendering any services in connection with and in terms of this Agreement, 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 one year prior to the Transfer Date, limited to maximum outstanding amount one year prior to the Transfer Date computed as per Schedule Z.
- (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
- (c) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost

provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed to be Debt Due even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

provided further that the Debt Due shall in no case exceed 85% (eighty five percent) of the Total Project Cost;

“**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 40.1.1;

“Dispute Resolution Board” shall have the meaning set forth in Clause 40.2 a and Schedule ‘W’.

“Dispute Resolution Procedure” means the procedure for resolution of Disputes set forth in Article 40;

“Divestment Requirements” means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 35.1;

“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 Project as set forth in Schedule-H, and shall include ‘as built’ drawings of the Project;

“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 Project 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 Project, including Users thereof, or which poses an immediate threat of material damage to any of the Project Assets;

“Encumbrances” means, in relation to the Project, 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 Project, 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;

“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 29.1.2;

“**Escrow Bank**” shall have the meaning set forth in Clause 29.1.1;

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

“**Exempted User**” means a user exempted from payment of Fee;

“**Fee**” means the charge levied on and payable for using the ropeway facility or a part thereof issued by the Authority but shall exclude any user charges and levies charged and collected by the Concessionaire in respect of any services or amenities, as permitted, provided by the Concessionaire to the Users at the Project;

“**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-V;

“**Financial Model**” means the financial model adopted by Senior Lenders, setting forth the capital and operating costs of the Project and revenues there from 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 the project 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, Subordinated Debt and Equity Support, if any ;

“**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 31.1;

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

“Government Instrumentality” means any department, division or subdivision 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 Project or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

“Indemnified Party” means the Party entitled to the benefit of an indemnity pursuant to Article 39;

“Indemnifying Party” means the Party obligated to indemnify the other Party pursuant to Article 39;

“Independent Engineer” shall have the meaning set forth in Clause 23.1;

“Indirect Political Event” shall have the meaning set forth in Clause 31.3;

“Insurance Cover” means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 29, and includes all insurances required to be taken out by the Concessionaire under Clause 29.1 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, programs 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 (E);

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

“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;

“Licensed Premises”/ “Project Area” shall have the meaning as set forth in Clause 10.2.2;

“MORTH” means the Ministry of Road Transport and Highways or any substitute thereof dealing with National Highways;

“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;

“Medical Aid Post” shall have the meaning set forth in Clause 21.1;

“Mutual Foreclosure Agreement” shall mean the agreement executed under Clause 34.7 pursuant to the execution of which all rights, claims, and obligations of the Parties arising under the Agreement shall cease;

“Nominated Company” means (i) 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 or (ii) wherever the Selected Bidder/Consortium Members of the Concessionaire are sought to be substituted in accordance with Clause 3A of the Substitution Agreement, the Concessionaire itself;

“Non-Political Event” shall have the meaning set forth in Clause 31.2;

“O&M” means the operation and maintenance of the Project 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 30.2.1;

“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 31.4;

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

“Project” means the design, finance, construction, operation and maintenance of the Ropeway System 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 in Site and all Project Assets, and its subsequent development and augmentation in accordance with this Agreement and handing over of the Project , in terms of this Agreement, to the Authority on the Transfer Date;

“Project Agreements” means this Agreement, the Financing Agreements, EPC Contract, O&M Contract, 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 license, Right of Way or otherwise;
- (b) tangible assets such as civil works and equipment including but not limited to ropeway asset, Stations, systems, IT Network;
- (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 authorizations relating to or in respect of the Project, 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 Project on or before the Scheduled Completion

Date;

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

“Project” means the Ropeway System and all Project Assets, and its subsequent development and augmentation in accordance with this Agreement;

“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;

“Realisable Fee” means all the Fee due and realisable under this Agreement, but does not include fees that the Concessionaire has not been able to realise after due diligence and best efforts. For the avoidance of doubt, Realisable Fee shall, save as provided in Clause 26.4, be the amount so declared by the Concessionaire on the basis of its provisional accounts or the audited accounts, as the case may be, and in the event of a dispute thereto, the Dispute Resolution Procedure shall apply;

“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’;

“Revenue Share shall have the meaning as ascribed to it under Clause 5.18

“Right of Way” means the constructive possession of the Site, together with all way leaves, easements, unrestricted access and other rights of way, to be read in conjunction with “Construction Zone”, howsoever described, necessary for construction, operation and maintenance of the Project in accordance with this Agreement;

“Ropeway Section” means segment of the Project between two adjacent

Terminal Stations

“Ropeway System” shall comprise of all components of any ropeway including but not limited to all necessary safeties, towers, etc. facilitating the transportation of passengers from starting point to designated point through ropes and / or cables

“Safety Audit” shall have the meaning as set forth in Clause 17.1

“Safety Consultant” shall have the meaning set forth in Clause 18.1.2;

“Safety Fund” shall have the meaning set forth in Clause 18.2;

“Safety Requirements” shall have the meaning set forth in Clause 18.1.1;

“Scheduled Completion 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, non-banking financial companies, 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 charge on the assets, rights, title and interests of the Concessionaire. Provided that for the purpose of this definition, financial institutions, banks, and multilateral lending agencies shall at least have a net worth of Rs. 1,000 Crore (Rs. one thousand crore), and non-banking financial companies shall at least have a net worth of Rs 500 Crore (Rs. Five hundred crore);

“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 Project, as set forth in Schedule-D, and any modifications thereof, or additions thereto, as included in the design and engineering for the Project submitted by the Concessionaire to, and expressly approved by, the Authority;

“State” means the State in which Ropeway is being planned and **“State Government”** means the government of that State Himachal Pradesh;

“Station” refers to both Technical Station and Terminal Station

“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 30.2.1;

“Subordinated Debt” means the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date:

- (a) the principal amount of debt provided by lenders or the Concessionaire’s shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders, limited to maximum outstanding amount on Transfer Date computed as per Schedule Z; and
- (b) all accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and six-month LIBOR (London Inter Bank Offer Rate) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due one year prior to the Transfer Date;

provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the lenders and/or the Concessionaire’s shareholders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

“Subsistence Revenue” means the total amount of Fee revenue that is required by the Concessionaire in an Accounting Year to meet the sum of (a) O&M Expenses, subject to an annual ceiling of 3% (three per cent) of the Total Project Cost, {plus Grant, if any,} & during the first Accounting Year after COD, to be revised for each subsequent year to reflect the variations in WPI occurring between COD and commencement of such Accounting Year, and (b) Debt Service in such Accounting Year, but excluding any interest paid by the Authority under clause 31.7.2 or 32.2;

“Substitution Agreement” shall have the meaning set forth in Clause 37.3;

“Suspension” shall have the meaning set forth in Clause 33.1;

“Supplementary Agreement” shall mean the agreement executed between the Parties novating any term and/or condition of the Agreement, upon the execution of which all rights and claims of the Concessionaire in respect of the novated terms and conditions shall cease;

“Technical Station” means the built up structure on the Site along the ropeway line where any embarking and disembarking of passengers from the ropeway cabins, associated office and related amenities shall be allowed only in case of an emergency and shall include administrative offices, control rooms / control panels, wherever applicable;

“Terminal Station” means the built up structure on the Site at both the ends of the ropeway carrier line and shall include any intermediate station(s) along the ropeway

line for the embarking and disembarking of passengers from the ropeway cabins, associated office and related amenities, Project Facilities and Project Assets and shall include administrative offices, control rooms / control panels, wherever applicable;

“Taxes” means any Indian taxes including excise duties, customs duties, GST, 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 Project 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. It is further agreed that at any time during the Concession Period, the aggregate of Debt Due and Adjusted Equity shall be limited to Total Project Cost for the purpose of computing the Termination Payment;

“Tests” means the tests set forth in Schedule-I to determine the completion of Project in accordance with the provisions of this Agreement

“Total Project Cost” means the lowest of:

- (a) the capital cost of the Project, {less Equity} as set forth in the Financial Package;
- (b) the actual capital cost of the Project upon completion of the Project {less Equity}; and
- (c) a sum of **Rs. 206.00 Crore (Rupees Two Hundred Six Crore Only)**, less Equity;

provided that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of complete works, if any, and further 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;

“**Traffic Aid Post**” shall have the meaning set forth in Clause 20.2;

“**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 uses or intends to use the Project or any part thereof upon payment of Fees (as prescribed from time to time in respect of each service or facility offered) or as per the schedule of charges prescribed by the Concessionaire, as the case may be, in accordance with the provisions of this Agreement and Applicable Laws

“**Vesting Certificate**” shall have the meaning set forth in Clause 35.4; 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 WPI published for the period ending with the preceding month.

