



**Public Private Partnership in  
Operation and Maintenance  
of  
Passenger Ropeways**

**MODEL CONCESSION AGREEMENT  
(*DRAFT*)**

**NITI Aayog  
Government of India**

**Public Private Partnership in  
Passenger Ropeways**

**MODEL CONCESSION AGREEMENT**

**(\*includes Aerial, Funicular, Cable Propelled Automated Passenger Movers (APM), Aerial Ropeway  
Transit (ART) Systems, Hybrid Systems including all cable propelled systems)**

**Government of xxx  
State capital**

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## CONCESSION AGREEMENT

THIS AGREEMENT<sup>1</sup> is entered into on this the ..... day of ....., 20.....

### BETWEEN

- 1 **The Department of Tourism/Ministry of Tourism including Agencies in Urban Transport/Urban Local Body, Government of XXX**, with its office located at XXX, YYY, City: \_\_\_\_\_ Pincode: \_\_\_\_\_ (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}<sup>§</sup>, a company incorporated under the provisions of the [Companies Act, 1956][Companies Act, 2013] and having its registered office at ....., (herein after 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 XXX has decided to construct a ropeway from xxx to yyy, (hereinafter referred to as **XXX Ropeway**) on PPP basis.
- (B) The Authority had accordingly invited proposals by its [Notice/ Request for Qualification No. \*\*\* dated \*\*\*] (the “**Request for Qualification**” or “**RFQ**”) for short listing of bidders for construction, operation and maintenance of the **XXX Ropeway** on DBFOT basis and had shortlisted certain bidders including, *inter alia*, the {the selected bidder/ consortium comprising ....., .....and .....(collectively the “**Consortium**”) with ..... as its lead member (the “**Lead Member**”)}. .
- (C) The Authority had prescribed the technical and commercial terms and conditions, and invited bids (the “**Request for Proposals**” or “**RFP**”) from the bidders shortlisted pursuant to the RFQ for undertaking the Project.
- (D) After evaluation of the bids received, the Authority had accepted the bid of the {selected bidder/ Consortium} and issued its Letter of Award No. .... dated ..... (hereinafter called the “**LOA**”) to the {selected bidder/ Consortium} requiring, *inter alia*, the execution of this Concession Agreement within 45 (forty-five) days of the date of issue thereof.
- (E) {The selected bidder/ Consortium has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 2013, and has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder/ Consortium under the LOA, }including the obligation to enter into this Concession Agreement pursuant to the LOA for executing the Project.

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<sup>1</sup> Serially numbered footnotes in this Model Concession Agreement are for guidance of the Authority and should be omitted from the draft Concession Agreement forming part of Bid Documents. Footnotes marked “\$” or in other non-numerical characters shall be retained in the draft Concession Agreement.

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

- (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

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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 receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

**PART I: PRELIMINARY**





## ARTICLE 1: DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 49) 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 reenactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “**include**” and “**including**” are to be construed without limitation and shall be deemed to be followed by “**without limitation**” or “**but not limited to**” whether or not they are followed by such phrases;
- (f) references to “**construction**” or “**building**” include, unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “**construct**” or “**build**” shall be construed accordingly;
- (g) references to “**development**” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and “**develop**” shall be construed accordingly;
- (h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (i) any reference to day shall mean a reference to a calendar day;
- (j) references to a “**business day**” shall be construed as a reference to a day (other than a Sunday) on which banks in Delhi are generally open for business;

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

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

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

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

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

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

### **1.3 Measurements and arithmetic conventions**

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

### **1.4 Priority of agreements, clauses and schedules**

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

- (a) this Agreement; and
  - (b) all other agreements and documents forming part hereof or referred to herein;
- i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) above.

1.4.2 Subject to the provisions of Clause 14.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

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

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

**PART II: THE CONCESSION**



## ARTICLE 2: SCOPE OF THE PROJECT

### 2.1 Scope of the Project

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

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





### ARTICLE 3: GRANT OF CONCESSION

#### 3.1 The Concession

3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Authority hereby grants to the Concessionaire the concession set forth herein including the exclusive right, licence and authority to construct, operate and maintain the Project (the “**Concession**”) for a period of [30 (thirty)] years commencing from the Appointed Date, and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein:

Provided that, in the event the Concessionaire shall have discharged its obligations without any material breach for a period of 25 (twenty-five) years from the Appointed Date, it may, by notice to be given no later than the 26<sup>th</sup> (twenty-sixth) anniversary of the Appointed Date, seek extension of the Concession Period and in such an event, it shall be entitled to additional Concession Period of 20 (twenty) years beyond the 30 (thirty) year period in accordance with the terms of the Concession Agreement. For the avoidance of doubt, material breach shall for the purpose thereof mean inter-alia suspension of Concessionaire and/or levy of damages in aggregate exceeding a sum equivalent to 50% (fifty percent) of the Performance Security, over the Concession Period.

3.1.2 Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire to:

- (a) Right of Way, access and licence to the Site for the purpose of and to the extent conferred by the provisions of this Agreement;
- (b) finance and construct the XXX Ropeway;
- (c) manage, operate and maintain the XXX Ropeway and regulate the use thereof by third parties;
- (d) demand, collect and appropriate Fee from Users for using the XXX Ropeway and refuse usage if the Fee due is not paid;
- (e) perform and fulfil all of the Concessionaire’s obligations under and in accordance with this Agreement;
- (f) save as otherwise expressly provided in this Agreement, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement; and
- (g) neither assign, transfer or sublet or create any lien or encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the XXX Ropeway nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement.

3.1.3 Subject to and in accordance with the provisions of this Agreement and Applicable Laws, the Concession hereby granted shall, without prejudice to the provisions of Clause 3.1.2, entitle the Concessionaire to undertake development, operation and maintenance of the real estate specified in Schedule-A, [subject to the conditions stipulated in Schedule-B and Schedule-D,]

and to exploit such development for commercial purposes (the “Real Estate Development”) with the right to sub-license any or all parts thereof by means of Project Agreements.

### **3.2 Waiver of System Augmentation<sup>2</sup>**

At any time before the [10<sup>th</sup> (tenth)] anniversary of the Appointed Date, the Concessionaire may, by a notice in this behalf to the Authority, excuse itself from all obligations relating to System Augmentation and thereupon operate the XXX Ropeway for a Concession Period of [20(twenty)]<sup>3</sup> years. Upon delivery of such notice, the Agreement shall be deemed to be modified as if it were a Concession Agreement restricted to the XXX Ropeway, as constructed prior to System Augmentation, for a Concession Period of [20 (twenty)] years. For the avoidance of doubt, in the event of waiver of System Augmentation hereunder, the Concessionaire shall not be entitled to the additional Concession Period specified in Clause 3.1.1.

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<sup>2</sup> Clause 3.2 may be omitted if two-stage phasing of the Project is not contemplated.

<sup>3</sup> To be fixed by reference to the year in which the projected traffic would cross the design capacity of the XXX Ropeway prior to System Augmentation.

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## ARTICLE 4: CONDITIONS PRECEDENT

### 4.1 Conditions Precedent

4.1.1 Save and except as expressly provided in Articles 4, 9, 10, 25, 35, 45 and 48, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the “**Conditions Precedent**”).

4.1.2 The Concessionaire may, upon providing the Performance Security to the Authority in accordance with Article 9, at any time after [90 (ninety)] days from the date of this Agreement or on an earlier day acceptable to the Authority, by notice require the Authority to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 30 (thirty) days of the notice, or such longer period not exceeding 60 (sixty) days as may be specified therein, and the Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:

- (a) procured for the Concessionaire the Right of Way to the Site in accordance with the provisions of Clause 10.3.1;
- (b) issued the Fee Notification;
- [(c) procured for the Concessionaire the Right of Way to \*\*\*\*\*;]<sup>4</sup>
- [(d) procured all Applicable Permits relating to environmental protection and conservation of the Site:]

4.1.3 The Conditions Precedent required to be satisfied by the Concessionaire prior to the Appointed Date shall be deemed to have been fulfilled when the Concessionaire shall have:

- (a) provided Performance Security to the Authority;
- (b) executed and procured execution of the Escrow Agreement;
- (c) executed and procured execution of the Substitution Agreement;
- (d) procured all the Applicable Permits specified in Schedule-E unconditionally or if subject to conditions, then all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full and such Applicable Permits are in full force and effect;
- (e) executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;

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<sup>4</sup> 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.

- (f) delivered to the Authority 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three)

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soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the 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; and
- (h) delivered to the Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof:

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

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

#### **4.2 Damages for delay by the Authority**

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

#### **4.3 Damages for delay by the Concessionaire**

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

## ARTICLE 5: OBLIGATIONS OF THE CONCESSIONAIRE

### 5.1 Obligations of the Concessionaire

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

### 5.2 Obligations relating to Project Agreements

- 5.2.1 It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project

Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Concessionaire from its obligations or liability hereunder.

- 5.2.2 The Concessionaire shall submit to the Authority the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that no review and/or observation of the Authority and/or its failure to review and/or convey its observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.
- 5.2.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire.
- 5.2.4 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire shall not sub-licence, assign or in any manner create an Encumbrance on any Project Asset forming part of Real Estate Development without prior written approval of the Authority, which approval the Authority may, in its discretion, deny if such sub-licence, assignment or Encumbrance has or may have a Material Adverse Effect on the rights and obligations of the Authority under this Agreement or Applicable Laws; provided that the provisions of this Clause 5.2.4 shall not apply where the Concessionaire grants a sub-licence for a cumulative period, including any renewals thereof, not exceeding 11 (eleven) months. For the avoidance of doubt, it is agreed that if the Authority does not deny the approval required under this Clause 5.2.4 within a period of 60 (sixty) days from the date of receiving a notice alongwith full particulars and documents from the Concessionaire, the approval shall be deemed to have been granted to the extent such sub-licence, assignment or Encumbrance, as the case may be, is in accordance with the provisions of this Agreement.
- 5.2.5 Notwithstanding anything to the contrary contained in Clause 5.2.4, the Concessionaire shall not sub-licence, assign or in any manner create an Encumbrance on any Project Asset forming part of Real Estate Development at any time prior to the [3rd (third) anniversary] of the Appointed Date. For the avoidance of doubt, the restriction imposed herein shall not apply to assignment under the Substitution Agreement.
- 5.2.6 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the “**Covenant**”). For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such

eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party(ies) of each of the Project Agreements, whereunder such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.

### **5.3 Obligations relating to Change in Ownership**

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

5.3.2 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that:

- (i) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of not less than 25% (twenty five per cent) of the total Equity of the Concessionaire; or
- (ii) acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him;

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

For the purposes of this Clause 5.3.2:

- (a) the expression “acquirer”, “control” and “person acting in concert” shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Concessionaire;
- (b) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and
- (c) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company, holding directly or through one or more companies (whether situated in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or

indirectly whether situate in India or abroad, having ultimate control of not less than 25% (twenty five per cent) of the Equity of the Concessionaire, shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.

#### 5.4 Obligations relating to Golden Share<sup>5</sup>

5.4.1 The Concessionaire and the {selected bidder/ Consortium Members} shall execute an agreement with the Authority, substantially in the form specified at Schedule V (the “Shareholders’ Agreement”), providing for the issue and allotment of one non-transferable equity share of the Company (the “Golden Share”) in favour of the Authority, and shall provide for the following:

- a) appointment of a nominee of the Authority on the Board of Directors of the Concessionaire;
- b) an irrevocable undertaking that the rights vested in the Authority shall not be abridged, abrogated or in any manner affected by any act done or purported to be done by the Concessionaire or any of its Associates or Affiliates;
- c) an irrevocable undertaking that any divestment of equity in the Concessionaire shall not in any manner affect the rights of the Authority herein and that the successors, assigns and substitutes of the Concessionaire shall be bound by such undertaking; and
- d) any other matter mutually agreed upon between the Parties.

5.4.2 The Parties expressly agree that the Shareholders’ Agreement shall further provide that so long the Authority holds the Golden Share, an affirmative vote of the Authority or the Director appointed by the Authority shall be necessary and required for the passing of, by the General Meeting of the Company or the meeting of Board of Directors thereof, as the case may be, any resolution providing for all or any of the following or any matter incidental or consequential thereto:

- a) to alter or add to the provisions of the memorandum;
- b) to alter or add to the articles of association;
- c) to change the name of the Company;
- d) to purchase the Company’s own shares or specified securities;e) to issue sweat equity shares;

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- e) to issue further shares without pre-emptive rights to non-members or to convert loans or debentures into shares;
  - f) to reduce the share capital;

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<sup>5</sup> This Clause may be deleted or suitably modified as necessary



- g) to remove the registered office of the Company outside the limits of the State;
- h) to commence any new lines of business;
- i) to keep registers and returns at any other place than within city, town or village in which the registered office is situated;
- i) to consent to a director or his relative or partner or firm or private company holding an office or place of profit, except that of managing director, manager, banker, or trustee for debenture holders of the Company;
- k) to make inter corporate loans and investments or guarantee/security to be given, etc., if the aggregate amount thereof, exceeds the limit of 10% (ten percent) of the Company's paid up share capital;
- l) to apply to a Court to wind up the Company;
- m) to wind up the Company voluntarily;
- n) for various other matters pertaining to the winding up of the Company; and
- o) any other matter which is required by the Companies Act, 2013 to be passed by a special resolution of the shareholders of the Company.

5.4.3 The Parties agree that the Shareholders' Agreement shall provide that till the time the Authority holds the Golden Share, it shall be entitled to nominate a person of its choice for appointment as a non-retiring Director on the Board of the Concessionaire, and upon such nomination, the Concessionaire shall appoint such person as Director in accordance with the Applicable Laws.

## **5.5 Employment of foreign nationals**

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

## **5.6 Employment of trained personnel**

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

## **5.7 Obligations relating to medical aid**

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

## **5.8 Obligations relating to basic amenities**

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

## **5.9 Obligations relating to noise control**

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

## **5.10 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.

## **5.11 Branding of XXX Ropeway**

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

## **5.12 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 XXX Ropeway.

## **[5.13 Obligations relating to maintenance of the Ropeway**

The Concessionaire agrees that it shall enter into a maintenance agreement with the original equipment or technical supplier of the equipment for a term of 5 (five) years following COD. The

Concessionaire shall furnish an undertaking to certify that it is in compliance with this obligation under Clause 5.13 no later than [\*\*\*\*] days prior to COD.]<sup>6</sup>

**5.14 Obligations relating to aesthetic quality of the XXX Ropeway**

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

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<sup>6</sup> The Authority may retain or remove this Clause. The Authority may revise the timeline based on the technical parameters for qualification as provided under the RFQ.

## ARTICLE 6: OBLIGATIONS OF THE AUTHORITY

### 6.1 Obligations of the Authority

- 6.1.1 The Authority shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 6.1.2 The Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:
- (a) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project;
  - (b) upon written request from the Concessionaire, provide reasonable assistance to the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;
  - (c) procure that no barriers are erected or placed on or about the XXX Ropeway by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency, national security, law and order or collection of inter-state taxes;
  - (d) make best endeavours to procure that no local Tax, or charge is levied or imposed on the use of whole or any part of the XXX Ropeway;
  - (e) subject to and in accordance with the Applicable Laws, grant to the Concessionaire the authority to regulate traffic on the XXX Ropeway;
  - (f) assist the Concessionaire in procuring police assistance for regulation of traffic, removal of trespassers and security on or at the XXX Ropeway;
  - (g) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
  - (h) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement;
  - (i) upon written request from the Concessionaire and subject to the provisions of Clause 5.5, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for the purposes of discharge by the Concessionaire or its Contractors their obligations under this Agreement and the Project Agreements; and
  - (j) undertake rehabilitation and resettlement of persons affected by construction of the XXX Ropeway and bear all costs and expense in respect thereof, save and except as otherwise provided in this Agreement.

### 6.2 Maintenance obligations prior to Appointed Date

During the Development Period, the Authority shall maintain the roads and pathways along the XXX Ropeway alignment, at its own cost and expense, so that its traffic worthiness and safety are at no time materially inferior as compared to its condition 7 (seven) days prior to the last date for submission of the Bid, and in the event of any material deterioration or damage other than normal wear and tear, undertake repair thereof, or pay to the Concessionaire the cost and expense, as determined by the Independent Engineer, for undertaking such repair after the Appointed Date. For the avoidance of doubt, the Authority shall undertake only routine maintenance during the Development Period, and it shall undertake special repairs only for ensuring safe operation of the roads and pathways along the XXX Ropeway alignment, or in the event of excessive deterioration or damage caused due to unforeseen events such as floods or torrential rain.

### **6.3 Obligations relating to Competing Facilities**

The Authority shall procure that during the subsistence of this Agreement, neither the Authority nor any Government Instrumentality shall, at any time before the [20<sup>th</sup> (twentieth)] anniversary of the Appointed Date, construct or cause to be constructed any Competing Facility; provided that the restriction herein shall not apply if the Average Daily Fee on the XXX Ropeway in any two consecutive years exceeds 90% (ninety per cent) of its designed capacity specified in Clause 30.3.1. Upon breach of its obligations hereunder, the Authority shall be liable to payment of compensation to the Concessionaire under and in accordance with Clause 36.4, and such compensation shall be the sole remedy of the Concessionaire.

## **ARTICLE 7: REPRESENTATIONS AND WARRANTIES**

### **7.1 Representations and warranties of the Concessionaire**

The Concessionaire represents and warrants to the Authority that:

- (a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (f) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;

- (g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association {or those of any member of the Consortium} or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;
- (k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3 and that the {selected bidder/ Consortium Members}, together with {its/ their} Associates, hold not less than 51% (fifty-one percent) of its issued and paid up Equity as on the date of this Agreement; and that no member of the Consortium whose technical and financial capacity was evaluated for the purposes of pre-qualification and short-listing in response to the Request for Qualification shall hold less than 26% (twenty six per cent) of such Equity during the Construction Period;
- (l) {the selected bidder/ Consortium Members and its/their} Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- (m) {the selected bidder/ each Consortium Member} is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Authority to enter into this Agreement with the Concessionaire pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (n) all its rights and interests in the XXX Ropeway shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;
- (o) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable

Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;

- (p) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith; and
- (q) all information provided by the {selected bidder/ Consortium Members} in response to the Request for Qualification and Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects.

## **7.2 Representations and warranties of the Authority**

The Authority represents and warrants to the Concessionaire that:

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

## **7.3 Disclosure**

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





**ARTICLE 8: DISCLAIMER****8.1 Disclaimer**

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

**PART III: DEVELOPMENT AND OPERATIONS**



## ARTICLE 9: PERFORMANCE SECURITY

### 9.1 Performance Security

- 9.1.1 The Concessionaire shall, for the performance of its obligations hereunder during the Construction Period, provide to the Authority no later than 180 (one hundred and eighty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs. \*\*\*\*\* crore (Rupees \*\*\*\*\* crore)<sup>7</sup> in the form set forth in Schedule-F (the “**Performance Security**”). Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Concessionaire.
- 9.1.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Concessionaire within a period of 180 (one hundred and eighty) days from the date of this Agreement, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

### 9.2 Appropriation of Performance Security

Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such Concessionaire Default or failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Concessionaire shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid, failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 38. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Concessionaire shall be entitled to an additional Cure Period of 90 (ninety) days for remedying the Concessionaire Default or to meet any Condition Precedent, and in the event of the Concessionaire not curing its default or meeting such Condition Precedent within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 38.

### 9.3 Release of Performance Security

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

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<sup>7</sup> Calculated @ 5% (five per cent) of the amount specified in the definition of Total Project Cost.

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

### 10.2 Licence, Access and Right of Way

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

10.2.5 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 and the Concessionaire shall, on a mutually agreed date and time, inspect the Site and prepare a memorandum containing an inventory of the Site including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Site. Such memorandum shall have appended thereto an appendix (the “**Appendix**”) specifying in reasonable detail those parts of the Site to which vacant access and Right of Way has not been granted to the Concessionaire. Signing of the memorandum, in two counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall, subject to the provisions of Clause 10.2.2, be deemed to constitute a valid licence and Right of Way to the Concessionaire for free and unrestricted use and development of the vacant and unencumbered Site during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For the avoidance of doubt, it is agreed that valid licence and Right of Way with respect to the parts of the Site as set forth in the Appendix shall be deemed to have been granted to the Concessionaire upon vacant access thereto being provided by the Authority to the Concessionaire.

10.3.2 Without prejudice to the provisions of Clause 10.3.1, the Parties hereto agree that on or prior to the Appointed Date, the Authority shall have granted vacant access and Right of Way such that the Appendix shall not include more than 20% (twenty per cent) of the total area of the Site required and necessary for the XXX Ropeway, and in the event Financial Close is delayed solely on account of delay in grant of such vacant access and Right of Way, the Authority shall be liable to payment of Damages under and in accordance with the provisions of Clause 4.2.

10.3.3 On and after signing the memorandum referred to in Clause 10.3.1, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.

10.3.4 The Authority shall make best efforts to procure and grant, no later than 90 (ninety) days from the Appointed Date, the Right of Way to the Concessionaire in respect of all land included in the Appendix, and in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Concessionaire, it shall pay to the Concessionaire Damages in a sum calculated at the rate of Rs. 50 (Rupees fifty) per day for every 1,000 (one thousand) square metres or part thereof, commencing from the 91st (ninety first) day of the Appointed Date and until such Right of Way is procured.

10.3.5 Upon receiving Right of Way in respect of any land included in the Appendix, the Concessionaire shall complete the Construction Works thereon within a reasonable period, to be determined by the Independent Engineer, in accordance with Good Industry Practice; provided that the issue of Provisional Certificate shall not be affected or delayed on account of vacant access to any part of the Site not being granted to the Concessionaire or any construction on such part of the Site remaining incomplete on the date of Tests on account of the delay or denial of such access thereto. For the avoidance of doubt, it is expressly agreed that Construction Works on all lands, for which Right of Way is granted within 90 (ninety) days of the Appointed Date, shall be completed before the Project Completion Date. It is further agreed that the obligation of the Concessionaire to complete the affected Construction Works shall

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

- 10.3.6 The Concessionaire 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, ancillary buildings, maintenance depots and electric sub-stations or for] construction of works specified in Change of Scope Order issues 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 under the provisions of the Applicable Laws 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 in accordance with the Act [; provided also that the land to be acquired by the Authority hereunder as a part of the Site 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, ancillary buildings, maintenance depots, electric sub-stations, and approach road thereof shall conform to the provisions of Schedule – B and Schedule – C. It is further agreed that the Authority may, at any time after such Bid Date, *suo moto* acquire the land required hereunder.

#### **10.4 Site to be free from Encumbrances**

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

#### **10.5 Protection of Site from encroachments**

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

#### **10.6 Special/temporary right of way**

The Concessionaire shall bear all costs and charges for any special or temporary right of way required by it in connection with access to the Site. The Concessionaire shall obtain at its cost



such facilities on or outside the Site as may be required by it for the purposes of the XXX Ropeway and the performance of its obligations under this Agreement.

## **10.7 Access to the Authority**

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

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

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

## **10.8 Geological and archaeological finds**

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

## **10.9 Additional land for System Augmentation<sup>8</sup>**

The additional real estate required for System Augmentation shall be acquired by the Authority and granted to the Concessionaire no later than 3 (three) years prior to the Scheduled System Augmentation Date and the provisions of this Article 10 shall apply, *mutatis mutandis*, to such real estate and to any other land over which Right of Way is procured and granted by the Authority to the Concessionaire at any time during the Concession Period.

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## **ARTICLE 11: UTILITIES, ASSOCIATED ROADS AND TREES**

### **11.1 Existing utilities and roads**

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<sup>8</sup> Clause 10.8 may be omitted if two stage capacity augmentation is not contemplated.

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

## **11.2 Shifting of obstructing utilities**

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

## **11.3 New utilities and roads**

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

11.3.2 The Authority may, by notice require the Concessionaire to connect any adjoining transport system, including a ropeway, to the XXX Ropeway, and the connecting portion thereof falling within the Site shall be constructed by the Concessionaire at the Authority's cost in accordance with Article 16. The maintenance of such connecting portion shall be undertaken by the Concessionaire in accordance with the provisions of Clause 17.1.3.

## **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 XXX Ropeway. The cost of such felling shall be borne by the Authority, and in the event of any delay in felling thereof for reasons beyond the control of the Concessionaire, it shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay in the felling of trees. For the avoidance of doubt, the Parties hereto agree that the felled trees shall be deemed to be owned by the Authority and shall be disposed in such manner and subject to such conditions as the Authority may in its sole discretion deem appropriate.

## ARTICLE 12: CONSTRUCTION OF THE XXX ROPEWAY

### 12.1 Obligations prior to commencement of construction

Prior to commencement of Construction Works, the Concessionaire shall:

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

### 12.2 Maintenance during Construction Period

12.2.1 During the Construction Period, the Concessionaire shall maintain, at its cost, the existing roads along and under the alignment of the XXX Ropeway so that their traffic worthiness and safety are at no time materially inferior as compared to their condition 7 (seven) days prior to the date of this Agreement, and shall undertake the necessary repair and maintenance works for this purpose; provided that the Concessionaire may, at its cost, interrupt and divert the flow of traffic if such interruption and diversion is necessary for the efficient progress of Construction Works and conforms to Good Industry Practice; provided further that such interruption and diversion shall be undertaken by the Concessionaire only with the prior written approval of the Independent Engineer which approval shall not be unreasonably withheld. For the avoidance of doubt, it is agreed that the Concessionaire shall at all times be responsible for ensuring safe operation of the existing roads.

12.2.2 Notwithstanding anything to the contrary contained in Clause 12.2.1, the Parties agree that in the event the Concessionaire undertakes its Construction Works in phases, it may divide the XXX Ropeway into sections of not less than 2 (two) kilometres each and commence work in such sections on different dates. Upon division into sections, the Concessionaire shall assume maintenance obligations under this Clause 12.2 on and from the date 60 (sixty) days prior to commencement of Construction Works in such section, and its maintenance obligations hereunder shall cease after the works affecting the road have been completed and the section of road is reverted to the Authority or a nominee thereof in a condition determined by the Independent Engineer as satisfactory in accordance with Good Industry Practice.

### 12.3 Drawings

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

- (a) The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, 3 (three) copies each of all Drawings to the Independent Engineer for review.
- (b) By submitting the Drawings for review to the Independent Engineer, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering, including field construction criteria related thereto, are in conformity with the Scope of the Project and Specifications and Standards.
- (c) Within 15 (fifteen) days of the receipt of the Drawings, the Independent Engineer shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and Specifications and Standards. The Concessionaire shall not be obliged to await the observations of the Independent Engineer on the Drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin or continue Construction Works at its own discretion and risk.
- (d) If the aforesaid observations of the Independent Engineer indicate that the Drawings are not in conformity with the Scope of the Project or Specifications and Standards, such Drawings shall be revised by the Concessionaire and resubmitted to the Independent Engineer for review. The Independent Engineer shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings.
- (e) No review and/or observation of the Independent Engineer and/or its failure to review and/or convey its observations on any Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Engineer or the Authority be liable for the same in any manner.
- (f) Without prejudice to the foregoing provisions of this Clause 12.2, the Concessionaire shall submit to the Authority for review and comments, its Drawings relating to alignment of the XXX Ropeway and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, within 30 (thirty) days of the receipt of such Drawings. The provisions of this Clause 12.2 shall apply *mutatis mutandis* to the review and comments hereunder.
- (g) Within 90 (ninety) days of the Project Completion Date, the Concessionaire shall furnish to the Authority and the Independent Engineer a complete set of as-built Drawings, in 2 (two) hard copies and in micro film form or in such other medium as may be acceptable to the Authority, reflecting the XXX Ropeway as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the XXX Ropeway and setback lines, if any, of the buildings and structures forming part of Project Facilities.

## 12.4 Construction of the Ropeway

- 12.4.1 On or after the Appointed Date, the Concessionaire shall undertake construction of the XXX Ropeway as specified in Schedule-B and Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D. The [\*\*\*\* day] from the Appointed Date shall be the scheduled date for completion of the XXX Ropeway (the “**Scheduled Date**”) and the Concessionaire agrees and undertakes that construction of the XXX Ropeway shall be completed on or before the Scheduled Date. For the avoidance of doubt, it is agreed that the Project Completion Schedule and Scheduled Date shall not apply to Real Estate Development.

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

## 12.5 System Augmentation

- 12.5.1 The Concessionaire shall undertake System Augmentation as specified in Schedule B and Schedule C, and in conformity with the Specifications and Standards set forth in Schedule D, so that the XXX Ropeway shall have System Augmentation on or before the [10<sup>th</sup> (tenth)] anniversary of the Appointed Date (the “**Scheduled System Augmentation Date**”).
- 12.5.2 In the event that the Concessionaire has not been excused from its obligations of System Augmentation in accordance with Clause 3.2 or Clause 31.2, as the case may be, and it fails to complete System Augmentation on or before the Scheduled System Augmentation Date, it shall pay to the Authority, Damages equal to 3% (three percent) of the Average Daily Fee for each day’s delay until System Augmentation.
- 12.5.3 The provisions of this Agreement, insofar as they relate to the XXX Ropeway, shall apply, *mutatis mutandis*, to System Augmentation, save and except where express provisions to the contrary have been made for System Augmentation.

## 12.6 Termination due to failure to complete System Augmentation

In the event that System Augmentation is not completed on or before the [10<sup>th</sup> (tenth)] anniversary of the Appointed Date, the Concession Period shall, notwithstanding anything to the contrary contained in this Agreement, be deemed to be [20 (twenty)] years and accordingly such [20<sup>th</sup> (twentieth)] anniversary shall be the Transfer Date.

## [12.7 Construction of Funded Works

- 12.7.1 The Authority acknowledges, agrees and undertakes that it shall, in accordance with the provisions of this Clause 12.7, reimburse the capital costs incurred by the Concessionaire for and in respect of the construction works referred to in Clause 12.7.2 (the “**Funded Works**”).

- 12.7.2 The Parties acknowledge and agree that the lump sum costs of all construction works comprising Funded Works, as specified in Schedule-A, shall be deemed to be Rs. {\*\*\* (Rupees \*\*\*\*\*)}. The Parties further agree that the amount specified hereinabove shall be modified to the extent of variation in WPI occurring between the Bid Date and the Appointed Date, and the amount so revised shall be due and payable to the Concessionaire. The Parties also acknowledge that the aforesaid costs of Funded Works have not been included in the figure specified in the definition of Total Project Cost.
- 12.7.3 The Concessionaire acknowledges and agrees that the capital cost of each of the Funded Works shall be deemed to be equal to the lump sum amount specified in Schedule-A and the aggregate thereof shall not exceed the amount specified in Clause 12.7.2. The Concessionaire further agrees and undertakes that any expenditure in excess thereof shall, save and except where such excess is on account of Force Majeure, Change of Scope or Change in Law, as the case may, be borne entirely and solely by the Concessionaire. For the avoidance of doubt, the Parties expressly agree that any additional costs incurred by the Concessionaire on account of Force Majeure, Change of Scope or Change in Law, as the case may be, shall be reimbursed forthwith by the Authority.
- 12.7.4 Without prejudice to the provisions of Clauses 12.7.2 and 12.7.3, the Authority shall pay to the Concessionaire, in 4 (four) equal instalments, the lump sum amount due and payable for each of the Funded Works, upon the Concessionaire completing about 30% (thirty per cent), 60% (sixty per cent), 80% (eighty per cent) and 100% (one hundred per cent) of the respective Funded Works. For the avoidance of doubt, the Parties agree that the provisions of this Clause 12.7 shall be applied individually, and not collectively, to each of the Funded Works.
- 12.7.5 All Funded Works shall be constructed by the Concessionaire as if they are Construction Works forming part of the Project, and the provisions of this Agreement shall apply *mutatis mutandis* to such Funded Works, save and except as otherwise provided in this Clause 12.7.
- 12.7.6 In the event of Termination occurring prior to completion of Funded Works, the Authority shall pay to the Concessionaire a sum equal to: (a) 75% (seventy five per cent) of the fair value of the Funded Works undertaken until the Transfer Date if such Termination occurs on account of a Concessionaire Default or a Non-Political Event, or (b) 110% (one hundred and ten per cent) of such fair value if Termination occurs on account of an Authority Default, a Political Event or an Indirect Political Event.]

## **ARTICLE 13: MONITORING OF CONSTRUCTION**

### **13.1 Monthly progress reports**

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

### **13.2 Inspection**

During the Construction Period, the Independent Engineer shall inspect the XXX Ropeway at least once a month and make a report of such inspection (the “**Inspection Report**”) to the Authority stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Scope of the Project and Specifications and Standards. It shall send a copy of the Inspection Report to the Authority and the Concessionaire within 7 (seven) days of such

inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Independent Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

### **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 percent) of the quantity and/or number of tests that the owner or builder of such works would normally undertake in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the Independent Engineer and furnish the results thereof to the Independent Engineer. One half of the costs incurred on such tests, and to the extent certified by the Independent Engineer as reasonable, shall be reimbursed by the Authority to the Concessionaire. For the avoidance of doubt, the costs to be incurred on any Test which is undertaken for determining the rectification of any defect or deficiency in construction shall be borne solely by the Concessionaire.

13.3.2 In the event that results of any tests conducted under this Clause 13.3 establish any defects or deficiencies in the Construction Works, the Concessionaire shall carry out remedial measures and furnish a report to the Independent Engineer in this behalf. The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests to determine that such remedial measures have brought the Construction Works into compliance with Specifications and Standards, and the procedure set forth in this Clause 13.3, shall be repeated until such Construction Works conform to the Specifications and Standards. For the avoidance of doubt, it is agreed that tests pursuant to this Clause 13.3 shall be undertaken in addition to and independent of the tests that shall be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Concessionaire to the Independent Engineer forthwith.

### **13.4 Delays during construction**

Without prejudice to the provisions of Clause 12.3.2, if the Concessionaire does not achieve any of the Project Milestones or the Independent Engineer shall have reasonably determined that the rate of progress of Construction Works is such that commissioning of XXX Ropeway is not likely to be achieved by the Scheduled Date, it shall notify the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Independent Engineer in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Project Completion Date.

### **13.5 Suspension of unsafe Construction Works**

13.5.1 Upon recommendation of the Independent Engineer to this effect, the Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Authority, such work threatens the safety of the Users and pedestrians.

- 13.5.2 The Concessionaire shall, pursuant to the notice under Clause 13.5.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works and the Users. The Concessionaire may, by notice, require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Independent Engineer, the Authority shall either revoke such suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this Clause 13.5 shall be repeated until the suspension hereunder is revoked.
- 13.5.3 Subject to the provisions of Clause 35.7, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (the “**Preservation Costs**”), shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the Authority, the Preservation Costs shall be borne by the Authority.
- 13.5.4 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine any extension of the dates set forth in the Project Completion Schedule to which the Concessionaire is reasonably entitled, and shall notify the Authority accordingly whereupon the Authority shall extend such Project Completion Schedule dates in accordance with the recommendations of the Independent Engineer. In the event that the Scheduled Date is extended pursuant hereto, the Concession Period shall be deemed to be extended by a period equal in length to the period of extension of the Scheduled Date.

## **13.6 Video recording**

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

## **ARTICLE 14: COMPLETION CERTIFICATE**

### **14.1 Tests**

- 14.1.1 At least 30 (thirty) days prior to the likely completion of the XXX Ropeway, the Concessionaire shall notify the Independent Engineer of its intent to subject the XXX Ropeway to Tests. The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Concessionaire and notified to the Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Engineer failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by giving not less than 10(ten)day notice to the Independent Engineer. For the avoidance of doubt, it is agreed that the provisions of this Article 14 shall not apply to Real Estate Development.
- 14.1.2 All Tests shall be conducted in accordance with Schedule-J. The Independent Engineer shall observe, monitor and review the results of the Tests to determine compliance of the XXX Ropeway with Specifications and Standards and if it is reasonably anticipated or determined by the Independent Engineer during the course of any Test that the performance of the XXX



Ropeway or any part thereof does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Independent Engineer shall provide to the Concessionaire and the Authority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent Engineer may require the Concessionaire to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the XXX Ropeway with Specifications and Standards.

## 14.2 Completion Certificate

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

## 14.3 Provisional Certificate

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

14.3.2 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 a line, if at least 75% (seventy five percent) of the total length of such line has been completed. Upon issue of such provisional certificate, the provisions of Article 15 shall apply to such completed part.

## 14.4 Completion of Punch List items

14.4.1 All items in the Punch List shall be completed by the Concessionaire within 90 (ninety) days of the date of issue of the Provisional Certificate and for any delay thereafter, other than for reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to recover Damages from the Concessionaire to be calculated and paid for each day of delay until all items are completed, at the lower of (a) 0.1% (zero point one per cent) of the Performance Security, and (b) 0.2% (zero point two per cent) of the cost of completing such items as estimated by the Independent Engineer. Subject to payment of such Damages, the Concessionaire shall be entitled to a further period not exceeding 120 (one hundred and twenty) days for completion of the Punch List items. For the avoidance of doubt, it is agreed that if completion of any item is delayed for reasons solely attributable to the Authority or due to Force Majeure, the completion date thereof shall be determined by the Independent Engineer in accordance with Good Industry Practice, and such completion date shall be deemed to be the date of issue of the Provisional Certificate for the purposes of Damages, if any, payable for such item under this Clause 14.4.1.

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

for reasons solely attributable to the Authority, shall entitle the Authority to terminate this Agreement.

#### **14.5 Withholding of Provisional Certificate**

- 14.5.1 If the Independent Engineer determines that the XXX Ropeway or any part thereof does 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. 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 XXX Ropeway is not fit and safe for commercial service, it shall, within 7 (seven) days of receiving the aforesaid report, notify the Concessionaire of the defects and deficiencies in the XXX Ropeway and direct the Independent Engineer to withhold issuance of the Provisional Certificate. 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 under Clause 14.3, 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)**

XXX Ropeway or part thereof shall be deemed to be complete when the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 14, and accordingly the commercial operation date of the Project shall be the date on which such Completion Certificate or the Provisional Certificate is issued]<sup>9</sup> (the “COD”). The XXX Ropeway shall enter into commercial service on COD whereupon the Concessionaire shall be entitled to demand and collect Fee in accordance with the provisions of Article 28, provided, however, that the entry of XXX Ropeway or part thereof into commercial service shall always be subject to compliance with the provisions of Clause 18.3.

#### **15.2 Damages for delay**

Subject to the provisions of Clause 12.3, if COD does not occur prior to the 91<sup>st</sup> (ninety first) day after the Scheduled Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Authority in

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<sup>9</sup> This provision may be suitably modified in case of a project where Fee is being levied and collected prior to the Appointed Date. In such a case, clause 15.2 shall be omitted.

a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until COD is achieved.

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## ARTICLE 16: CHANGE OF SCOPE

### 16.1 Change of Scope

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

### 16.2 Procedure for Change of Scope

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

with the performance thereof pending resolution of the Dispute, or carry out the works in accordance with Clause 16.5.

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

### **16.3 Payment for Change of Scope**

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

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

### **16.4 Restrictions on certain works**

16.4.1 Notwithstanding anything to the contrary contained in this Article 16, but subject to the provisions of Clause 16.4.2, the Authority shall not require the Concessionaire to undertake any works or services if such works or services are likely to delay completion of the XXX Ropeway; provided that in the event that the Authority considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of or affected by such Order shall not be reckoned for purposes of determining completion of XXX Ropeway and issuing the Provisional Certificate.

16.4.2 Notwithstanding anything to the contrary contained in this Article 16, the Concessionaire shall be entitled to nullify any Change of Scope Order if it causes the cumulative costs relating to all the Change of Scope Orders to exceed 5% (five per cent) of the Total Project Cost in any continuous period of 3 (three) years immediately preceding the date of such Change of Scope Order or if such cumulative costs exceed 20% (twenty per cent) of the Total Project Cost at any time during the Concession Period.

### **16.5 Power of the Authority to undertake works**

16.5.1 Notwithstanding anything to the contrary contained in Clauses 16.1.1, 16.2 and 16.3, the Authority may, after giving notice to the Concessionaire and considering its reply thereto,

award any works or services, contemplated under Clause 16.1.1, to any person on the basis of open competitive bidding; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 2% (two per cent) of the bid amount to the Authority<sup>§</sup>, 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 XXX Ropeway. The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to the works carried out under this Clause 16.5.

## **16.6 Reduction in Scope of the Project**

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

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<sup>§</sup>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 XXX Ropeway in accordance with this Agreement either by itself, or through the O&M Contractor and if required, modify, repair or otherwise make improvements to the XXX Ropeway to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. The obligations of the Concessionaire hereunder shall include:

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

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

17.1.3 The Concessionaire shall maintain, in conformity with Good Industry Practice, all stretches of approach roads, over-passes, under-passes or other structures situated on the Site but not forming part of the XXX Ropeway.

### 17.2 Maintenance Requirements

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

### 17.3 Maintenance Manual

- 17.3.1 No later than 180 (one hundred and eighty) days prior to the Scheduled Date, the Concessionaire shall submit the authorised repair and maintenance manual (the “**Maintenance Manual**”) of the technology and equipment supplier which shall be in compliance with Specifications and Standards for the regular and preventive maintenance of the XXX Ropeway in conformity with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice, and shall provide 5 (five) copies thereof to the Authority and 2 (two) copies to the Independent Engineer. The Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause 17.3 shall apply, *mutatis mutandis*.
- 17.3.2 Without prejudice to the provision of Clause 17.3.1, the Maintenance Manual shall, in particular, include provisions for maintenance of Project Assets and shall provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Project Assets, including replacement thereof, such that their overall condition conforms to Good Industry Practice.

### 17.4 Maintenance Programme

- 17.4.1 On or before COD and no later than 45 (forty five) days prior to the beginning of each Accounting Year during the Operation Period, as the case may be, the Concessionaire shall provide to the Authority and the Independent Engineer, its proposed annual programme of preventive, urgent and other scheduled maintenance (the “**Maintenance Programme**”) to comply with the Maintenance Requirements, Maintenance Manual and Safety Requirements as per Specifications and Standards. Such Maintenance Programme shall include:
- (a) preventive maintenance schedule;
  - (b) arrangements and procedures for carrying out urgent repairs;
  - (c) criteria to be adopted for deciding maintenance needs;
  - (d) intervals and procedures for carrying out inspection of all elements of the XXX Ropeway;
  - (e) intervals at which the Concessionaire shall carry out periodic maintenance;
  - (f) arrangements and procedures for carrying out safety related measures; and
  - (g) intervals for major maintenance works and the scope thereof.
- 17.4.2 Within 15 (fifteen) days of receipt of the Maintenance Programme, the Independent Engineer shall review the same and convey its comments to the Concessionaire with particular reference to its conformity with the Maintenance Requirements, Maintenance Manual and Safety Requirements.



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

### **17.5 Safety, breakdowns and accidents**

17.5.1 The Concessionaire shall ensure safe conditions for the Users, and in the event of unsafe conditions, it shall follow the relevant operating procedures as per Specifications and Standards, and removal of obstruction and debris without delay. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.

17.5.2 The Concessionaire's responsibility for rescue operations on the XXX Ropeway shall be limited to getting the passengers to the nearest Station for disembarkation. The technology provider shall define procedure/ capability under such circumstances. Alternatively, rescue operations procedure to be followed as per Specifications and Standards with the responsibility of the Concessionaire to get people safely on the ground.

### **17.6 De-commissioning due to Emergency**

17.6.1 If, in the reasonable opinion of the Concessionaire, there exists an Emergency which warrants de-commissioning and closure to traffic of the whole or any part of the XXX Ropeway, the Concessionaire shall be entitled to de-commission and close the whole or any part of the XXX Ropeway to traffic for so long as such Emergency and the consequences thereof warrant; provided that such decommissioning and particulars thereof shall be notified by the Concessionaire to the Authority without any delay, and the Concessionaire shall diligently carry out and abide by any reasonable directions that the Authority may give for dealing with such Emergency.

17.6.2 The Concessionaire shall re-commission the XXX Ropeway or the affected part thereof as quickly as practicable after the circumstances leading to its decommissioning and closure have ceased to exist or have so abated as to enable the Concessionaire to re-commission the XXX Ropeway and shall notify the Authority of the same without any delay.

17.6.3 Any decommissioning or closure of any part of the XXX Ropeway and the re-commissioning thereof shall, as soon as practicable, be brought to the notice of affected persons by means of public announcements/notice.

### **17.7 Section closure**

17.7.1 The Concessionaire shall not close any section of the XXX Ropeway or part thereof for undertaking maintenance or repair works 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 section 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 necessary 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 of any one section 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 the flow of traffic 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 section for the period specified therein, and in the event of any delay in reopening such section, 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 that section, for each day of delay until the section has been re-opened for traffic.

## **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. 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 XXX Ropeway or any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual or the Maintenance Programme, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from the Authority or the Independent Engineer, as the case may be, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Concessionaire to the Authority as Damages. For the avoidance of doubt, the right of the Authority under this Clause 17.9.1 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.

## **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.

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 35.3, 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 XXX Ropeway or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 35 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 XXX Ropeway**

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

#### **17.12 Modifications to the XXX Ropeway**

The Concessionaire shall not carry out any material modifications to the XXX Ropeway save and except where such modifications are necessary for the XXX Ropeway to operate in conformity with the Specifications and Standards, Maintenance Requirements, Good Industry Practice and Applicable Laws; provided that the Concessionaire shall notify the Independent Engineer of the proposed modifications along with particulars thereof at least 15 (fifteen) days before commencing work on such modifications and shall reasonably consider any suggestions that the Independent Engineer may make within 15 (fifteen) days of receiving the Concessionaire's proposal. For the avoidance of doubt, if any modification to the XXX Ropeway or part thereof has a material effect on the safety of Users, the same shall be subject to safety related certification in accordance with Applicable Laws and the procedure specified in Clause 18.3. For the avoidance of doubt, all modifications made hereunder shall comply with Specifications and Standards, Applicable Laws and the provisions of this Agreement.

#### **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 XXX Ropeway is not available to traffic on account of any of the following for the duration thereof:

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

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

#### **17.15 Advertising on the Site**

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

### **ARTICLE 18: SAFETY REQUIREMENTS**

#### **18.1 Safety Requirements**

18.1.1 The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws, Applicable Permits, Safety Manual and conform to Good Industry Practice for securing the safety of the Users. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the XXX Ropeway, and shall comply with the safety requirements set forth in Schedule-M (the “**Safety Requirements**”).

18.1.2 The Authority shall appoint an experienced and qualified firm or organisation (“**Safety Consultant**”) for carrying out safety audit of the XXX Ropeway in accordance with the Safety

Requirements and shall take all other actions necessary for securing compliance with the Safety Requirements.

## **18.2 Expenditure on Safety Requirements**

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

## **18.3 Safety Manual**

18.3.1 The Authority shall lay emphasis on aspects of User safety, system reliability and availability for the XXX Ropeways 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 – M. The Concessionaire shall provide 5 (five) copies thereof to the Authority and 2 (two) copies to the Independent Engineer. The Safety Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause 18.3 shall apply, *mutatis mutandis*.

## ARTICLE 19: MONITORING OF OPERATION AND MAINTENANCE

### 19.1 Monthly status reports

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

### 19.2 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 XXX Ropeway relating to the safety and security of the Users and XXX Ropeway. A weekly and monthly summary of such reports shall also be sent within 3 (three) days of the closing of each week and month, as the case may be. For the purposes of this Clause 19.2, accidents and unusual occurrences on the XXX Ropeway shall include:

- (a) death or injury to any person;
- (b) [broken or buckled rails/ropes;]
- (c) damaged or dislodged fixed equipment;
- (d) obstruction in opening/closing of doors of a coach;
- (e) failure of cab signaling for more than 5 (five) minutes;
- (f) cancellation of any scheduled train or loss of punctuality of trains by more than 10 (ten) minutes in each case;
- (g) any obstruction on the XXX Ropeway, which results in slow down of the services being provided by the Concessionaire;
- (h) disablement of any coach during operation;
- (i) communication failure affecting the operation of XXX Ropeway;
- (j) smoke or fire; and
- (k) such other relevant information as may be required by the Authority or the Independent Engineer.

### 19.3 Inspection

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

### 19.4 Tests

For determining that the XXX Ropeway conforms to the Maintenance Requirements, the Independent Engineer shall require the Concessionaire to carry it, 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.

## **19.5 Remedial measures**

19.5.1 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 19.4 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.

19.5.2 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 XXX Ropeway into compliance with the Maintenance Requirements and the procedure set forth in this Clause 19.5 shall be repeated until the XXX Ropeway conforms to the Maintenance Requirements. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Damages from the Concessionaire under and in accordance with the provisions of Clause 17.8.

## **19.6 Monthly Fee Statement**

During the Operation Period, the Concessionaire shall furnish to the Authority, within 7 (seven) days of completion of each month, a statement of Fee substantially in the form set forth in Schedule-Q (the “**Monthly Fee Statement**”). The Concessionaire shall also furnish to the Authority such other information as the Authority may reasonably require, at specified intervals, in discharge of its statutory functions.

## **ARTICLE 20: TRAFFIC REGULATION AND SECURITY**

### **20.1 Traffic regulation by the Concessionaire**

20.1.1 The Concessionaire shall regulate the traffic on the XXX Ropeway in accordance with Applicable Laws and subject to the supervision and control of the Authority [or a substitute thereof empowered in this behalf under the Applicable Laws].

20.1.2 The Concessionaire shall, in consultation with the Authority and representatives of Users, evolve and publicise a system based on Good Industry Practice such that no User or category of Users is discriminated against or unduly favoured, as the case may be, in the use of the XXX Ropeway.

20.1.3 The Concessionaire shall have the right and obligation to manage, operate and regulate the XXX Ropeway on a common carrier basis providing non-discriminatory services to all persons.

### **20.2 Security**

- 20.2.1 The Authority acknowledges and agrees that unless otherwise specified in this Agreement it shall, at its own cost and expense, provide or cause to be provided security within the limits of the XXX Ropeway 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 in the XXX Ropeway.
- 20.2.2 The Concessionaire shall be responsible for the security arrangements within the XXX Ropeway in order to maintain orderly conduct of its business and the security thereof.
- 20.2.3 The Concessionaire shall abide by and implement any instructions of the Authority for enhancing the security within and around the XXX Ropeway. 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 organisation authorised by the Authority other than those resulting from willful or grossly negligent acts or omissions of such organisation. The Authority agrees that it shall cause the relevant organisations to take such actions as reasonably deemed necessary by them, without unduly or unreasonably disrupting the operations of the XXX Ropeway or interfering with the exercise of rights or fulfilment 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 organisations authorised by the Authority in the discharge of their obligations thereunder.
- 20.2.4 Subject to the rights of the Concessionaire under this Clause 20.2, the Authority or any agency duly authorised by it shall be entitled to inspect and search the XXX Ropeway or part thereof and to search any person or vehicle entering the Site or departing there from, without unduly or unreasonably disrupting the operations of the XXX Ropeway.
- 20.2.5 The Authority agrees that it shall, at the request of the Concessionaire, procure and provide the services of security forces of the Authority on a best effort basis.
- 20.2.6 The Authority shall ensure and procure that the personnel of the Concessionaire and all its contractors, suppliers, sub-contractors and agents and the Users of the XXX Ropeway are allowed free ingress and egress from the limits of the XXX Ropeway without any unreasonable interference by the personnel of the Authority, including the security personnel employed by or on behalf of the Authority.
- 20.2.7 The Authority and the Concessionaire shall jointly make best endeavours to ensure that the security of the XXX Ropeway is maintained such that the level of risk premium under insurance covers (if any) that is to be borne by the Concessionaire shall be at the lowest possible rate. The Parties hereto agree that in the event of a significant rise in such risk premium arising out of a change in the security environment, the Concessionaire shall, notwithstanding anything to the contrary contained in this Agreement, be entitled to pass on 80% (eighty per cent) of such increase to the Users by means of a corresponding increase in Fee.



## ARTICLE 20: KEY PERFORMANCE INDICATORS

### 21.1 Key Performance Indicators

Without prejudice to the obligations specified in this Agreement, the Concessionaire shall operate the XXX Ropeways such that it achieves or exceeds the performance indicators specified in this Article 21 (the “**Key Performance Indicators**”)

### 21.2 Operation of Ropeway Carriers

21.2.1 The XXX Ropeways shall be operated such that the service shall operate between [XXX hours] and [YYY hours] at the service levels specified in this Clause 21.2; provided that the duration of services may be customized as per the requirements specified in RFP.

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

21.2.3 The Concessionaire shall at all times ensure that:

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

### 21.3 Provisions of Carriers

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

### 21.4 Operation of Terminal Stations

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

21.4.2 The design, construction, operation and maintenance of the Stations shall be such that:

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

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

21.4.4 The Concessionaire shall provide adequate number of ticket vending machines and ticket counters such that waiting time for the Users shall not exceed [2 (two)] minutes.

21.4.5 The Concessionaire shall at all times ensure that:

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

#### **21.5 Monthly status report**

During Operation Period, the Concessionaire shall, no later than 7 (Seven) days after the close of each month, furnisha monthly report stating in detail the compliance with all the Key Performance Indicators specified in this Article 21 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 XXX Ropeway.

#### **21.6 Penalty for shortfall in performance**

The Concessionaire shall ensure and procure compliance of each of the Key Performance Indicators specified in this Article 21 and for any shortfall in average performance during a quarter, it shall pay Damages within 30 (thirty) days of the quarter in which the shortfall occurred. The Damages due and payable under this Clause 21.6 shall be determined at the rate of [1% (one per cent) of the total revenue from fee in the respective quarter for every shortfall of 10% (ten per cent)] in any single performance indicator specified in this Article 21; provided, however, that the Authority may waive the Damages, in part or full, if it is satisfied that the Concessionaire has been carrying out its obligations diligently and efficiently and that the shortfall to be waived was on account of reasons beyond the control of the Concessionaire.

#### **[21.7 ISO certification**

21.7.1 The Concessionaire shall, within 6 (six) months from COD, achieve and thereafter maintain throughout the Concession Period, ISO 9001:2015certification or a substitute thereof for all the facilities at the XXX Ropeway, and shall provide a certified copy thereof to the Authority forthwith.

21.7.2 In the event of default in obtaining the certification specified in Clause 21.7.1, 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 XXX Ropeway.

21.7.3 If the period of default in obtaining the ISO certification under this Clause 21.7 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 monthly revenue from Fee for every 1 (one) month of default.]

**21.8 Passenger Charter**

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



## ARTICLE 22: EMERGENCY MEDICAL AID

### 22.1 Medical Aid Posts

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

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



## **ARTICLE 23: TRAFFIC CENSUS AND SAMPLING**

### **23.1 Traffic census and Train operations**

The Concessionaire shall install, maintain and operate an electronic/computerised fee collection system and a train control system, the number of Users, distance travelled, frequency and capacity of the XXX Ropeway, travel time and Fee collected. A statement of such data shall be compiled and furnished forthwith by the Concessionaire to the Authority substantially in the forms specified in Schedule-M.

### **23.2 Traffic survey**

The Authority may require the Concessionaire to conduct, during each year of the Concession Period, a detailed traffic survey 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, carry out or cause to be carried out, the survey in the form and manner reasonably specified by the Authority and furnish a detailed report thereof within 15 (fifteen) days of the completion of each survey. For the avoidance of doubt, the Authority may also conduct traffic surveys, in such manner as it deems fit and at its own cost, through any agency designated by it for this purpose.

### **23.3 Traffic sampling**

23.3.1 For determining the actual traffic on the XXX Ropeway, the Authority shall be entitled to inspect the relevant records of the Concessionaire, and may, at its own cost, undertake traffic sampling substantially in the manner set forth in Schedule-P or in such manner as the Parties may agree upon. The Concessionaire shall provide such assistance as the Authorities may reasonably require for such User traffic sampling.

23.3.2 If the traffic sampling pursuant to this Clause 23.3 demonstrates that the actual traffic is more than the traffic reported by the Concessionaire, the traffic determined by the traffic sampling shall be deemed to be the traffic for purposes of this Agreement and in the event of any Dispute relating to the traffic sampling, the Dispute Resolution Procedure shall apply. For the avoidance of doubt, Realisable Fee for any comparable period shall be calculated with reference to the traffic determined hereunder.

### **23.4 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-M may be modified by the Authority from time to time for conforming to the requirements and output of EDI.

## **ARTICLE 24: INDEPENT ENGINEER**

### **24.1 Appointment of Independent Engineer**

The Authority shall appoint a consulting engineering firm, from a panel of 10 (ten) firms or bodies corporate, constituted by the Authority substantially in accordance with the selection criteria set forth in Schedule-I, to be the independent consultant under this Agreement (the “**Independent Engineer**”). The appointment shall be made no later than 90 (ninety) days from the date of this Agreement and shall be for a period of 3 (three) years. On expiry or termination of the aforesaid period, the Authority may in its discretion renew the appointment, or appoint another firm from a fresh panel constituted pursuant to Schedule-I to be the Independent Engineer for a term of 3 (three) years, and such procedure shall be repeated after expiry of each appointment.

### **24.2 Duties and functions**

- 24.2.1 The Independent Engineer shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule-I. For the avoidance of doubt, the Parties expressly agree that the functions of the Independent Engineer under this Article 24 shall not include Real Estate Development.
- 24.2.2 The Independent Engineer shall submit regular periodic reports (at least once every month) to the Authority in respect of its duties and functions set forth in Schedule-I.
- 24.2.3 True copy of all communications sent by the Authority to the Independent Engineer and by the Independent Engineer to the Authority, shall be sent forthwith by the Independent Engineer to the Concessionaire.
- 24.2.4 True copy of all communications sent by the Independent Engineer to the Concessionaire and by the Concessionaire to the Independent Engineer shall be sent forthwith by the Independent Engineer to the Authority.
- 24.2.5 Independent Engineer shall periodically submit data on the progress / status of Construction Works, financial progress and other requisite details at such interval, as mentioned in the TOR, which shall enable the Authority for updating the project specific website.

### **24.3 Remuneration**

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

### **24.4 Termination of appointment**

- 24.4.1 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 24.1.
- 24.4.2 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 24.1.

#### **24.5 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.

#### **24.6 Dispute resolution**

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

## **PART IV: FINANCIAL COVENANTS**



## **ARTICLE 25: FINANCIAL CLOSE**

### **25.1 Financial Close**

- 25.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 180 (one hundred and eighty) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding [120 (one hundred and twenty)] days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day of delay, and for a further period not exceeding [80 (eighty)] days, subject to payment of Damages at the rate specified in Clause 4.3; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 180 (one hundred and eighty) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred solely as a result of any default or delay by the Authority in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Concessionaire shall be in addition to the Damages, if any, due and payable under the provisions of Clause 4.3.
- 25.1.2 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.

### **25.2 Termination due to failure to achieve Financial Close**

- 25.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 35.6.1, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 25.1.1 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. For the avoidance of doubt, it is agreed that in the event the Parties hereto have, by mutual consent, determined the Appointed Date to precede the Financial Close, the provisions of this Clause 25.2.1 shall not apply.
- 25.2.2 Upon Termination under Clause 25.2.1, the Authority shall be entitled to encash the Bid Security and appropriate the proceeds thereof as Damages; provided, however, that if Financial Close has not occurred solely as a result of the Authority being in default of any of its obligations under Clause 4.2, it shall, upon Termination, return the Bid Security forthwith along with the Damages due and payable under Clause 4.2. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by Performance Security, the Authority shall be entitled to encash therefrom an amount equal to Bid Security.

## ARTICLE 26: GRANT

### 26.1 Grant

- 26.1.1 The Authority agrees to provide to the Concessionaire cash support by way of an outright grant equal to the sum set forth in the Bid, namely, Rs. .... (Rupees in words.....), in accordance with the provisions of this Article 26 (the “Grant”).
- 26.1.2 The Grant shall be disbursed to the Concessionaire by way of Equity Support in accordance with the provisions of Clause 26.2

### 26.2 Equity Support

- 26.2.1 Subject to the conditions specified in this Clause 26.2, the Grant shall be credited to the Escrow Account and shall be applied by the Concessionaire for meeting the Total Project Cost (the “Equity Support”).
- 26.2.2 The Equity Support shall not exceed the sum specified in the Bid and as accepted by the Authority but shall in no case be greater than twice the Equity and shall be further restricted to a sum not exceeding 40% (forty per cent) of the Total Project Cost. Provided, however that in the event Equity Support shall exceed 20% (twenty per cent) of the Total Project Cost, the amount in excess of such 20% (twenty per cent) shall be released against an irrevocable bank guarantee for 2 (two) years which may be invoked if the Concessionaire commits any breach of the obligations specified in this Agreement. For the avoidance of doubt, the Total Project Cost to be reckoned for the purposes of this Clause 26.2.2 shall include Equity Support.
- 26.2.3 Equity Support shall be due and payable to the Concessionaire after it has expended the Equity and shall be disbursed proportionately along with the loan funds thereafter remaining to be disbursed by the Senior Lenders under the Financing Agreements. The Authority shall disburse each tranche of the Equity Support as and when due, but no later than 15 (fifteen) days of receiving a request from the Concessionaire along with necessary particulars.
- 26.2.4 In the event of occurrence of a Concessionaire Default, disbursement of Equity Support shall be suspended till such Concessionaire Default has been cured by the Concessionaire.

### 26.3 Premium<sup>§</sup>

The Concessionaire acknowledges and agrees that as set forth in the Bid, it shall pay to the Authority for each year of the Concession Period, but commencing from the day falling after ..... (.....) days from the COD, a premium (the “Premium”) in the form of an additional Concession Fee, as set forth in Clause 27.2.1 , and in the manner set forth in Clause 27.3 .}

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<sup>§</sup> In the event that the Concessionaire does not seek any Grant from the Authority and offers to pay a Premium instead, the provisions of Clauses 27.1, 27.2 and 27.3 relating to Grant shall be substituted by the provisions of Clause 27.4 relating to Premium, which Clause shall be renumbered.

## ARTICLE 27: CONCESSION FEE

### 27.1 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 27.2].

### 27.2 Additional Concession Fee

27.2.1 Without prejudice to the provisions of Clause 25.1., the Concessionaire agrees to pay to the Authority for the {20th (twentieth) year of the Concession Period}<sup>£</sup>, a premium (the “**Premium**”) in the form of an additional Concession Fee equal to {1% (one per cent)}<sup>§</sup> of the total Realisable Fee during that year, net of any taxes on Fee; and for each subsequent year of the Concession Period, the Premium shall be determined by increasing the proportion of Premium to the total Realisable Fee in the respective year by an additional 1% (one per cent) as compared to the immediately preceding year; provided that the Premium payable under this Article 27 shall be subject to a ceiling of 20% (twenty per cent) of the total Realisable Fee in the respective year. For the avoidance of doubt and by way of illustration, the Premium for the {21<sup>st</sup> (twenty-first) and 22<sup>nd</sup> (twenty-second)} years shall be equal to {2% (two per cent) and 3% (three per cent)} respectively of the total Realisable Fee for the respective years.

27.2.2 The Premium payable under Clause 27.2.1 shall be deemed to be part of the Concession Fee for the purposes of this Agreement.

### 27.3 Payment of Concession Fee

The Concession Fee payable under the provisions of this Article 27 shall be due and payable in half yearly instalments within 7 (seven) days of the close of each month, the Concessionaire shall pay to the Authority against the Concession Fee, a provisional amount calculated on the basis of total Realisable Fee of the immediately preceding month, and final settlement thereof, based on audited accounts of the Concessionaire, shall be made within 120 (one hundred and twenty) days of completion of the respective Accounting Year.

### 27.4 Verification of Realisable Fee

27.4.1 The Authority may, in order to satisfy itself that the Concessionaire is reporting its Realisable Fee honestly and faithfully, depute its representatives to the Stations, centralised controls of automatic Fee collection system and its offices of the concessionaire , and undertake such other measures and actions it may deem necessary, to ascertain the actual revenues from Fee.

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<sup>£</sup> Where the successful bidder has sought a Grant or has not offered any Premium, payment of additional Concession Fee shall commence from the 20<sup>th</sup> (twentieth) year of the Concession Period and the Premium in that year shall be 1% of the total Realisable Fee. Annual increase thereafter shall be in accordance with the provisions of Clause 30.2.1.

<sup>§</sup> In case no Grant is sought by the bidder, it may offer a Premium and specify the reference date for computation and commencement of its payment, subject always to a ceiling of 20% (twenty per cent) of the Total Realisable Fee. For the avoidance of doubt, the rate of Premium payable by the successful bidder and the date of commencement thereof shall be determined by inviting bids with reference to the number of days before/after the COD. In the event of the bidder specifying a date prior to COD for giving effect to a Premium greater than 1% (as specified in the curly parenthesis), such higher Premium shall be payable from COD and shall be increased annually in accordance with the provisions of Clause 30.2.1.

27.2.2 If the verification of Fee revenues pursuant to this Clause 27.4 demonstrates that the Realisable Fee is more than the amount reported by the Concessionaire, the Authority shall, for the purpose of determining the Fee revenues, be entitled to undertake traffic sampling for a continuous period of 7 (seven) days in accordance with Clause 23.3. The Parties hereto agree that if the Average Daily Fee revenue determined under this Clause 28.4.2 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 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 payable under this Clause 28.4.2.

## **ARTICLE 28: USER FEE**

### **28.1 Collection and appropriation of Fee**

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

### **28.2 Revision of Fee**

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

### **28.3 Discounted Fee for frequent Users**

- 28.3.1 The Concessionaire shall, upon request from any person, issue a return pass on payment of a sum equal to 180% (one hundred and eighty per cent) of the Fee payable if it were to undertake a single one-way trip on the XXX Ropeway. Such return pass shall entitle the User to undertake a return journey on the same day as the outward journey.
- 28.3.1 The Concessionaire shall, upon request from any person for issue of a daily pass, issue such pass on payment of a sum equal to twice the Fee payable if it were to undertake a single one-way trip on the longest route of the XXX Ropeway. Such daily pass shall entitle the User to unlimited travel on the XXX Ropeway for the date of issue.
- 28.3.3 The Concessionaire shall, upon request from any person for issue of a weekly pass, issue such pass on payment of a sum equal to ten times the Fee payable if it were to undertake a single one-way trip on the selected section of the XXX Ropeway. Such weekly pass shall entitle the User to unlimited travel on such section of the XXX Ropeway for one week from the date of issue.
- 28.3.4 The Concessionaire shall, upon request from any person for issue of a monthly pass, issue such pass on payment of a sum equal to forty times the Fee payable if it were to undertake a single one-way trip on the selected section of the XXX Ropeway. Such monthly pass shall entitle the User to unlimited travel on such section of the XXX Ropeway for one month from the date of issue.

### **28.4 Fee Contractor**

The Concessionaire may appoint a Fee 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.

### **28.5 Fee collection points**

The Concessionaire shall be entitled to set up at its own risk and cost, its temporary or permanent Fee collection counters and gates, or impose such other restrictions on entry to the XXX



Ropeway, as may reasonably be necessary for preventing evasion of Fee. For the avoidance of doubt, the Concessionaire hereby acknowledges and agrees that it shall establish and operate a system of Fee collection in conformity with Good Industry Practice.

#### **28.6 Additional charge for evasion of Fee**

In the event that any person uses the XXX Ropeway without payment of Fee due, the Concessionaire shall, subject to Applicable Law and Applicable Permits, be entitled to determine and collect from such person the Fee due and thrice the amount thereof towards predetermined liquidated damages for attempt to make unauthorised use of the XXX Ropeway; provided that the determination and collection of such Fee and 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.

#### **28.7 Differential Fee**

28.7.1 The Concessionaire may, after obtaining prior written approval of the Authority which approval the Authority may in its discretion deny, determine and collect a higher and discounted Fee (the “**Differential Fee**”) for use of the XXX Ropeway during peak and off-peak hours respectively in accordance with this Clause 28.7 For the avoidance of doubt, the provisions of this Clause 28.7 shall not apply to passes or tickets, as the case may be, issued under Clause 28.3.

28.7.2 The Concessionaire may designate not more than 4 (four) hours in a day as peak hours and a period equal to twice the peak hours as off-peak hours. The Concessionaire may determine and collect a premium of up to 25% (twenty-five per cent) of the Fee during peak hours or such higher premium as the Authority may by order permit. Simultaneously with such premium on peak hour Fee, the Concessionaire shall offer a discount during off-peak hours at a rate equal to the said premium. For the avoidance of doubt, the determination of Differential Fee shall be with reference to the time of entry of a User.

#### **28.8 Display of Fee Rates**

28.8.1 The Concessionaire shall conspicuously display the Fee structure at each of the terminal Stations of the Project at least in English, Hindi and local language.

28.8.2 The Concessionaire shall, from time to time, inform the Authority of the applicable Fee. Such information shall be communicated at least \*\*\*\* days prior to the revision of Fee under and in accordance with this Agreement.

28.8.3 The Concessionaire shall not revise, display or collect any amounts in excess of the rates of Fee payable under this Agreement. In the event any excess amounts are collected by or on behalf of the Concessionaire, it shall, upon receiving a notice to this effect from the Authority, refund such excess amounts to the Authority along with Damages equal to \*\*\*\*percent thereof.

### **ARTICLE 29: REVENUE SHORTFALL LOAN**

#### **29.1 Revenue Shortfall Loan**

29.1.1 If the Realisable Fee in any Accounting Year shall fall short of the Subsistence Revenue as a result of an Indirect Political Event, a Political Event or a Authority Default, as the case may be, the Authority shall, upon request of the Concessionaire, provide a loan for meeting

such shortfall (the “**Revenue Shortfall Loan**”) at an interest rate equal to 2% (two per cent) above the Bank Rate.

- 29.1.2 If the half-yearly results of the Concessionaire indicate that the shortfall referred to in Clause 29.1.1 and contemplated for an Accounting Year has arisen in respect of the first 6 (six) months thereof, the Concessionaire shall be entitled to a provisional Revenue Shortfall Loan; provided that, no later than 60 (sixty) days after the close of such Accounting Year, the Concessionaire shall either repay the provisional loan with interest or adjust it against the Revenue Shortfall Loan, if any, as may be due to it under this Clause 29.1.
- 29.1.3 The Authority shall disburse the Revenue Shortfall Loan or the provisional Revenue Shortfall Loan, as the case may be, within 30 (thirty) days of receiving a valid request from the Concessionaire along with the particulars thereof including a detailed account of the Indirect Political Event, Political Event or the Authority Default, as the case may be, and its impact on the collection of Fee.

## **29.2 Repayment of Revenue Shortfall Loan**

A sum equal to 50% (fifty per cent) of the ‘profit before tax’ of the Concessionaire, as and when made, shall be earmarked for repayment of the Revenue Shortfall Loan and interest thereon, and paid by the Concessionaire to the Authority within 90 (ninety) days of the close of the Accounting Year in which such profits have been made; provided that the Concessionaire shall repay the entire Revenue Shortfall Loan and interest thereon no later than one year prior to the expiry of the Concession Period and in the event that any sum remains due or outstanding at any time during such period of one year, the Authority shall be entitled to terminate this Agreement forthwith. For the avoidance of doubt, it is agreed that the repayment of Revenue Shortfall Loan shall be in accordance with and subject to the provisions of Article 32.

## ARTICLE 30: EFFECT OF VARIATIONS IN TRAFFIC GROWTH

### 30.1 Effect of variations in traffic growth

- 30.1.1 The Authority and the Concessionaire acknowledge that the traffic on the last day of the month of [month, year] (the “**Target Date 1**”)<sup>10</sup> is estimated to be \*\*\*\*\* passengers per day (the “**Target Traffic 1**”)<sup>11</sup> and hereby agree that for determining the modifications to the Concession Period under this Article 30, the actual traffic on Target Date 1 shall be derived by computing the average of the traffic, on the date that falls one year prior to the Target Date 1, on Target Date 1 and on the first anniversary of Target Date 1 (the “**Actual Average Traffic 1**”).
- 30.1.2 Further, the Authority and the Concessionaire acknowledge that the traffic on the last day of the month of [month, year] (the “**Target Date 2**”)<sup>12</sup> is estimated by increasing the Actual Average Traffic 1 by 5% (five per cent) per annum from the Target Date 1 till Target Date 2 (the “**Target Traffic 2**”) and hereby agree that for determining the modifications to the revised Concession Period, modified as per Target Traffic 1 and Actual Average Traffic 1 in Clause 30.2.1 (A) ) or Clause 30.2.2 (A) ), the actual traffic on Target Date 2 shall be derived by computing the average of the traffic , on the date that falls one year prior to the Target Date 2, on Target Date 2 and on the first anniversary of Target Date 2 (the “**Actual Average Traffic 2**”).
- 30.1.3 In the event that the Actual Average Traffic 1 shall have fallen short of the Target Traffic 1 by more than [2.5% (two point five per cent)] thereof or exceeded the Target Traffic 1 by more than [2.5% (two point five per cent)] thereof, the Concession Period shall be deemed to be modified in accordance with Clause 30.2 For the avoidance of doubt, in the event of any Dispute relating to Actual Average Traffic, the Dispute Resolution Procedure shall apply.
- 30.1.4 In the event that the Actual Average Traffic 2 shall have fallen short of the Target Traffic 2 by more than [2.5% (two point five per cent)] thereof or exceeded the Target Traffic 2 by more than [2.5% (two point five per cent)] thereof, the Concession Period shall be deemed to be modified in accordance with Clause 30.2 For the avoidance of doubt, in the event of any Dispute relating to Actual Average Traffic, the Dispute Resolution Procedure shall apply.

### 30.2 Modification in the Concession Period

- 30.2.1 Subject to the provisions of Clause 30.1.2 or 30.1.3 in case Actual Average Traffic falls short of Target Traffic, the modification shall be as under:
- (A) In the event Actual Average Traffic 1 shall have fallen short of the respective Target Traffic 1, then for every 1% (one per cent) shortfall as compared to the Target Traffic 1, the

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<sup>10</sup> The Target Date 1 to be specified here shall be between 7 (seven) and 10 (ten) years from the date of this Agreement.

<sup>11</sup> The Target Traffic 1 shall be a number based on the traffic report prepared by the Technical Consultant for the XXX Ropeway. [It shall be based on 5% Compounded Annual Growth Rate (CAGR) over the base traffic estimated by the Technical Consultant for the XXX Ropeway].

<sup>12</sup> The Target Date 2 to be specified here shall be the minimum of 10 (ten) years from Target Date 1 or 7 (seven) years prior to the date of expiry of the Concession Period, whichever is earlier.

Concession Period shall, subject to payment of Concession Fee in accordance with this Agreement, be increased by 1.5% (one point five per cent) thereof; provided that such increase in Concession Period shall not in any case exceed 20% (twenty per cent) of the Concession Period. For the avoidance of doubt, and by way of illustration, it is agreed that in the event of a shortfall of 10.6% (ten point six per cent) in Target Traffic 1, the Concession Period shall be increased by 15% (fifteen per cent) thereof. Notwithstanding anything to the contrary contained in this Agreement, the Authority and the Concessionaire agree and acknowledge that upon modification as per Target Traffic 1 and Actual Average Traffic 1, the modified Concession Period shall become the Concession Period for the purpose of this XXX Ropeway.

- (B) In the event Actual Average Traffic 2 shall have fallen short of the respective Target Traffic 2, then for every 1% (one per cent) shortfall as compared to the Target Traffic 2, the Concession Period shall, subject to payment of Concession Fee in accordance with this Agreement, be increased by 1.5% (one point five per cent) thereof; provided that such increase in Concession Period shall not in any case exceed 20% (twenty per cent) of the Concession Period. Notwithstanding anything to the contrary contained in this Agreement, the Authority and the Concessionaire agree and acknowledge that upon modification as per Target Traffic 2 and Actual Average Traffic 2, the modified Concession Period shall become the Concession Period for the purpose of this XXX Ropeway.

30.2.2 Subject to the provisions of Clause 30.1.2 or 30.1.3, in case Actual Average Traffic exceeds the Target Traffic, the modification shall be as under

- (A) In the event Actual Average Traffic 1, shall have exceeded the respective Target Traffic 1, then for every 1% (one per cent) excess as compared to the respective Target Traffic 1, the Concession Period shall be reduced by 0.75% (zero point seven five per cent) thereof; provided that such reduction in Concession Period shall not in any case exceed 10% (ten per cent) thereof. For the avoidance of doubt and by way of illustration, it is agreed that in the event of an excess of 8.7% (eight point seven per cent) in Target Traffic 1, the Concession Period shall be reduced by 6% (six per cent) thereof. Notwithstanding anything to the contrary contained in this Agreement, the Authority and the Concessionaire agree and acknowledge that upon modification as per Target Traffic 1 and Actual Average Traffic 1, the modified Concession Period shall become the Concession Period for the purpose of this XXX Ropeway.
- (B) In the event Actual Average Traffic 2, shall have exceeded the respective Target Traffic 2, then for every 1% (one per cent) excess as compared to the respective Target Traffic 2, the Concession Period shall be reduced by 0.75% (zero point seven five per cent) thereof; provided that such reduction in Concession Period shall not in any case exceed 10% (ten per cent) thereof. Notwithstanding anything to the contrary contained in this Agreement, the Authority and the Concessionaire agree and acknowledge that upon modification as per Target Traffic 2 and Actual Average Traffic 2, the modified Concession Period shall become the Concession Period for the purpose of this XXX Ropeway.

[Provided further that in lieu of a reduction in Concession Period under this Clause 30.2.2 the Concessionaire may elect to pay, in addition to the Concession Fee that would be due and payable if the Concession Period were not reduced hereunder, a further Premium equal to [25% (twenty five per cent)] of the Realisable Fee in the respective year(s), and upon notice given to this effect by the Concessionaire no later than 2 (two) years prior to the Transfer Date contemplated under this Clause 30.2.2 the Authority shall waive the reduction in Concession Period hereunder and recover the Concession Fee and the aforesaid premium for the period waived hereunder.]

### 30.3 Termination due to congestion<sup>13</sup>

30.3.1 Notwithstanding anything to the contrary contained in this Agreement, if the Average PHPDT in any Accounting Year shall exceed the designed capacity of the XXX Ropeway and shall continue to exceed the designed capacity for 4 (four) Accounting Years following thereafter, an Indirect Political Event shall be deemed to have occurred and the Authority may in its discretion terminate this Agreement by issuing a Termination Notice and making a Termination Payment under and in accordance with the provisions of Clause 35.9.2; provided that before issuing the Termination Notice, the Authority shall inform the Concessionaire of its intention to issue such Termination Notice and grant a period of 180 (one hundred and eighty) days for making a representation, and may, after the expiry of such period, whether or not it has received such representation, in its sole discretion issue the Termination Notice. For the avoidance of doubt, the Parties agree that an Average PHPDT of \*\*\*\*\*[and of \*\*\*\*\*] shall be deemed to be the designed capacity of the XXX Ropeway for the purposes of this Clause 30.3 [prior to System Augmentation, and after System Augmentation, respectively]:

Provided that in lieu of Termination under this Clause 30.3.1, the Concessionaire may elect to pay, in addition to the Concession Fee due and payable under Article 27 if the Agreement were not terminated, a further premium equal to [20% (twenty per cent)] of the Realisable Fee in the respective years, and upon notice given to this effect by the Concessionaire, the Authority shall not issue a Termination Notice under this Clause 30.3.1 and allow the Concessionaire to continue as if the breach hereunder were cured by payment of the said premium.[For the avoidance of doubt, the provisions of this Clause 30.3 shall be applied as if each corridor/ line is a separate XXX Ropeway; provided however, that the Termination Notice under this Clause 30.3 shall apply to the entire XXX Ropeway.]

30.3.2 If the Concessionaire shall have, prior to issue of a Termination Notice under Clause 30.3.1, completed the construction works necessary for augmenting the capacity of the XXX Ropeway such that its capacity shall have increased sufficiently for carrying the then current traffic in accordance with the provisions of this Agreement and Good Industry Practice, the Indirect Political Event specified in Clause 30.3.1 shall be deemed to have been cured.

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<sup>13</sup> **HSA Note:** To be confirmed by Niti Aayog.

## ARTICLE 31: CONSTRUCTION OF COMPETING FACILITY

### 31.1 Restrictions on construction of Competing Facility

- 31.1.1 Notwithstanding anything to the contrary contained in this Agreement but subject always to Clause 30.2, the Authority shall not construct, and shall procure that no Authority Instrumentality shall construct or cause to be constructed, any ropeway system, between, *inter alia*, \*\*\* and \*\*\* or \*\*\* and \*\*\* (collectively the “**Competing Facility**”) for use by traffic at any time before the [10<sup>th</sup> (tenth)] anniversary of the Appointed Date; provided that the restriction herein shall not apply if the Average PHPDT on the XXX Ropeway in any 2 (two) consecutive years exceeds 90% (ninety per cent) of its designed capacity specified in Clause 30.3.1. For the avoidance of doubt, Competing Facility does not include any ropeway system or other facility connecting, *inter alia*, \*\*\* and \*\*\* or \*\*\* and \*\*\* if the length of such transport system exceeds the length of the existing route comprising the XXX Ropeway by 30 % (thirty per cent) thereof.
- 31.1.2 If the Authority shall be in breach of the provisions of Clause 31.1.1, the Concessionaire shall, without prejudice to its other rights and remedies under this Agreement, be entitled to receive compensation from the Authority under and in accordance with the provisions of Clause 36.4.

### 31.2 Modification in the Concession Period<sup>14</sup>

In the event of the Authority or any Government Instrumentality constructing or causing construction of any Competing Facility, the following shall apply:

- [(a) if the Competing Facility is proposed to be opened to traffic between the 10<sup>th</sup> (tenth) and the 15<sup>th</sup> (fifteenth) anniversary of the Appointed Date, the Authority shall, by notice to be communicated before the 10<sup>th</sup> (tenth) anniversary of the Appointed Date, require the Concessionaire not to undertake System Augmentation and to operate the XXX Ropeway for a Concession Period of w0 (twenty) years. Upon delivery of such notice, the Concession Period shall be deemed to be 20 (twenty) years for purposes of this Agreement;]
- [(b) if the Concession Period is revised to 20 (twenty) years under clause (a) above, and the Competing Facility is opened to traffic between the 10<sup>th</sup> (tenth) and 15<sup>th</sup> (fifteenth) anniversary of the Appointed Date, the Concessionaire shall be entitled to an additional Concession Period which shall be equal in duration to the period between the opening of the Competing Facility and the 15<sup>th</sup> (fifteenth) anniversary;]<sup>15</sup>
- (c) if the Competing Facility is opened to traffic between the [15<sup>th</sup> (fifteenth)] and [30<sup>th</sup> (thirtieth)] anniversary of the Appointed Date, the Concessionaire shall be entitled to an additional Concession Period, which shall be equal in duration to the period between the opening of the Competing Facility and the [30<sup>th</sup> (thirtieth)] anniversary. For the avoidance of doubt, if the Competing Facility is opened on the [25<sup>th</sup> (twenty-fifth)] anniversary, the Concession Period shall be deemed to be increased by a period of 5 (five) years; and

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<sup>14</sup> **HSA Note:** NITI Aayog to confirm the timelines

<sup>15</sup> Sub-clauses (a) and (b) may be omitted if two-stage capacity augmentation is not specified in the Agreement and Sub-clause (c) may be retained as Clause 35.2.

- (d) if the Concession Period is to be increased in accordance with the provisions of this Clause 31.2, the same shall be added to the Concession Period due to the

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Concessionaire under and in accordance with all other provisions of this Agreement, save and except the provisions relating to Termination.

### **31.3 Minimum Fee for the XXX Ropeway**

Upon commissioning of the Competing Facility, the Concessionaire shall continue to collect the Fee, and shall not offer any discounts or reductions in such Fee except with the prior written consent of the Authority; provided that the Concessionaire may continue, in the same form and manner, any discounts or reductions that it had offered to any general or special class of Users for a continuous period of three years prior to the opening of the Competing Facility to traffic.

### **31.4 Minimum Fee for Competing Facility**

The Authority agrees and undertakes to procure that the fee to be levied and collected from any person using the Competing Facility during the subsistence of this Concession shall at no time be less than 25% (twenty five per cent) higher than the Fee levied and collected from similar Users using the XXX Ropeway.

## ARTICLE 32: ESCROW ACCOUNT

### 32.1 Escrow Account

32.1.1 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.

32.1.2 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.

### 32.2 Deposits into Escrow Account

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

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

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

### 32.3 Withdrawals during Concession Period

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

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



the Concessionaire;

- (h) 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.

32.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Clause 32.3.1 except with the prior written approval of the Authority.

#### **32.4 Withdrawals upon Termination**

32.4.1 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 XXX Ropeway;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt if required to be as per the terms of this Agreement;
- (c) outstanding Concession Fee;
- (d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire, including {Premium};
- (e) retention and payments relating to the liability for defects and deficiencies set forth in Article 43;
- (f) outstanding Debt Service including the balance of Debt Due;
- (g) incurred or accrued O&M Expenses;
- (h) any other payments required to be made under this Agreement; and
- (i) balance, if any, in accordance with the instructions of the Concessionaire;
- (j) outstanding Subordinated Debt;

Provided that no appropriations shall be made under Sub-clause (j) of this Clause 32.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of Article 42.

32.4.2 The provisions of this Article 32 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 32.4.1 have been discharged.

### **ARTICLE 33: INSURANCE**

#### **33.1 Insurance during Concession Period**

- 33.1.1 The Concessionaire shall effect and maintain at its own cost, during the Construction Period and the Operation Period, such insurances for such maximum sums as may be required under the Financing Agreements, and the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Concessionaire during the Construction Period. The Concessionaire shall procure that in each insurance policy, the Authority shall be a co-insured and that the insurer shall pay the proceeds of insurance into the Escrow Account. For the avoidance of doubt, the level of insurance to be maintained by the Concessionaire after repayment of Senior Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Senior Lenders' dues.
- 33.1.2 Without prejudice to the provisions contained in Clause 33.1.1, the The Concessionaire shall, 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 the Authority to the Concessionaire, at replacement value;
  - (b) Machinery break-down insurance policy for insuring critical plant & equipment against any damage;
  - (c) comprehensive third-party liability insurance including injury to or death of personnel of the Authority or others who may enter the Project;
  - (d) the Concessionaire's general liability arising out of the Concession;
  - (e) liability to third parties for goods or property damage;
  - (f) workmen's compensation insurance, personal accident insurance and medical insurance;
  - (g) passenger accident insurance for the passengers on-board the ropeway project having a valid ticket; and
  - (h) 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.

### **33.2 Notice to the Authority**

No later than 45 (forty-five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 33. 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.

### **33.3 Evidence of Insurance Cover**

All insurances obtained by the Concessionaire in accordance with this Article 33 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.

#### **33.4 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.

#### **33.5 Waiver of subrogation**

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 33 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.

#### **33.6 Concessionaire's waiver**

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

#### **33.7 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 32.3 apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the XXX Ropeway, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

### **ARTICLE 34: ACCOUNTS AND AUDIT**

#### **34.1 Audited accounts**

34.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including all Realisable Fee and other revenues derived/collected by it from or on account of the XXX Ropeway and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along

with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.

- 34.1.2 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.
- 34.1.3 On or before the 31<sup>st</sup> (thirty-first) day of May each Year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on (a) the number of passengers using the XXX Ropeway and liable for payment of Fee therefor, (b) Fee charged and received, Realisable Fee and other revenues derived from the XXX Ropeway, and (c) such other information as the Authority may reasonably require.

#### **34.2 Appointment of auditors**

- 34.2.1 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.
- 34.2.2 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.
- 34.2.3 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 any time, another firm (the “**Additional Auditors**”) from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.
- 34.2.4 In the event that the Grant exceeds 20% (twenty per cent) of the Total Project Cost, the Authority shall have the right, but not the obligation, to appoint at its cost, for the duration of the Construction Period, another firm (the “**Concurrent Auditors**”) from the Panel of Chartered Accountants to undertake concurrent audit of the Concessionaire’s accounts.

#### **34.3 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.

#### **34.4 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.

#### **34.5 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 35: FORCE MAJEURE

### 35.1 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 35.2, 35.3, 35.4 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.

### 35.2 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 XXX Ropeway for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 35.3
- (c) any failure or delay of a Contractor but only to the extent caused by another NonPolitical Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (d) any delay or failure of an overseas contractor to deliver equipment in India if such delay or failure is caused outside India by any event specified in Sub-clause (a) above and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such contractor;<sup>16</sup>
- (e) 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;
- (f) 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

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<sup>16</sup> **HSA Note:** NITI Aayog to confirm.



- (g) any event or circumstances of a nature analogous to any of the foregoing.

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### **35.3 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.

### **35.4 Political Event**

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

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 45 and its effect, in financial terms, exceeds the sum specified in Clause 42.1
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;
- (d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or

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

### **35.5 Duty to report Force Majeure Event**

35.5.1 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 35 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.

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

35.5.3 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 35.5.1 and such other information as the other Party may reasonably request the Affected Party to provide.

### **35.6 Effect of Force Majeure Event on the Concession**

35.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 4.1 for fulfilment of Conditions Precedent and in 23.1.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

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

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

### **35.7 Allocation of costs arising out of Force Majeure**

35.7.1 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.

35.7.2 Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Project (the “**Force Majeure Costs**”) shall be allocated and paid as follows:

- (a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;
- (b) upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Concessionaire; and
- (c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Concessionaire.

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

35.7.3 Save and except as expressly provided in this Article 35, 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.

### **35.8 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 35, 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.

### **35.9 Termination Payment for Force Majeure Event**

35.9.1 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.

- 35.9.2 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; and
  - (c) an amount equivalent to the Additional Termination Payment 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 computation of the amount payable hereunder.
- 35.9.3 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 39.3.2 as if it were an Authority Default.

### **35.10 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.

### **35.11 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 36: COMPENSATION FOR BREACH OF AGREEMENT**

### **36.1 Compensation for default by the Concessionaire**

In the event of the Concessionaire being in material breach or default of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material breach or default, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 36.1 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.

### **36.2 Compensation for default by the Authority**

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

### **36.3 Extension of Concession Period**

In the event that a material breach or default of this Agreement set forth in Clause 36.2 causes delay in achieving COD or leads to Suspension of or reduction in collection of Fee, as the case may be, the Authority shall, in addition to payment of compensation under Clause 36.2 extend the Concession Period, such extension being equal in duration to the period by which COD was delayed or the collection of Fee remained suspended on account thereof, as the case may be; and in the event of reduction in collection of Fee where the daily collection is less than 90% (ninety per cent) of the Average Daily Fee, the Authority shall, in addition to payment of compensation under Clause 36.2, extend the Concession Period in proportion to the loss of Fee on a daily basis. For the avoidance of doubt, loss of 25% (twenty-five per cent) in collection of Fee as compared to the Average Daily Fee for four days shall entitle the Concessionaire to extension of one day in the Concession Period.

### **36.4 Compensation for Competing Facility**

36.4.1 In the event that a Competing Facility is opened to traffic in breach of this Agreement, the Authority shall pay to the Concessionaire, for each day of breach, compensation in a sum equal to the difference between the average daily Realisable Fee and the projected daily Fee (the “**Projected Fee**”) until the breach is cured. The Projected Fee hereunder shall be an amount equal to the Average Daily Fee, increased at the close of every month by 0.5% (zero point five per cent) thereof and revised in accordance with Clause 28.2. For the avoidance of doubt, the Average Daily Fee for the purposes of this Clause shall be the amount so determined in respect of the Accounting Year or period, as the case may be, occurring prior to such opening or operation of the Competing Facility.

36.4.2 Payment of compensation under this Clause 35.4 shall be deemed to cure the breach of this Agreement so long as the Authority continues to pay compensation hereunder.

**36.5 Compensation to be in addition**

Compensation payable under this Article 36 shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any.

**36.6 Extension of Concession Period**

The Affected Party shall make all reasonable efforts to mitigate or limit the costs and damage arising out of or as a result of breach of Agreement by the other Party.

## **ARTICLE 37: SUSPENSION OF CONCESSIONAIRE'S RIGHTS**

### **37.1 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.

### **37.2 Authority to act on behalf of Concessionaire**

37.2.1 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 32.3

37.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period. The Concessionaire hereby licences and sub-licences respectively, the Authority or any other person authorised by it under Clause 37.1 to use during Suspension, all Intellectual Property belonging to or licenced to the Concessionaire with respect to the XXX Ropeway and its design, engineering, construction, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

### **37.3 Revocation of Suspension**

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

37.3.2 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.

### **37.4 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 37.1 for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

### **37.5 Termination**

- 37.5.1 At any time during the period of Suspension under this Article 37, 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 37.4, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 41.
- 37.5.2 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 37.1, 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 38: TERMINATION

### 38.1 Termination for Concessionaire Default

38.1.1 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 XXX Ropeway without the prior written consent of the Authority;
- (e) Project Completion Date does not occur within the period specified in Clause 12.3.3;
- (f) the Punch List items have not been completed within the period set forth in Clause 14.4.1;
- (g) the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be, or commits repeated default in conforming to the Key Performance Indicators;
- (h) the Concessionaire has failed to make any payment to the Authority within the period specified in this Agreement;
- (i) an Escrow Default has occurred, and the Concessionaire fails to cure the default within a Cure Period of 15 (fifteen) days;
- (j) upon occurrence of a Financial Default, the Lenders’ Representative has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;
- (k) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- (l) the Concessionaire creates any Encumbrance in breach of this Agreement;
- (m) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;

- (n) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- (o) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;
- (p) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- (q) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;
- (r) the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
- (s) occurrence of any Insolvency Event;
- (t) the Concessionaire has been, or is in the process of being amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:
  - (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
  - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and
  - (iii) each of the Project Agreements remains in full force and effect;
- (u) 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;
- (v) 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;
- (w) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement; or
- (x) 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.

38.1.2 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 38.1.3.

38.1.3 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 38.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement:

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

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

## **38.2 Termination for Authority Default**

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

- (a) The Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;
- (b) the Authority has failed to make any payment to the Concessionaire within the period specified in this Agreement; and
- (c) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

38.2.2 Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon occurrence of an Authority Default, the Concessionaire shall, subject

to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Concessionaire shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Authority to make a

representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

**38.3 Termination Payment<sup>17</sup>**

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

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

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

38.3.2 Notwithstanding the provisions of Clause 38.3.1, upon Termination on account of Concessionaire Default during the Construction Period, the Authority shall pay Termination Payment corresponding to the Physical Progress of the Project made by the Concessionaire, calculated on the basis of the last achieved Project Milestone as follows:

Project Milestone	Termination Payment

For the avoidance of doubt, it is clarified that if Termination occurs between Project Milestones, the Termination Payment would be calculated on the basis of the last Project Milestone achieved by the Concessionaire.

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

- (i) If Termination occurs prior to COD
  - (a) Debt Due calculated as per the table below less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, 80% (eighty per cent) of such unpaid claims shall be included in the computation of Deb

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Due and would be calculated as follows:

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<sup>17</sup> **HSA NOTE:** This provision has been retained as per discussion. However, there is a departure from the Urban Rail MCA wherein no termination payment is given to the Concessionaire prior to COD. NITI Aayog to confirm.

Project Milestone	Basis of calculation for Debt Due

For the avoidance of doubt, it is clarified that if Termination occurs between Project Milestones, the Termination Payment would be calculated on the basis of the last Project Milestone achieved by the Concessionaire; and

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

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

38.3.5 The Concessionaire expressly agrees that Termination Payment under this Article 41 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

#### **38.4 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 XXX Ropeway forthwith;
- (b) take possession and control of all materials, stores, implements, construction plants and equipment on or about the Site;
- (c) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Site or any part of the Project;
- (d) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 39.1; 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.

### **38.5 Certain limitations on Termination Payment**

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

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

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

38.5.3 Additional Termination Payment due and payable in respect of Specified Assets, not being assets forming part of Real Estate Development [or System Augmentation, as the case may be], which are constructed, acquired or installed after the 5<sup>th</sup> (fifth) anniversary of COD, but before the [10<sup>th</sup> (tenth)] anniversary thereof, shall be limited to the lowest of:

- (a) Adjusted Depreciated Value thereof;
- (b) the replacement value thereof, as assessed by an Approved Valuer, who shall be selected and appointed by the Authority, within 15 (fifteen) days of Termination, for submitting his assessment within 30 (thirty) days of his appointment hereunder; and

- (c) [20% (twenty per cent)] of the sum of Total Project Cost and Equity Support, if any.

### **38.6 Survival of rights**

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 38.3 , any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.





## **ARTICLE 39: DIVESTMENT OF RIGHTS AND INTEREST**

### **39.1 Divestment Requirements**

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

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

### **39.2 Inspection and cure**

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Independent Engineer shall verify, after giving due notice to the Concessionaire of the time, date and venue of such verification, compliance by the Concessionaire with the Maintenance Requirements, and if required,

cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 43 shall apply, mutatis mutandis, in relation to curing of defects or deficiencies under this Article 39.

### **39.3 Cooperation and assistance on transfer of Project**

- 39.3.1 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.
- 39.3.2 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.
- 39.3.3 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 39.1.1 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.

### **39.4 Vesting Certificate**

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

### **39.5 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.

### **39.6 Divestment costs etc.**

- 39.6.1 The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the XXX Ropeway in favour of the Authority upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such divestment shall be borne by the Authority.
- 39.6.2 In the event of any Dispute relating to matters covered by and under this Article 39, the Dispute Resolution Procedure shall apply.

## **ARTICLE 40: DEFECTS LIABILITY AFTER TERMINATION**

### **40.1 Liability for defects after Termination**

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

### **40.2 Retention in Escrow Account**

- 40.2.1 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 40.1
- 40.2.2 Without prejudice to the provisions of Clause 40.2.1 , the Independent Engineer shall carry out an inspection of the XXX Ropeway at any time between 210 (two hundred and ten) and 180 (one hundred and eighty) days prior to the Termination and if it recommends that the status of the XXX Ropeway is such that a sum larger than the amount stipulated in Clause 40.2. 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.
- 40.2.3 The Concessionaire may, for the performance of its obligations under this Article 40, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under Clause 40.2.1 or 40.2.2 as the case may be, and for the period specified therein, substantially in the form set forth in Schedule-F(the "**Performance Guarantee**"), to be modified, mutatis mutandis, for this purpose, and the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at the Concessionaire's risk and cost in accordance with the provisions of this Article 40. Upon furnishing of a Performance Guarantee under this Clause 40.2.3, the retention of funds in the Escrow Account in terms of Clause 40.2.1 or 40.2.2, as the case may be, shall be dispensed with.

**PART VI: OTHER PROVISIONS**



## **ARTICLE 41: ASSIGNMENT AND CHARGES**

### **41.1 Restrictions on assignment and charges**

41.1.1 Subject to Clauses 41.2 and 41.3 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.

41.1.2 Subject to the provisions of Clause 41.2 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.

### **41.2 Permitted assignment and charges**

The restraints set forth in Clause 41.1 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 XXX Ropeway;
- (b) mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title, arising or created in the ordinary course of business of the XXX Ropeway, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the XXX Ropeway;
- (c) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and
- (d) liens or encumbrances required by any Applicable Law.

### **41.3 Substitution Agreement**

41.3.1 The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire pursuant to the agreement for substitution of the Concessionaire (the "**Substitution Agreement**") to be entered into amongst the Concessionaire, the Authority and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Schedule-P.

41.3.2 Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire; provided that where the Concessionaire is in breach of this Agreement on the date of such substitution, the Authority shall by notice grant a Cure Period of 120 (one hundred and twenty) days to the Concessionaire for curing such breach.

### **41.4 Assignment by the Authority**

Notwithstanding anything to the contrary contained in this Agreement, the Authority may,

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

## **ARTICLE 42: CHANGE IN LAW**

### **42.1 Increase in costs**

If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of Rs. 1 crore (Rupees one crore)<sup>18</sup> and 0.5% (zero point five percent) of the Realisable Fee in any Accounting Year, the Concessionaire may so notify the Authority and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Concessionaire may by notice require the Authority to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Authority shall pay the amount specified therein; provided that if the Authority shall dispute such claim of the Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 42.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

### **42.2 Reduction in costs**

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

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Authority may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Concessionaire shall pay the amount specified therein to the Authority; provided that if the Concessionaire shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 42.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

### **42.3 Protection of NPV**

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<sup>18</sup> This amount may, in the discretion of the Authority, be suitably increased, but in no case exceeding a ratio of Rs. 1 cr. for every Rs. 500 cr. of Total Project Cost.



Pursuant to the provisions of Clauses 42.1 and 42.2 and for the purposes of placing the

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

**42.4 Restriction on cash compensation**

The Parties acknowledge and agree that the demand for cash compensation under this Article 42 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.

**42.5 No claim in the event of recovery from Users**

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

## **ARTICLE 43: LIABILITY AND INDEMNITY**

### **43.1 General indemnity**

- 43.1.1 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.
- 43.1.2 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.

### **43.2 Indemnity by the Concessionaire**

- 43.2.1 Without limiting the generality of Clause 43.1 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.
- 43.2.2 Without limiting the generality of the provisions of this Article 43, 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 XXX Ropeway, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a licence, at no cost to the Authority, authorising continued use of the infringing work. If the Concessionaire is unable to secure such licence within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process or modify the same so that it becomes noninfringing.

### **43.3 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 43 (the “**Indemnified Party**”) it shall notify the other Party (the “**Indemnifying Party**”) within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

### **43.4 Defence of claims**

- 43.4.1 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 43, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.
- 43.4.2 If the Indemnifying Party has exercised its rights under Clause 43.3 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).
- 43.4.3 If the Indemnifying Party exercises its rights under Clause 43.3 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 43.4.3 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.

#### **43.5 No consequential claims**

Notwithstanding anything to the contrary contained in this Article 43, 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.

#### **43.6 Survival on Termination**

The provisions of this Article 43 shall survive Termination.

## **ARTICLE 44: RIGHTS AND TITLE OVER THE SITE**

### **44.1 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 XXX Ropeway by third parties in accordance with and subject to the provisions of this Agreement.

### **44.2 Access rights of the Authority and others**

44.2.1 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 XXX Ropeway or to investigate any matter within their authority, and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

### **44.3 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.

### **44.4 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 XXX Ropeway.

## ARTICLE 45: DISPUTE RESOLUTION

### 45.1 Dispute resolution

- 45.1.1 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 45.2
- 45.1.2 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 nonprivileged records, information and data pertaining to any Dispute.

### 45.2 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 45.1.1 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 45.3

### 45.3 Arbitration

- 45.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 45.2 2, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 45.3.2 Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”), or such other rules as may be mutually agreed by the Parties and shall be subject to the provisions of the Arbitration Act. The venue of such arbitration shall be Delhi, and the language of arbitration proceedings shall be English.
- 45.3.2 There shall be a Board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.
- 45.3.3 The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 45 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.

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

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

**45.4 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 45.3, 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 46: DISCLOSURE

### 46.1 Disclosure of Specified Documents

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

### 46.2 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 XXX Ropeway, free of charge, during normal business hours on all working days, at the Concessionaire’s Registered Office. The Concessionaire shall make copies of the same available to any person upon payment of copying charges on a ‘no profit no loss’ basis.

Notwithstanding the provisions of Clauses 46.1 and 46.2, the Authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined hereinbelow) to any person in pursuance of the aforesaid Clauses.

*Explanation:*

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 46.1 and 46.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.



## **ARTICLE 47: REDRESSAL OF PUBLIC GRIEVANCES**

### **47.1 Complaints Register**

- 47.1.1 The Concessionaire shall maintain a public relations office at each of the terminals where it shall keep a register (the “**Complaint Register**”) open to public access at all times for recording of complaints by any person (the “**Complainant**”). Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Concessionaire at each terminal so as to bring it to the attention of all Users.
- 47.1.2 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.
- 47.1.3 Without prejudice to the provisions of Clauses 47.1.1 and 47.1.2, the Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

### **47.2 Redressal of complaints**

- 47.2.1 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.
- 47.2.2 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 48: MISCELLANEOUS**

### **48.1 Governing law and jurisdiction**

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

### **48.2 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).

### **48.3 Depreciation and Interest**

48.3.1 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.

48.3.2 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.

### **48.4 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 5% (five per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

### **48.5 Waiver**

48.5.1 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:

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- (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.

48.5.2 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.

#### **48.6 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 XXX Ropeway nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- (b) the Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

#### **48.7 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.

#### **48.8 Survival**

48.8.1 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.

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

#### **48.9 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 Qualification or Request for Proposals, as the case may be, shall be deemed to form part of this Agreement and treated as such.

#### **48.10 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.

#### **48.11 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.

#### **48.12 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.

#### **48.13 Successors and assigns**

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

#### **48.14 Notices**

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

- (a) in the case of the Concessionaire, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Concessionaire may from time to time designate

by notice to the Authority; provided that notices or other communications to be given to an address outside Delhi may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Concessionaire may from time to time designate by notice to the Authority;

Attention:

Designation:

Address:

Fax No:

Email:

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

Fax No:

Email:

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

#### **48.15 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.

#### **48.16 Counterparts**

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

### **ARTICLE 49: DEFINITIONS**

#### **49.1 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;

“**Actual Average Traffic 1**” shall have the meaning set forth in Clause 30.1.1

“**Actual Average Traffic 2**” shall have the meaning set forth in Clause 30.1.2

“**Additional Auditors**” shall have the meaning set forth in Clause 34.2.3

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

“**Additional Termination Payment**” means the amount, if any, payable upon Termination, on account of the Adjusted Depreciated Value of Specified Assets, as further limited by the provisions of Clauses 39.5.2, 39.5.3 and 39.5.4, (39.5.2 (a), (b) & (c) as the case may be;

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

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

- (a) on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and the Reference Date;
- (b) from COD and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the “**Base Adjusted Equity**”) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in WPI occurring between COD and the Reference Date;
- (c) after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.42% (zero point four two per cent)<sup>19</sup> thereof at the commencement of each month following the 4th (fourth)

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anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date;

“**Affected Party**” shall have the meaning set forth in Clause 35.1

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<sup>19</sup> This number shall be substituted in each case by the figure arrived at upon dividing 100 by the number of months comprising the Concession Period. For example, the figure for a 20 year Concession Period shall be  $100/240 = 0.416$  rounded off to two decimal points i.e. 0.42.

“**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 XXX Ropeway during the subsistence of this Agreement;

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

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

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

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

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

“**Authority Default**” shall have the meaning set forth in Clause 39.2.1

“**Authority Indemnified Persons**” shall have the meaning set forth in Clause 43.1.1

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

“**Average Daily Fee**” means the amount arrived at after dividing the total revenues of the immediately preceding Accounting Year by 365 (three hundred and sixty-five), and increasing the result thereof by 5% (five per cent);

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

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

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

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

“**Bid Date**” means the last date on which the Bid may have been submitted in accordance with the provisions of the Request for Proposals;

“**Bid Security**” means the security provided by the Concessionaire to the Authority along with the Bid in a sum of Rs. \*\*\*\*\* crore (Rupees \*\*\*\*\* crore)<sup>20</sup>, in accordance with the Request for Proposal, and which is to remain in force until substituted by the Performance Security;

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

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

“**Change in Ownership**” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate

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holding of the {selected bidder/Consortium Members}, together with {its/their} Associates, in the total Equity to decline below (i) 51% (fifty one per cent) thereof during Construction

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<sup>20</sup> Calculated @1% (one per cent) of the amount specified in the definition of Total Project Cost. The Authority may, if deemed necessary, prescribe a higher Bid Security not exceeding 2% of the Total Project Cost. In the case of a project having a Total Project Cost of Rs. 2,000 cr. or above, the Authority may reduce the Bid Security, but not less than 0.5% of the Total Project Cost in any case.



Period, (ii) 33% (thirty three per cent) thereof during a period of 3 (three) years following COD, and (iii) 26% (twenty six per cent) thereof, or such lower proportion as may be permitted by the Authority during the remaining Concession Period; provided that any material variation (as compared to the representations made by the Concessionaire during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or Bid, as the case may be,) in the proportion of the equity holding of {the selected bidder/any Consortium Member} to the total Equity, if it occurs prior to COD, shall constitute Change in Ownership;

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

“**Change of Scope Note**” shall have the meaning set forth in Clause 16.2.1;

“**Change in Scope Order**” shall have the meaning set forth in Clause 16.2.3

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

“**Competing Facility**” shall have the meaning set forth in Clause 30.2.3,

“**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 27.1

“**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 39.1.1;

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

“**Complainant**” shall have the meaning set forth in Clause 47.1.1;

“**Complaint Register**” shall have the meaning set forth in Clause 47.1.1;

“**Concurrent Auditors**” shall have the meaning set forth in Clause 34.2.4

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

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

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

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

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

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

“**Covenant**” shall have the meaning set forth in Clause 5.2.6;

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

- (a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
- (c) not in any way be extended by any period of Suspension under this Agreement; provided that if the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the Authority or the Independent Engineer hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or the Independent Engineer to accord their approval;

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

“**Damages**” shall have the meaning set forth in Sub-clause (w) of Clause 1.2.1; “**Debt Due**” means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:

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

**“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 45.1.1

**“Dispute Resolution Procedure”** means the procedure for resolution of Disputes set forth in Article 45;

**“Divestment Requirements”** means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 39.1

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

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

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

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

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

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

**“Equity Support”** shall have the meaning set forth in Clause 26.2.1;

**“Escrow Account”** means an Account which the Concessionaire shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures shall be credited and debited, as the case may be, in accordance

with the provisions of this Agreement, and includes the Sub-Accounts of such Escrow Account;

“**Escrow Agreement**” shall have the meaning set forth in Clause 32.1.2

“**Escrow Bank**” shall have the meaning set forth in Clause 32.1.1;

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

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

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

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

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

“**Financial Model**” means the financial model adopted by Senior Lenders, setting forth the capital and operating costs of the Project and revenues therefrom on the basis of which financial viability of the Project has been determined by the Senior Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein;

“**Financial Package**” means the financing package indicating the total capital cost of XXX Ropeway and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements, 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 35.1

“**Force Majeure Costs**” shall have the meaning set forth in Clause 35.7.2;

“**Funded Works**” shall have the meaning as set forth in Clause 12.4.1;

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

“**Good Industry Practice**” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in

the performance of its obligations by the Concessionaire in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

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

**“Golden Share”** shall have the meaning set forth in Clause 5.4.1

**“Grant”** shall have the meaning set forth in Clause 26.1.1

**“Indemnified Party”** means the Party entitled to the benefit of an indemnity pursuant to Article 46;

**“Indemnifying Party”** means the Party obligated to indemnify the other Party pursuant to Article 46;

**“Independent Engineer”** shall have the meaning set forth in Article 24; **“Indirect**

**Political Event”** shall have the meaning set forth in Clause 35.3;

**“Insolvency Event”** in respect of a Party means:

(a) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee, administrator, liquidator or the like of itself or of all or a substantial part of its assets or business; (B) been unable to pay its debts as such debts become due; (C) enters into a compromise arrangement with its creditors ; (D) an attachment or restraint has been levied on the assets of such entity Party which materially affects such Party’s ability to perform its obligations under this Agreement; (E) commenced proceedings under the (Indian) Insolvency and Bankruptcy Code, 2016 ("**Code**"); (F) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or

(b) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (B) the appointment of an insolvency resolution professional, a trustee, receiver, custodian, administrator, liquidator or the like of such Party under the Code and an order admitting the insolvency petition has been passed in such proceeding and such order has not been stayed or dismissed within a period of [90 (ninety)] days or (C) directions with the same or similar effect happen under the provisions of the Companies Act, 1965 or the Companies Act, 2013 or the Code in relation to the winding up of the company;

**“Inspection Report”** shall have the meaning set forth in Clause 13.2;

**“Insurance Cover”** means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 36, and includes all insurances required to be taken out by the Concessionaire under Clause 33.1 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate

of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

**“Intellectual Property”** means all patents, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, semiconductor, 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;

**“Key Performance Indicators”** shall have the meaning set forth in Clause 21 Clause 21.1

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

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

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

**“Licensed Premises** shall have the meaning set forth in Clause 10.2.2;

**“Local User”** means a person living in the geographical area comprising the districts of XXX, YYY and ZZZ;

**“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;

**“Monthly Fee Statement”** shall have the meaning set forth in Clause 19.5;

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

**“Non-Political Event”** shall have the meaning set forth in Clause 35.2;

**“NPV”** shall have the meaning set forth in Clause 42.3;

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

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

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

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

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

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

<sup>21</sup>“**PHPDT**” or “**Peak Hour Peak Direction Traffic**” shall mean

“**Panel of Chartered Accountants**” shall have the meaning set forth in Clause 34.2.1;

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

“**Passenger Charter**” shall have the meaning set forth in Clause 20.7;

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

“**Performance Guarantee**” shall have the meaning set forth in Clause 40.2.3;

“**Political Event**” shall have the meaning set forth in Clause 35.4

“**Physical Progress**” shall mean the physical construction of the Project completed by the Concessionaire and shall be measured as per the assessment done by the Independent Engineer based on the relevant guidances/ guidelines issued by [Indian Road Congress] from time to time;

{“**Premium**” shall have the meaning set forth in Clause 26.3}

“**Preservation Costs**” shall have the meaning set forth in Clause 13.5.3;

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

“**Project Agreements**” means this Agreement, the Financing Agreements, EPC Contract, O&M Contract, all agreements relating to Real Estate Development and any other material agreements or contracts that may be entered into by the Concessionaire with any person in

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<sup>21</sup> **HSA Note:** to be confirmed by NITI Aayog

connection with matters relating to, arising out of or incidental to the Project, but does not include the Escrow Agreement, Substitution Agreement, or any agreement for procurement of goods and services involving a consideration of upto Rs.[5(five)] crore;

“**Project Assets**” means all physical and other assets relating to and forming part of the Site including (a) rights over the Site in the form of licence, Right of Way or otherwise; (b) tangible assets such as civil works and equipment; (c) Project Facilities situated on the

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Site; (d) all rights of the Concessionaire under the Project Agreements; (e) financial assets, such as receivables, security deposits etc.; (f) insurance proceeds; and (g) Applicable Permits and authorisations relating to or in respect of the XXX Ropeway, but does not include Additional Facilities;

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

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

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

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

“**Project Milestones**” means the project milestones set forth in Schedule-G;

“**Provisional Certificate**” shall have the meaning set forth in Clause 14.3;

“**Punch List**” shall have the meaning ascribed to it in Clause 14.3.1;

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

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

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

“**Realisable Fee**” means all the Fee due and realisable under this Agreement but does not include Fee 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;



**"Regulatory Authority"** shall have the meaning set forth in Clause 45.4;

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

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

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

**"Rules"** shall have the meaning set forth in Clause 45.3.1;

**"Safety Consultant"** shall have the meaning set forth in Clause 18.1.2;

**"Safety Requirements"** shall have the meaning set forth in Clause 18.1.1;

**"Safety Fund"** shall have the meaning set forth in Clause 18.2;

**"Safety Manual"** shall have the meaning set forth in Clause 18.3;

**"Scheduled Date"** shall have the meaning set forth in Clause 12.3.1;

**"Scope of the Project"** shall have the meaning set forth in Clause 2.1;

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

**"Site"** shall have the meaning set forth in Clause 10.1;

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

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

**"Specified Documents"** shall have the meaning set forth in Clause 46.1;

**"State"** means the State of \*\*\*\*\* and **"State Government"** means the government of that State;

**"Station"** means a place in the XXX Ropeway where carriers stop for the purposes of transporting Users or goods;

**"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 34.2.1

**“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; 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 [6 (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 [1 (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 Government under Clause 31.7.2 or 32.2;

**“Substitution Agreement”** shall have the meaning set forth in Clause 41.3

**“Suspension”** shall have the meaning set forth in Clause 37.1;

**“System Augmentation”** means the construction and completion of all works included in or constituting a System Augmentation XXX Ropeway as specified in Article 2, read with Schedule B and Schedule C. For the avoidance of doubt, a System Augmentation means a XXX Ropeway;

**“Target Date 1”** shall have the meaning set forth in Clause 30.1.1

**“Target Date 2”** shall have the meaning set forth in Clause 30.1.2

**“Target Traffic 1”** shall have the meaning set forth in Clause 30.1.1

**“Target Traffic 2”** shall have the meaning set forth in Clause 30.1.2

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

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

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

“**Termination Payment**” means the amount payable, under and in accordance with this Agreement, by the Authority to the Concessionaire upon Termination, and includes Additional Termination Payment. For the avoidance of doubt, it is expressly agreed that the amount payable shall be subject to the limitations specified in Clause 34.3.

“**Tests**” means the tests set forth in Schedule-J to determine the completion of XXX Ropeway in accordance with the provisions of this Agreement [and shall, *mutatis mutandis*, include similar Tests to determine completion of System Augmentation];

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

- (a) the capital cost of the Project, {less Equity Support} as set forth in the Financial Package;
- (b) the actual capital cost of the Project upon completion of the XXX Ropeway {less Equity Support}; and
- (c) a sum of Rs. \*\*\*\*\* crore (Rupees \*\*\*\*\* crore), less Equity Support<sup>22</sup>;

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

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

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

“**Vesting Certificate**” shall have the meaning set forth in Clause 39.4 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, save and except that for the purposes of annual revision of Fee in accordance with the provisions of Clause 28.2.1, the revision due on April 1 of any year shall be computed with reference to WPI as on January 31 of that year.

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<sup>22</sup> This amount may be indicated on the basis of project-specific cost estimates, including financing charges; and this amount shall, after bidding, be reduced by a sum equivalent to the Equity Support. In determining this amount, the estimated cost of construction shall be increased by 25% thereof to account for contingencies, risk premia and financing costs. These costs should be reviewed and firmed up during pre-bid consultations.

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

SIGNED, SEALED AND THE COMMON SEAL OF DELIVERED CONCESSIONAIRE has been affixed

For and on behalf of \_\_\_\_\_ pursuant to the resolution passed by the Board  
THE AUTHORITY by: of Directors of the Concessionaire at its meeting held on the ..... day  
of 20.....

(Signature) \_\_\_\_\_ hereunto affixed in the presence of  
(Name) ....., Director, who has signed (Designation) these presents in token thereof  
and

....., Company Secretary / Authorised Officer who has  
countersigned the same in token thereof<sup>s</sup>:

In the presence of:

1.

2.

---

<sup>§</sup> To be affixed in accordance with the articles of association of the Concessionaire.

## **SCHEDULES**



## **SCHEDULE – A**

*(See Clause 10.1)*

### **SITE OF THE PROJECT**

#### **1 The Site**

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

#### **2 Additional land for System Augmentation**

- 2.1 Additional land required for System Augmentation has been described in Annex-II of this Schedule-A. Such land shall be acquired by the Authority, at its own cost, no later than 3 (three) years prior to the Scheduled System Augmentation Date, and shall thereupon form part of the Site. Any delay in granting Right of Way in respect of the land included in Annex-II or part thereof shall entitle the Concessionaire to Damages in accordance with Clause 10.3.4.
- 2.2 If any land not forming part of this Schedule-A is required for construction of any underbridge, overbridge, electric sub-station, maintenance depot, ancillary building or any other structure forming part of System Augmentation, the same shall be acquired by the Authority no later than four years prior to the Scheduled System Augmentation Date. The location and alignment of such land shall be determined by the Authority, in consultation with the Concessionaire, before proceedings for its acquisition are initiated. In the event of any delay in the acquisition of land hereunder, the Concessionaire shall be entitled to complete and commission the Construction Works thereon within a period of three years from the date of such acquisition.

#### **3 Real Estate Development**

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

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



**Annex - I**  
*(Schedule-A)*

**Site for the Ropeway**

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



**Annex - II**  
*(Schedule-A)*

**Site for System Augmentation**

[**Note 1:** Through suitable drawings and description in words, the additional land required for System Augmentation shall be specified briefly but precisely in this Annex-II.]

[**Note 2:** This Annex-II may be omitted if two-stage capacity augmentation is not contemplated.]



**Annex-III**  
*(Schedule-A)*  
*(See Clause 3.1.3)*

**Site for Real Estate Development**

[Note 1: Through suitable drawings and description in words, that part of the Site on which Real Estate Development may be undertaken by the Concessionaire shall be specified precisely. In case any Real Estate Development is linked to System Augmentation, the land comprising therein may be identified separately and its possession may be handed over alongwith the land specified in Annex-II of this Schedule-A]

[Note 2: The purposes for which such land may be developed by the Concessionaire shall be specified precisely in conformity with Applicable Laws and the provisions of this Agreement]

[Note 3: This Annex-III may be re-numbered if Annex-II is omitted.]

[Note 4: This Annex-III may be omitted if Real Estate Development is not contemplated.]



[Annex – III

**Funded Works**  
(See Clause 12.4)

**1 Funded Works**

[**Note:** Through suitable drawings and description in words, the structures and works comprising the Funded Works shall be described here precisely, with reference to the Manual of Specifications and Standards.]

[Provide details here]

**2 Cost of Funded Works**

[The estimated lump sum cost of each of the Funded Works shall be specified here. While specifying the cost, the date of estimate shall be indicated and the specified amount shall be deemed to be revised to adjust for the variation in WPI occurring between the Bid Date and the Appointed Date. The amount so derived shall be increased by 20% (twenty per cent) thereof to provide for physical and price contingencies, interest during construction and Concessionaire's overhead costs profit.]

[Provide details here]





## **SCHEDULE – B**

*(See Clause 2.1)*

### **DEVELOPMENT OF THE ROPEWAY**

#### **1. Development of the Ropeway**

Development of the ropeway shall include construction of the XXX Ropeways as described in this Schedule-B and in Schedule-C.

#### **2. Ropeway**

2.1 Ropeway shall include construction of the XXX Ropeway as described in Annex-I of this Schedule-B and Schedule-C.

2.2 Ropeway shall be completed by the Concessionaire in conformity with the Specifications and Standards set forth in Annex-I of Schedule-D.

#### **3 System Augmentation**

3.1 System Augmentation shall include construction of the System Augmentation as described in Annex-II of this Schedule-B and Annex-II of Schedule-C.

3.2 System Augmentation shall be undertaken and completed by the Concessionaire in conformity with the Specifications and Standards set forth in Annex-II of Schedule-D.

#### **4. Real Estate Development**

4.1 Real Estate Development shall be undertaken in accordance with and subject to the terms and conditions specified in Annex-III of this Schedule-B.

4.2 Real Estate Development shall be undertaken and completed by the Concessionaire in conformity with the Specifications and Standards set forth in Schedule-D.

[**Note 1:** Paragraph 3 may be omitted if two-stage capacity augmentation is not contemplated.]

[**Note 2:** Paragraph 4 may be omitted if Real Estate Development is not contemplated.]

Annex -  
I  
(Schedule-B)

**Description of Ropeways**

**1. Length of the Ropeways**

- 1.1 The XXX Ropeway shall be \*\*\* Km in length.
- 1.2 The XXX Ropeway shall be designed to a capacity of \*\*\*\*\* PHPDT.
- 1.3 The XXX Ropeway shall be constructed as briefly described below:

[Provide details here]

**2. Project Facilities**

Project Facilities shall be constructed in conformity with Schedule-C.

**3. Specifications and Standards**

The XXX Ropeway shall be constructed in conformity with the Specifications and Standards specified in Annex-I of Schedule-D.



Annex -

II  
(Schedule-B)

**Description of System Augmentation**

**1 [Length of the System Augmentation]**

- 1.1 The System Augmentation shall be \*\*\* Km in length.
- 1.2 The System Augmentation shall be designed to a capacity of \*\*\*\*\* PHPDT.
- 1.3 The System Augmentation shall be undertaken [elevated] as briefly described below:

[Provide details here]

**2 Project Facilities**

Project Facilities shall be constructed in conformity with Annex-II of Schedule-C.

**3 Standards and Specifications**

The System Augmentation shall be undertaken in conformity with the Specifications and Standards specified in Annex-II of Schedule-D.

[**Note:** This Annex-II may be omitted if two-stage capacity augmentation is not contemplated.]

Annex -

## II

*(Schedule-B)*

### **Description of Real Estate Development**

[**Note 1:** Describe the land use, floor area, FSI, height restrictions, open spaces, parking and other terms of Real Estate Development in conformity with local laws and municipal regulations.]

[**Note 2:** Describe the terms and conditions of Real Estate Development.]

[**Note 3:** This Annex-III may be renumbered if Annex-II is omitted.]

[**Note 4:** This Annex-III may be omitted if Real Estate Development is not contemplated.]

Annex -



## **SCHEDULE – C**

*(See Clause 2.1)*

### **PROJECT FACILITIES**

The Concessionaire shall construct the Project Facilities in accordance with the provisions of this Agreement.

#### **2 Project Facilities for XXX Ropeway**

Project Facilities forming part of the XXX Ropeway and to be completed on or before the Project Completion Date have been described in Annex-I of this Schedule-C.

#### **3 Project Facilities for System Augmentation**

Project Facilities forming part of System Augmentation and to be completed on or before the Scheduled System Augmentation Date have been described in Annex-II of this Schedule-C.

[**Note 1:** Paragraph 3 may be omitted if two-stage capacity augmentation is not contemplated.]

## **1 Project Facilities**

Annex - I  
(Schedule-C)

**Project Facilities for XXX Ropeway**

The Concessionaire shall construct the Project Facilities described in this Annex-I to form part of the XXX Ropeway. The Project Facilities shall include:

- (a) Ticketing counters/booths;
- (b) ticket vending machines;
- (c) pedestrian facilities;
- (d) toilets;
- (e) tree plantation;
- (f) facilities for disabled;
- (g) lifts and escalators at Stations;
- (h) public address system at Stations;
- (i) public information systems at Stations;
- (j) refreshment facilities at Stations;
- (k) public access telephones; and [(l) others (to be specified)].

**2 Description of Project Facilities**

Each of the Project Facilities is briefly described below:

[To be described briefly.]

## **1 Project Facilities**

Annex - II  
(Schedule-C)

### **Project Facilities for System Augmentation**

The Concessionaire shall construct the Project Facilities described in this Annex-II to form part of the System Augmentation. The Project Facilities shall include:

- (a) Ticketing counters/ booths;
- (b) ticket vending machines;
- (c) pedestrian facilities;
- (d) toilets;
- (e) tree plantation;
- (f) facilities for disabled;
- (g) lifts and escalators at Stations;
- (h) public address system at Stations;
- (i) public information systems at Stations;
- (j) refreshment facilities at Stations;
- (k) public access telephones; and
- (l) others (to be specified)]

## **2 Description of Project Facilities**

[Each of the Project Facilities is briefly described below:]

[To be described briefly.]

[**Note:** This Annex-II may be omitted if two-stage capacity augmentation is not contemplated.]

1

## **SCHEDULE – D**

*(See Clause 2.1)*

### **SPECIFICATIONS AND STANDARDS**

#### **Ropeways**

The Concessionaire shall comply with the Specifications and Standards set forth in Annex I of this Schedule-D for construction of the XXX Ropeways.

2. **System Augmentation**

The Concessionaire shall comply with the Specifications and Standards set forth in Annex II of this Schedule-D for construction of the XXX Ropeway.

3. Real Estate Development shall be undertaken in accordance with Applicable Laws, Good Industry Practice and the provisions of building construction codes widely followed in India[, UK or USA, as the case may be].

[**Note 1:** The Authority shall prepare a “**Manual of Specifications and Standards for the XXX Ropeway**”. Only the basic/fundamental requirements of design and construction shall be laid down in the manual, and greater emphasis shall be placed on prescribing the output specifications that have a direct bearing on the level and quality of service for Users. The manual shall be published and applied to the ropeway by reference hereunder. This would remove the element of uncertainty in project design and help in laying down cost effective specifications and standards across the country.]

[**Note 2:** Paragraph 2 may be omitted if two-stage capacity augmentation is not contemplated.]

[**Note 3:** Paragraph 3 may be omitted if Real Estate Development is not contemplated.]

Annex - I  
(Schedule-D)

**Specifications and Standards for the Ropeway**

**Manual of Specifications and Standards to apply**

Subject to the provisions of Paragraph 2 of this Annex-I, the ropeway shall conform to the Manual of Specifications and Standards for the XXX Ropeway published by [the Authority] (An authenticated copy of the manual has been provided to the Concessionaire as part of the Bid Documents.

**2 [Deviations from the Manual**

Notwithstanding anything to the contrary contained in the aforesaid manual, the following Specifications and Standards shall apply to the ropeway, and for purposes of this Agreement, the aforesaid manual shall be deemed to be amended to the extent set forth below:]

[**Note 1:** Deviations from the aforesaid manual shall be listed out here. Such deviations shall be specified only if they are considered essential in view of project-specific requirements.]

**1**



Annex - II  
(Schedule-D)

**Specifications and Standards for System Augmentation**

**Manual of Specifications and Standards to apply**

Subject to the provisions of Paragraph 2 of this Annex-II, System Augmentation shall conform to the Manual of Specifications and Standards for XXX Ropeway published by the Authority. (An authenticated copy of the Manual has been provided to the Concessionaire as part of the bid documents.)

**2 [Deviations from the Manual]**

Notwithstanding anything to the contrary contained in the aforesaid Manual, the following Specifications and Standards shall apply to the System Augmentation, and for purposes of this Agreement, the aforesaid Manual shall be deemed to be amended to the extent set forth below:]

[**Note 1:** Deviations from the aforesaid Manual shall be listed out here. Such deviations shall be specified only if they are considered essential in view of project-specific requirements.]

[**Note 2:** See Note 1 below Schedule-D.]

[**Note 3:** This Annex-II may be omitted if two-stage augmentation is not contemplated.]

**1**

**SCHEDULE –E**

(See Clause 4.1.3)

**APPLICABLE PERMITS**

**Applicable Permits**

1.1 The Concessionaire shall obtain, as required under the Applicable Laws, the following Applicable Permits on or before the Appointed Date, save and except to the extent of a waiver granted by the Authority in accordance with Clause 4.1.3 of the Agreement.

Unless otherwise specified in this Agreement, Applicable Permits, if any, relating to environmental protection and conservation with respect to XXX Ropeways, excluding the Real Estate Development, shall have been procured by the Authority as a Condition Precedent.

Sr. No.	Description
<b>Approvals Required.</b>	
1.	No Objection Certificate from the State Government.
2.	Consent to Establish and Consent to Operate under the Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974 from State Pollution Control Board (State and Centre).
3.	Compliance under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.
4.	Forest clearance from Ministry of Environment and Forest.
5.	No-Objection certificate from relevant panchayat in whose territorial limits the project is located, if applicable.
6.	Clearance of fire safety standards and protection apparatus and system under the Factories Act, 1948, and standards mandated by the local fire department, if applicable from Chief Inspector of Factories or any other designated authority appointed.
7.	Compliance under Maternity Benefit Act, 1961.
8.	License for usage and storage of fuel oil storage tank, pressurized vessels, explosive and inflammable liquids, gases and chemicals under (a) Explosives Act, 1884 read with Explosives Rules, 2008 and Gas Cylinder Rules, 2004; and (b) Petroleum Act, 1934 read with Petroleum Rules, 2002, if applicable from Chief Controller of Explosives, GoI, if applicable.
9.	Approval under the Electricity Act 2003 for electrical installations and works form Chief Electrical Inspector.
10.	Other facilitation that could be obtained from the nodal agency is statutory clearances from Govt. Departments/Agencies, Evacuation approval from State Transmission Utility (STU), Connectivity to the substation of STU, clearances from State Pollution Control Board (SPCB), whenever feasible.

1

11.	Certificate of Registration from the labour department issued under the Inter-State Migrant Workmen (Regulations of Employment and Conditions of Services) Act, 1979 in relation to employment of migrant workmen.
12.	Registration under Section 7 of Contract Labour (Regulation and Abolition) Act, 1970.
13.	Registration under Employees Provident Fund and Miscellaneous Provisions Act, 1952.
14.	Authorization for management and handling of hazardous waste under Hazardous Waste (Management, Handling & Transboundary Movement) Rules, 2016.
15.	Registration under Employee State Insurance Act, 1948.
16.	Consent for Right of Way under applicable law.
17.	NOC for height clearance from directorate of air traffic management, Airport Authority of India when project lies within 20Kms radius of air strips/funnel.
18.	Approval under Ancient Monuments and Archaeological Sites and Remains Act, 1958 with subsequent amendments

1.2 Applicable Permits, if any, relating to environmental protection and conservation during the development of the XXX Ropeway, excluding the Real Estate Development, shall have been procured by the Authority [as a Condition Precedent].

## SCHEDULE –F

(See Clause 9.1)

### PERFORMANCE SECURITY

The Chairman,  
Authority

#### WHEREAS:

- (A) ..... (the “Concessionaire”) and The Department of Tourism/Ministry of Tourism including Agencies Urban Transport/Urban Local Body, XXX State (the “**Authority**”) have entered into a Concession Agreement dated ..... (the “**Agreement**”) whereby the Authority has agreed to the Concessionaire undertaking XXX Ropeway on design, build, finance, operate and transfer (the “**DBFOT**”) basis, subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Concessionaire to furnish a Performance Security to the Authority in a sum of Rs. \*\*\*\*\* cr. (Rupees \*\*\*\*\* crore) (the “Guarantee Amount”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Construction Period (as defined in the Agreement).
- (C) We, ..... through our Branch at ..... (the “**Bank**”) have agreed to furnish this Bank Guarantee by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Concessionaire’s obligations during the Construction Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums upto an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an Officer not below the rank of Deputy Secretary, that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Construction Period under the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire, or any Dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.
3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or

the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.

4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation 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 Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force until the earlier of the 1<sup>st</sup> (first) anniversary of the Appointed Date or compliance of the conditions specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Security shall cease to be in force and effect when the Concessionaire shall have expended on Project construction an aggregate sum not less than 20% (twenty per cent) of the Total Project Cost which is deemed to be Rs.\*\*\* cr. (Rupees \*\*\*\*\* crore) for the purposes of this Guarantee, and provided the Concessionaire is not in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars required hereunder, duly certified by a statutory auditor of the Concessionaire, the Authority shall release the Performance Security forthwith.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been

delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.

11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of one year and six months from the date hereof or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

Signed and sealed this ..... day of ....., 20..... at .....

**SIGNED, SEALED AND DELIVERED**

For and on behalf of the  
BANK by:

(Signature)  
(Name)  
(Designation)  
(Code Number)  
(Address)

**NOTES:**

- (i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.

The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

## **SCHEDULE –G**

*(See Clause 12.1)*

### **PROJECT COMPLETION SCHEDULE**

#### **1 Project Completion Schedule**

During Construction Period, the Concessionaire shall comply with the requirements set forth in this Schedule-G for each of the Project Milestones and the Scheduled Date (the “**Project Completion Schedule**”). Within 15 (fifteen) days of the date of each Project Milestone, the Concessionaire shall notify the Authority of such compliance along with necessary particulars thereof. For the avoidance of doubt, it is agreed that the provisions of this Schedule shall not apply to Real Estate development.

#### **2 Project Milestone-I**

- 2.1 Project Milestone-I shall occur on the date falling on the [180th (one hundred and eightieth)] day from the Appointed Date (the “**Project Milestone-I**”).
- 2.2 Prior to the occurrence of Project Milestone-I, the Concessionaire shall have commenced construction of the XXX Ropeway and expended not less than [25% (twenty-five per cent)] of the Total Project Cost set forth in the Financial Package.

#### **3 Project Milestone-II**

- 3.1 Project Milestone-II shall occur on the date falling on the [365th (three hundred and sixty fifth)] day from the Appointed Date (the “**Project Milestone-II**”).
- 3.2 Prior to the occurrence of Project Milestone-II, the Concessionaire shall have commenced [construction of \*\*\*\*\* and expended not less than 50% (fifty per cent)] of the Total Project Cost set forth in the Financial Package.

#### **4 Project Milestone-III**

- 4.1 Project Milestone-III shall occur on the date falling on the [550th (five hundred and fiftieth)] day from the Appointed Date (the “**Project Milestone-III**”).
- 4.2 Prior to the occurrence of Project Milestone-III, the Concessionaire shall have commenced [construction of \*\*\*\*\* and expended not less than 75% (seventy-five per cent)] of the Total Project Cost set forth in the Financial Package.

#### **5. Scheduled Date**

- 5.1 The Scheduled Date shall occur on the [730th (seven hundred and thirty)] day from the Appointed Date. On or before the Scheduled Date, the Concessionaire shall have completed the XXX Ropeway in accordance with this Agreement.
- 5.2 On or before the Scheduled Date, the Concessionaire shall have completed the XXX Ropeway in accordance with this Agreement.

#### **6 Extension of period**

Upon extension of any or all of the aforesaid Project Milestones or the Scheduled Date, as the case may be, under and in accordance with the provisions of this Agreement, the Project Completion Schedule shall be deemed to have been amended accordingly.





**SCHEDULE –H** (*See  
Clause 12.2*)

**DRAWINGS**

**1. Drawings**

In compliance of the obligations set forth in Clause 12.2 of this Agreement, the Concessionaire shall furnish to the Independent Engineer, free of cost, all Drawings listed in Annex-I of this Schedule-H.

**2. Additional drawings**

If the Independent Engineer determines that for discharging its duties and functions under this Agreement, it requires any drawings other than those listed in Annex-I, it may by notice require the Concessionaire to prepare and furnish such drawings forthwith. Upon receiving a requisition to this effect, the Concessionaire shall promptly prepare and furnish such drawings to the Independent Engineer, as if such drawings formed part of Annex-I of this Schedule.



Annex - I  
(Schedule-H)

**List of Drawings**

[Note: The Authority shall describe in this Annex-I, all the Drawings that the Concessionaire is required to furnish under Clause 12.2.]

[The list shall be in two parts, namely, Part A specifying the Drawings for the XXX Ropeway and Part B specifying the Drawings for System Augmentation.]



## SCHEDULE – I

### SELECTION OF INDEPENDENT ENGINEER

*(See Clauses 24.1 and 24.2)*

#### **1. Selection of Independent Engineer**

- 1.1 The provisions of Part II of the Standard Bidding Documents for Consulting Assignments, Time Based (Volume V) issued by the Ministry of Finance, GOI in July, 1997 or any substitute thereof shall apply, *mutatis mutandis*, for invitation of bids and evaluation thereof save as otherwise provided herein.
- 1.2 The Authority shall invite expressions of interest from consulting engineering firms or bodies corporate to undertake and perform the duties and functions set forth in Schedule R and thereupon shortlist 6 (six) qualified firms in accordance with pre-determined criteria. The Authority shall convey the aforesaid list of firms to the Concessionaire for scrutiny and comments, if any. The Concessionaire shall be entitled to scrutinise the relevant records of the Authority to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Authority within 15 (fifteen) days of receiving the aforesaid list of firms. Upon receipt of such comments, if any, the Authority shall, after considering all relevant factors, finalise and constitute a panel of 6 (six) firms (the “**Panel of Firms**”) and convey its decision to the Concessionaire.
- 1.3 The Authority shall invite the aforesaid firms in the Panel of Firms to submit their respective technical and financial offers, each in a separate sealed cover. All the technical bids so received shall be opened and pursuant to the evaluation thereof, the Authority shall shortlist 3 (three) eligible firms on the basis of their technical scores. The financial bids in respect of such 3 (three) firms shall be opened and the order of priority as among these firms shall be determined on the basis of a weighted evaluation where technical and financial scores shall be assigned respective weights of 80:20.
- 1.4 In the event that the Authority shall follow the selection process specified in the Model RFP for selection of Technical Consultant, as published by the Ministry of Finance, the selection process specified in this Schedule – I shall be deemed to be substituted by the provisions of the said Model RFP and the Concessionaire shall be entitled to scrutinize the relevant records forming part of such selection process.

#### **2. Fee and expenses**

- 2.1 In determining the nature and quantum of duties and services to be performed by the Independent Engineer during the Development Period and Construction Period, the Authority shall endeavour that payments to the Independent Engineer on account of fee and expenses do not exceed [1% (one per cent)] of the Total Project Cost, including Equity Support, if any. Payments not exceeding such [1% (one per cent)] shall be borne equally by the Authority and the Concessionaire in accordance with the provisions of this Agreement and any payments in excess thereof shall be borne entirely by the Authority.
- 2.2 The nature and quantum of duties and services to be performed by the Independent Engineer during the Operation Period shall be determined by the Authority in conformity with the provisions of this Agreement and with due regard for economy in expenditure. All payments made to the Independent Engineer on account of fee and expenses during the

Operation Period, including the construction of system augmentation, shall be borne equally by the Authority and the Concessionaire.

**3. Selection every three years**

- 3.1 No later than 3 (three) years from the date of appointment of the Independent Engineer, in accordance with the provisions of Paragraph 1 of this Schedule-I, the Authority shall engage another firm in accordance with the criteria set forth in this Schedule-I.

**4. Appointment of government entity as Independent Engineer**

- 4.1 [Notwithstanding anything to the contrary contained in this Schedule - I, the Authority may in its discretion appoint a government-owned entity as the Independent Engineer; provided that such entity shall be a body corporate having as one of its primary function the provision of consulting, advisory and supervisory services for engineering projects; provided further that a government- owned entity which is owned or controlled by the Authority shall not be eligible for appointment as an Independent Engineer.]

**I. TERMS OF REFERENCE FOR INDEPENDENT ENGINEER**

**1. Scope**

- 1.1 These Terms of Reference for the Independent Engineer (the “**TOR**”) are being specified in accordance with the Concession Agreement dated..... (the “**Agreement**”), which has been entered into between the Authority and..... (the “**Concessionaire**”) for XXX Ropeway at ..... corridor in city of..... on design, build, finance, operate and transfer (the “**DBFOT**”) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.
- 1.2 This TOR shall apply to construction, operation and maintenance of the XXX Ropeway, and shall apply, *mutatis mutandis*, to system augmentation thereof.

The TOR for the appointment of the Independent Engineer will be as follows:

**2. Definitions and Interpretation**

- 2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.
- 2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.

The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement shall apply, *mutatis mutandis*, to this TOR.

**3. Role and functions of the Independent Engineer**

- 3.1 The role and functions of the Independent Engineer shall include the following:
- (i) review of the Drawings and Documents as set forth in Paragraph 4;
  - (ii) review, inspection and monitoring of Construction Works as set forth in Paragraph 5;
  - (iii) review, inspection and testing of rolling stock as set forth in Paragraph 5;
  - (iv) conducting Tests on completion of construction and issuing Completion/ Provisional Certificate as set forth in Paragraph 5;
  - (v) review, inspection and monitoring of O&M as set forth in Paragraph 6;
  - (vi) review, inspection and monitoring of Divestment Requirements as set forth in Paragraph 7;
  - (vii) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;



- (viii) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
  - (ix) assisting the Parties in resolution of disputes as set forth in Paragraph 9; and
  - (x) undertaking all other duties and functions in accordance with the Agreement.
- 3.2 The role and functions of the Independent Engineer shall not include construction works comprising the Real Estate Development.
- 3.3 The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

#### **4 Development Period**

- 4.1 During the Development Period, the Independent Engineer shall undertake a detailed review of the Drawings to be furnished by the Concessionaire along with supporting data, including the geo-technical and hydrological investigations, characteristics of materials, topographical surveys and traffic surveys. The Independent Engineer shall complete such review and send its comments/observations to the Authority and the Concessionaire within 15 (fifteen) days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and Specifications and Standards.
- 4.2 The Independent Engineer shall review any modified Drawings or supporting Documents sent to it by the Concessionaire and furnish its comments within 7 (seven) days of receiving such Drawings or Documents.
- 4.3 The Independent Engineer shall review the Drawings sent to it by the Safety Consultant in accordance with Schedule-M and furnish its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receiving such Drawings. The Independent Engineer shall also review the Safety Report and furnish its comments thereon to the Authority within 15 (fifteen) days of receiving such report.
- 4.4 The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.
- 4.5 The Independent Engineer shall review the detailed design, manufacturing, installation, testing and commissioning plans for the XXX Ropeway sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.
- 4.6 Upon reference by the Authority, the Independent Engineer shall review and comment on the EPC contract or any other contract for construction, operation and maintenance of the XXX Ropeway and furnish its comments within 7 (seven) days from receipt of such reference from the Authority.

#### **5. Construction Period**

- 5.1 In respect of the Drawings, Documents and Safety Report received by the Independent Engineer for its review and comments during the Construction Period, the provisions of Paragraph 4 shall apply, mutatis mutandis.
- 5.2 The Independent Engineer shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 5.3 The Independent Engineer shall inspect the Construction Works and electromechanical equipment (if any) once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20<sup>th</sup>(twentieth)day of each month in any case, and make out a report of such inspection (the “**Inspection Report**”) setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works and electromechanical with the Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the XXX Ropeway or the deficiencies in the electromechanical equipment. The Independent Engineer shall send a copy of its Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.
- 5.4 The Independent Engineer may inspect the XXX Ropeway more than once in a month if any lapses, defects or deficiencies require such inspections.
- 5.5 For determining that the Construction Works conform to Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance. For purposes of this Paragraph 5.5, the tests specified in the IRC Special Publication-47 {Guidelines on Quality systems for Road Bridge (Plain, Reinforced, Pre-stressed and Composite Concrete)} and other relevant Manuals specified by the Authority in relation to structures, buildings, track, equipment and rolling stock (the “**Quality Control Manuals**”) or any modification/substitution thereof shall be deemed to be tests conforming to Good Industry Practice for quality assurance. The Independent Engineer shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.
- 5.6 The sample size of the tests, to be specified by the Independent Engineer under Paragraph 5.5, shall comprise 10% (ten per cent) of the quantity or number of tests prescribed for each category or type of tests in the Quality Control Manuals; provided that the Independent Engineer may, for reasons to be recorded in writing, increase the aforesaid sample size by up to 10% (ten per cent) for certain categories or types of tests.
- 5.7 The timing of tests referred to in Paragraph 5.5, and the criteria for acceptance/ rejection of their results shall be determined by the Independent Engineer in accordance with the Quality Control Manuals. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice
- 5.5 In the event that the Concessionaire fails to achieve any of the Project Milestones, the Independent Engineer shall undertake a review of the progress of construction and identify

potential delays, if any. If the Independent Engineer shall determine that completion of the XXX Ropeway is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which COD shall be achieved. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire forthwith.

- 5.6 If at any time during the Construction Period, the Independent Engineer determines that the Concessionaire has not made adequate arrangements for the safety of workers and

Users in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers and the Users, it shall make a recommendation to the Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.

- 5.7 In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works and Users, it may, by notice in writing, require the Independent Engineer to inspect such works, and within 3 (three) days of receiving such notice, the Independent Engineer shall inspect the suspended works and make a report to the Authority forthwith, recommending whether or not such suspension may be revoked by the Authority.

- 5.8 If Suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of dates set forth in the Project Completion Schedule, to which the Concessionaire is reasonably entitled, and shall notify the Authority and the Concessionaire of the same.

- 5.9 The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in Schedule-I and issue a Completion Certificate.

- 5.10 For carrying out its functions under this Paragraph 5.10 and all matters incidental thereto, the Independent Engineer shall act under and in accordance with the provisions of Article 14 and Schedule-I.

- 5.11 Upon reference from the Authority, the Independent Engineer shall make a fair and reasonable assessment of the costs of providing information, works and services as set forth in Article 16 and certify the reasonableness of such costs for payment by the Authority to the Concessionaire. The Independent Engineer shall aid and advise the Concessionaire in preparing the Maintenance Manual.

## **6 Operation Period**

- 6.1 In respect of the Drawings, Documents and Safety Report received by the Independent Engineer for its review and comments during the Operation Period, the provisions of Paragraph 4 shall apply, mutatis mutandis.

- 6.2 The Independent Engineer shall review the annual Maintenance Programme furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 15 (fifteen) days of receipt of the Maintenance Programme.

- 6.3 The Independent Engineer shall review the monthly status report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 6.4 The Independent Engineer shall inspect the XXX Ropeway, including carriers and Stations, once every month, preferably after receipt of the monthly status report from the Concessionaire, but before the 20<sup>th</sup> (twentieth) day of each month in any case, and make out an O&M Inspection Report setting forth an overview of the status, quality and safety of O&M including its conformity with the Key Performance Indicators, Maintenance Requirements and Safety Requirements. In a separate section of the O&M Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the XXX Ropeway. The Independent Engineer shall send a copy of its O&M Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.
- 6.5 The Independent Engineer may inspect the XXX Ropeway more than once in a month, if any lapses, defects or deficiencies require such inspections.
- 6.6 The Independent Engineer shall in its O&M Inspection Report specify the tests, if any, that the Concessionaire shall carry out, or cause to be carried out, for the purpose of determining that the XXX Ropeway is in conformity with the Maintenance Requirements. It shall monitor and review the results of such tests and the remedial measures, if any, taken by the Concessionaire in this behalf. In respect of any defect or deficiency referred to in Paragraph 3 of Schedule - L, the Independent Engineer shall, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards and shall also specify the time limit for repair or rectification of any deviation or deterioration beyond the permissible limit.
- 6.7 The Independent Engineer shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Agreement, and shall also determine the Damages, if any, payable by the Concessionaire to the Authority for such delay.
- 6.8 The Independent Engineer shall examine the request of the Concessionaire for closure of the XXX Ropeway for undertaking maintenance/repair thereof, keeping in view the need to minimize disruption in traffic and the time required for completing such maintenance/repair in accordance with Good Industry Practice. It shall grant permission with such modifications, as it may deem necessary, within 3 (three) days of receiving a request from the Concessionaire. Upon expiry of the permitted period of closure, the Independent Engineer shall monitor the re-opening of such rope(s), and in case of delay, determine the Damages payable by the Concessionaire to the Authority under Clause 17.7.
- 6.9 The Independent Engineer shall monitor and review the curing of defects and deficiencies by the Concessionaire as set forth in Clause 19.4.
- 6.10 In the event that the Concessionaire notifies the Independent Engineer of any modifications that it proposes to make to the XXX Ropeway, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire within 15 (fifteen) days of receiving the proposal.
- 6.11 In Independent Engineer shall undertake traffic sampling, as and when required by the Authority, under and in accordance with Article 23 and Schedule – O.

**7. Audit of Fee collection system**

- 7.1 The Independent Engineer shall, at least once every month, conduct an audit of the working of the automatic fee collection system installed by the Concessionaire, to check its accuracy in recording the entry and exit of Users and in recording the fee.

## **8. Termination**

- 8.1 At any time, not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the Independent Engineer shall, in the presence of a representative of the Concessionaire, inspect the XXX Ropeway for determining compliance by the Concessionaire with the Divestment Requirements set forth in Clause 39.1 and, if required, cause tests to be carried out at the Concessionaire's cost for determining such compliance. If the Independent Engineer determines that the status of the XXX Ropeway is such that its repair and rectification would require a larger amount than the sum set forth in Clause 40.2, it shall recommend retention of the required amount in the Escrow Account and the period of retention thereof.
- 8.2 The Independent Engineer shall inspect the XXX Ropeway once in every 15(fifteen) days during a period of 90 (ninety) days after Termination for determining the liability of the Concessionaire under Article 43, in respect of the defects or deficiencies specified therein. If any such defect or deficiency is found by the Independent Engineer, it shall make a report in reasonable detail and send it forthwith to the Authority and the Concessionaire.

## **9. Determination of costs and time**

- 9.1 The Independent Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement. The Independent Engineer shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

## **10. Assistance in Dispute resolution**

- 10.1 When called upon by either Party in the event of any Dispute, the Independent Engineer shall mediate and assist the Parties in arriving at an amicable settlement. In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on Good Industry Practice and authentic literature.

## **11. Other duties and functions**

- 11.1 The Independent Engineer shall perform all other duties and functions specified in the Agreement.

## **12. Miscellaneous**

- 12.1 The Independent Engineer shall notify its programme of inspection to the Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.
- 12.2 A copy of all communications, comments, instructions, Drawings or Documents sent by the Independent Engineer to the Concessionaire pursuant to this TOR, and a copy of all the

test results with comments of the Independent Engineer thereon shall be furnished by the Independent Engineer to the Authority forthwith.

- 12.3 The Independent Engineer shall obtain and the Concessionaire shall furnish in 2 (two) copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Independent Engineer, whereupon the Independent Engineer shall send 1 (one) of the copies to the Authority along with its comments thereon.
- 12.4 The Independent Engineer shall retain at least one copy each of all Drawings and Documents received by it, including 'as-built' Drawings, and keep them in its safe custody.
- 12.5 Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list all Drawings, Documents, results of tests and other relevant records, and hand them over to the Authority or such other person as the Authority may specify and obtain written receipt thereof. Two copies of the said documents shall also be furnished in editable digital format or in such other medium or manner as may be acceptable to the Authority.

## **SCHEDULE – J**

*(See Clause 14.1.2)*

### **TEST**

#### **1 Schedule for Tests**

- 1.1 The Concessionaire shall, no later than 60 (sixty) days prior to the likely completion of the XXX Ropeway, notify the Independent Engineer and the Authority of its intent to subject the XXX Ropeway to Tests, and no later than 7 (seven) days prior to the actual date of Tests, furnish to the Independent Engineer and the Authority detailed inventory and particulars of all works and equipment forming part of the XXX Ropeway.
- 1.2 The Concessionaire shall notify the Independent Engineer of its readiness to subject the XXX Ropeway to Tests at any time after 7 (seven) days from the date of such notice, and upon receipt of such notice, the Independent Engineer shall, in consultation with the Concessionaire, determine the date and time for each Test and notify the same to the Authority who may designate its representative to witness the Tests. The Independent Engineer shall thereupon conduct the Tests itself or cause any of the Tests to be conducted in accordance with Article 14 and this Schedule-J.

#### **2 Tests**

- 2.1 The Independent Engineer shall conduct, or cause to be conducted, the Tests in accordance with Applicable Law, Good Industry Practice and Specifications and Standards.



**SCHEDULE – K**

*(See Clause 14.2 & 14.3)*

**COMPLETION CERTIFICATE**

1. I/We, ..... (Name of the Independent Engineer), under and in accordance with the Concession Agreement dated ..... (the “**Agreement**”), for development and operation of the XXX Ropeways for ..... corridor in city of ..... on design, build, finance, operate and transfer (the “**DBFOT**”) basis, through ..... (Name of Concessionaire), hereby certify that the Tests specified in Article 14 and Schedule-J of the Agreement have been successfully undertaken to determine compliance of the XXX Ropeway with Specifications and Standards and with the provisions of the Agreement, and I/We am/are satisfied that the XXX Ropeway can be safely and reliably placed in commercial service of the Users thereof.
  
2. It is certified that, in terms of the aforesaid Agreement, all works forming part of XXX Ropeway have been completed, and the XXX Ropeway is ready for entry into commercial operation on this the ..... day of ..... 20.....

SIGNED, SEALED AND DELIVERED

For and on behalf of INDEPENDENT ENGINEER by:

(Signature)

(Name)

(Designation)

(Address)



**PROVISIONAL CERTIFICATE**

- 1 I, ..... (Name of the Independent Engineer), under and in accordance with the Concession Agreement dated ..... (the “**Agreement**”), for \*\*\*ropeway (the “**XXX Ropeway**”) on design, build, finance, operate and transfer (the “**DBFOT**”) basis through ..... (Name of Concessionaire), hereby certify that the Tests specified in Article 14 and Schedule-J of the Agreement have been undertaken to determine compliance of the XXX Ropeway with the provisions of the Agreement.
  
- 2 Construction Works that were found to be incomplete and/or deficient have been specified in the Punch List appended hereto, and the Concessionaire has agreed and accepted that it shall complete and/or rectify all such works in the time and manner set forth in the Agreement. (Some of the incomplete works have been delayed as a result of reasons attributable to the Authority or due to Force Majeure and the Provisional Certificate cannot be withheld on this account. Though the remaining incomplete works have been delayed as a result of reasons attributable to the Concessionaire,)<sup>@</sup> I am satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the XXX Ropeway, pending completion thereof.
  
- 3 In view of the foregoing, I am satisfied that the XXX Ropeway can be safely and reliably placed in commercial service of the Users thereof, and in terms of the Agreement, the XXX Ropeway is hereby provisionally declared fit for entry into commercial operation on this the ..... day of ..... 20.....

ACCEPTED, SIGNED, SEALED  
AND DELIVERED  
For and on behalf of  
CONCESSIONAIRE by:

SIGNED, SEALED AND  
DELIVERED  
For and on behalf of  
INDEPENDENT ENGINEER by:

(Signature)(Signature)  
(Name and Designation) (Name and (Designation)  
(Address)(Address)

## **SCHEDULE – L**

*(See Clause 17.2)*

### **PERFORMANCE AND MAINTENANCE REQUIREMENTS**

#### **1. Maintenance Requirements**

- 1.1 The Concessionaire shall, at all times, operate and maintain the XXX Ropeway in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits. In particular, the Concessionaire shall, at all times during the Operation Period, conform to the maintenance requirements set forth in this Schedule-L (the “**Maintenance Requirements**”).

#### **Performance and Maintenance Requirements**

The list of performance and maintenance requirements of key ropeway components to optimize ropeway efficiency during its operational lifetime. Each equipment supplier will provide service schedule which the Concessionaire will follow for trouble free and safe performance of the ropeway. Checks are recommended for daily, weekly, monthly, quarterly, half yearly, yearly, 3-year, 6-year basis etc.

1. Check the loading and unloading points as well as the access and exit areas and fix them if need be;
2. Towers: Check the platforms, handrails, catwalks, anemometers, ladders and rope lifting frames for cracks, rust, deformation, correct position or any deviation from the standard ;
3. Overhead Cables - Signal Cables: Check for any visual deviation in terms of physical damage such as breakage, color deformation, cuts, correct position, overhead cable for oscillations;
4. Lighting Protection Cable inspection as Overhead Cables at Serial No.3;
5. Main Gear Box: Follow gear box manufacturers recommendation for maintenance schedule;
6. Universal Shaft: Check for any unusual noise (technician should be trained to differentiate between a normal and abnormal noise during shaft operation);
7. Main Motor: refer to manufacturer’s manual schedule of activities;
8. Gear Rim: General check for any physical damage or aberration;
9. Hydraulic Unit for emergency drive / brakes;
10. Service Brake: check for correct functioning by actuating the switch 'EMERGENCY STOP' check stopping distance. Check the brake and hydraulic lines for any leaks;
11. Emergency Brake: Check for correct functioning by actuating the switch 'EMERGENCY STOP' check stopping distance. Check the brake release cylinder and the hydraulic lines for any leaks;
12. Rope Tensioner Hydraulic Unit: check tension on display and visual check for leaks;
13. Drive and Return Bull wheels: Check for any unusual noise, wobble or eccentricity in the motion of the bull wheel, etc.;

14. Bull wheel coupling, positioning monitoring unit, axle position monitoring unit, bearing;
15. Tension Carriage: Check tension carriage position;
16. Grip Opening/Closing Equipment: Check for Normal Operation as per approved manufacturer's process; other components associated with functioning of the grips such as grip fault before launch limit switch, not open limit switch, grip gauge, grip operating lever fault, electronic grip force testing device;
17. Outer Guide Rail: Functional check of the dampened outer guide rail;
18. Tyre Conveyors: General inspection as per schedule of maintenance;
19. Hydraulic Lifting Unit: Check for leaks and loose pipe connections;
20. Clutch/Brake Combination/Safety Clutch: Check the clutch/brake combination/safety clutch for correct functioning;
21. Line components such as rope, sheave assemblies, hangar, grip mechanism, tacho drive, counting sheave, haul rope grounding, towers, overhead cables, signal cables, lightning protection rope, gear rim, rope tensioner hydraulic unit, power take off (PTO) drive, break fork switch etc. including all safety features listed in Schedule M to be checked and technical specifications of the equipment suppliers;
22. Door opening closing of gondolas, access control barriers and passenger control systems; and
23. Magnetic Particle Testing of components to ensure safety of the operations.

1.2 The Concessionaire shall repair or rectify any defect or deficiency set forth in Paragraph 2 of this Schedule-L within the time limit specified therein and any failure in this behalf shall constitute a breach of the Agreement. Upon occurrence of any breach hereunder, the Authority shall be entitled to recover Damages as set forth in Clause 17.7 of the Agreement, without prejudice to the rights of the Authority under the Agreement, including Termination thereof.

## **2. Repair/rectification of defects and deficiencies**

The obligations of the Concessionaire in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies specified in Annex - I of this Schedule - L within the time limit set forth therein. The Concessionaire shall at all times maintain an adequate inventory of spares and consumables to meet the Maintenance Requirements.

## **3. Other defects and deficiencies**

3.1 In respect of any defect or deficiency not specified in Annex - I of this Schedule-L, the Concessionaire shall undertake repair or rectification in accordance with Good Industry Practice and within the time limit specified by the Independent Engineer.

3.2 In respect of any defect or deficiency not specified in Annex - I of this Schedule-L, the Independent Engineer may, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards, and any deviation or deterioration beyond the permissible limit shall be repaired or rectified by the Concessionaire within the time limit specified by the Independent Engineer.

**4. Extension of time limit**

Notwithstanding anything to the contrary specified in this Schedule-L, if the nature and extent of any defect or deficiency justifies more time for its repair or rectification than the time specified herein, the Concessionaire shall be entitled to additional time in conformity with Good Industry Practice and Specification and Standards. Such additional time shall be determined by the Independent Engineer and conveyed to the Concessionaire and the Authority with reasons thereof.

**5. Emergency repairs/restoration**

Notwithstanding anything to the contrary contained in this Schedule-L, if any defect, deficiency or deterioration in the XXX Ropeway poses a hazard to safety or risk of damage to property, the Concessionaire shall promptly take all reasonable measures for eliminating or minimizing such danger.

**6. Daily Inspection by the Concessionaire**

The Concessionaire shall, through its engineer, undertake a daily visual inspection of the XXX Ropeway and maintain a record thereof in a register to be kept in such form and manner as the Independent Engineer may specify. Such record shall be kept in safe custody of the Concessionaire and shall be open to inspection by the Authority and the Independent Engineer at any time during office hours.

**7. Divestment Requirements**

All defects and deficiencies specified in this Schedule-L shall be repaired and rectified by the Concessionaire so that the XXX Ropeway conforms to the Maintenance Requirements on the Transfer Date.

**8. Display of Schedule – L**

The Concessionaire shall display a copy of this Schedule-L at every station along with the Complaint Register stipulated in Article 47.

Annex - I  
(Schedule-L)

**Repair/Rectification of Defects and Deficiencies**

Any deficiency leading to stoppage of XXX Ropeway shall be rectified in accordance with Applicable Laws, Good Industry Practice and Specifications and Standards.



## **SCHEDULE-M**

*(See Clause 18.1)*

### **SAFETY REQUIREMENTS**

#### **1 Guiding principles**

- 1.1 Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on the XXX Ropeway, irrespective of the person(s) at fault.
- 1.2 Users of the XXX Ropeway include staff of the Concessionaire and its contractors working on the XXX Ropeway.
- 1.3 Safety Requirements apply to all phases of construction, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.
- 1.4 Safety Requirements include measures associated with safe movement, safety management, safety equipment, fire safety, enforcement and emergency response, with particular reference to the safety guidelines specified in Annex - I of this Schedule - M.
- 1.5 The XXX Ropeway shall be especially designed, operated and serviced in such a way so as to:
  - (a) eliminate and reduce risks by means of design and construction features;
  - (b) implement necessary measures to protect against risks that cannot be completely eliminated; and
  - (c) lay down precautions to be taken to avoid any risks.

#### **2 Obligations of the Concessionaire**

The Concessionaire shall abide by the following insofar as they relate to safety of the Users:

- (a) Applicable Laws and Applicable Permits;
- (b) Manual for safety;
- (c) provisions of this Agreement; and
- (d) relevant standards/Guidelines addressing highest human safety parameters; and
- (e) Good Industry Practice.

#### **3 Safety measures during Development Period**

- 3.1 No later than 90 (ninety) days from the date of this Agreement, the Authority shall appoint a Safety Consultant for carrying out safety audit at the design stage of the Project.
- 3.2 The Concessionaire shall provide to the Safety Consultant, in four copies, the relevant drawings containing the design details that have a bearing on safety of Users (the “**Safety Drawings**”). Such design details shall include ropeway alignments; horizontal and vertical forces, layouts of ropeway profile, foundation drawings, inertia forces, bending moments in global coordinates, tower loads, sheave loads, effects of forces caused by winds, snow, ice or any other external factors, Station forces and design, people movement and safety

procedures at Stations along with other incidental or consequential information. The Safety Consultant shall review the design details and forward 3 (three) copies of the Safety Drawings with its recommendations, if any, to the Independent Engineer who shall record its comments, if any, and forward one copy each to the Authority and the Concessionaire.

- 3.3 The design and equipment details shall be compiled, analysed and used by the Safety Consultant for evolving a package of recommendations consisting of safety related measures for the XXX Ropeways. The safety audit shall be completed in a period of 3 (three) months and a report thereof (the “**Safety Report**”) shall be submitted to the Authority, in 5 (five) copies. One copy each of the Safety Report shall be forwarded by the Authority to the Concessionaire and the Independent Engineer forthwith.
- 3.4 The Concessionaire shall endeavour to incorporate the recommendations of the Safety Report in the design of the XXX Ropeways, as may reasonably be required in accordance with Applicable Laws, Applicable Permits, Manuals and Guidelines of the Authority, Specifications and Standards, and Good Industry Practice. If the Concessionaire does not agree with any or all of such recommendations, it shall state the reasons thereof and convey them to the Authority forthwith. In the event that any or all of the works and services recommended in the Safety Report fall beyond the scope of Schedule-C, Schedule-D or Schedule-E, the Concessionaire shall make a report thereon and seek the instructions of the Authority for funding such works in accordance with the provisions of Article 18.
- 3.5 Without prejudice to the provisions of Paragraph 4, the Concessionaire and the Independent Engineer shall, within 15 (fifteen) days of receiving the Safety Report, send their respective comments thereon to the Authority, and no later than 15 (fifteen) days of receiving such comments, the Authority shall review the same along with the Safety Report and by notice direct the Concessionaire to carry out any or all of the recommendations contained therein with such modifications as the Authority may specify; provided that any works or services required to be undertaken hereunder shall be governed by the provisions of Article 18.

#### **4 Safety measures during Construction Period**

- 4.1 A Safety Consultant shall be appointed by the Authority, no later than 6 (six) months prior to the expected Project Completion Date, for carrying out a safety audit of the completed Construction Works.
- 4.2 The Safety Consultant shall study the Safety Report for the Development Period and inspect the XXX Ropeway to assess the adequacy of safety measures. The Safety Consultant shall complete the safety audit within a period of 4 (four) months and submit a Safety Report recommending a package of additional safety measures, if any, that are considered essential for reducing accident hazards on the XXX Ropeway. Such recommendations shall be processed, *mutatis mutandis*, and acted upon in the manner set forth in Paragraphs 4.3, 4.4 and 4.5 of this Schedule-M.
- 4.3 The Concessionaire shall make adequate arrangements during the Construction Period for the safety of workers and road users in accordance with Applicable Laws and Good Industry Practice for safety in construction zones and notify the Authority and the Independent Engineer about such arrangements.
- 4.4 **Layout, speed, distance between vehicles**



- 4.4.1 The XXX Ropeways shall be designed taking into account the characteristics of the terrain and its surroundings i.e., atmospheric and meteorological conditions.
- 4.4.2 Sufficient distance shall be maintained laterally and vertically between vehicles, towing devices, tracks, cables, etc., and possible structures and obstacles located in the vicinity either on the ground or in the air, taking account of the vertical, longitudinal and lateral movement of the cables and vehicles or of the towing devices under the most adverse foreseeable operating conditions.
- 4.4.3 The maximum distance between vehicles and ground shall take account of the nature of the XXX Ropeway, the type of vehicles and the rescue procedures. In the case of open cars, it shall also take account of the risk of fall as well as the psychological aspects associated with the distance between vehicles and ground.
- 4.4.4 The maximum speed of the vehicles or towing devices, the minimum distance between the two and their acceleration and braking performance shall be decided in a way to ensure the safety of Users and safe operation of the XXX ropeways.

#### 4.5 **Cables and their supports**

- 4.5.1 All measures shall be taken in line with the latest technological developments:
  - (a) to avoid cables or their attachments breaking;
  - (b) to cover their minimum and maximum stress values;
  - (c) to ensure that they are safely mounted on their supports and prevent derailment;  
and
  - (d) to enable them to be monitored.
- 4.5.2 Measures to be taken to ensure that cables can be retrieved in case of any cable derailment and that the XXX Ropeways can be shut down without any risks to any persons in the event of such derailment.

#### 4.6 **Mechanical installations**

##### 4.6.1 Drives

The drive system of the XXX Ropeways shall be of a suitable performance and capability, adapted to the various operating systems and modes.

##### 4.6.2 Standby drive

The XXX Ropeways shall have a standby drive with an energy supply which is independent of that of the main drive system.

##### 4.6.3 Braking

- 4.6.3.1. In an Emergency it shall be possible to shut down the XXX Ropeways and/or the vehicles at any moment, under the most unfavourable conditions in terms of authorised load and pulley adhesion during operation. The stopping distance shall be as short as the security of the XXX Ropeways dictates.

4.6.3.2. Deceleration values shall be within adequate limits fixed in such a way as to ensure both the safety of the Users and the satisfactory functioning of the vehicles, cables and other parts of the XXX Ropeways.

4.6.3.3. In all XXX Ropeways there shall be 2 (two) or more braking systems, each capable of bringing the it to a halt, and coordinated in such a way that they automatically replace the active system when its efficiency becomes inadequate. The XXX Ropeways' last braking system shall act as close as possible to the traction cable.

4.6.3.4. The XXX Ropeways shall be fitted with an effective clamp and locking mechanism to guard against premature restarts.

#### 4.7 **Control devices**

The control devices shall be designed and constructed in a way that they are safe and reliable, and able to withstand normal operating stresses and external factors such as humidity, extreme temperatures or electromagnetic interference.

#### 4.8 **Communication devices**

The Concessionaire to ensure that the operational staff is provided with equipment to communicate with one another and the Users in case of an Emergency

#### 4.9 **Vehicles and Towing devices**

4.9.1 The fittings of vehicles and towing devices shall be dimensioned and constructed so as not to:

- a) damage the cable, or
- b) slip, except where slippage does not significantly affect the safety of the vehicle, the towing device or the installation, under the most unfavorable conditions.

4.9.2 Vehicle doors (on cars, carriers) shall be designed and constructed in such a way as to make it possible to close and lock them. The vehicle floor and walls shall be designed and constructed so as to withstand pressure and loads exerted by Users and operating staff under any circumstances.

4.9.3 The vehicle shall be fitted with the suitable equipment if, for reasons of operational safety, an operator is required on board.

4.9.4 Vehicles and/or towing devices and, in particular, their suspension mechanisms shall be designed and fitted so as to ensure the safety of personnel servicing them in accordance with appropriate rules and instructions.

4.9.5 In the case of vehicles equipped with disconnectable fittings, all measures shall be taken to bring to a halt, without risk to Users or operating staff, at the moment of departure, any vehicle whose fitting has been incorrectly connected to the cable and, at the moment of arrival, any vehicle whose fitting has not been disconnected, and to prevent the vehicle from falling.

4.9.6 All ropeway installations shall be equipped with an automatic braking device.

- 4.9.7 Where all risk of derailment of the vehicle cannot be eliminated by other measures, the vehicle shall be fitted with an anti-derailment device which enables the vehicle to be brought to a halt without risk to persons.
- 4.9.8 Vehicles and/or towing devices shall be designed and fitted out in such a way that under foreseeable operating conditions no passenger or operation personnel can fall out or encounter any other risks i.e., getting stuck in doors, etc.

## **5 Safety measures during Operation Period**

- 5.1 The Concessionaire shall develop, implement and administer a surveillance and safety programme for Users, including correction of safety violations and deficiencies and all other actions necessary to provide a safe environment in accordance with this Agreement.

This shall be approved by the Safety Consultant after an inspection and shall form part of the Safety Manual.

- 5.2 The Safety Consultant shall establish a Ropeway Safety Management Unit (the “RSMU”) to be functional on and after COD and designate one of its officers to be in-charge of the RSMU. Such officer shall have specialist knowledge and training in ropeway system safety by having attended a course conducted by a reputed organisation on the subject.
- 5.3 The Safety Consultant shall keep a copy of every FIR recorded by the Police with respect to any accident occurring on the XXX Ropeway. In addition, the Safety Consultant shall also collect data for all cases of accidents not recorded by the Police. The information so collected shall be summarised in the form prescribed by the Authority for this purpose. The Safety Consultant shall also record the exact location of each accident on a route map. The aforesaid data shall be submitted to the Authority at the conclusion of every quarter.
- 5.4 The Safety Consultant shall submit to the Authority before the 31st (thirty first) May of each year, an annual report (in ten copies) containing, without limitation, a detailed listing and analysis of all accidents of the preceding Accounting Year and the measures taken by the Safety Consultant pursuant to the provisions of Paragraph 6.1 of this Schedule-M for averting or minimising such accidents in future.
- 5.5 Once in every Accounting Year, a safety audit shall be carried out by the Safety Consultant to be appointed by the Authority. It shall review and analyse the annual report and accident data of the preceding year and undertake an inspection of the XXX Ropeway. The Safety Consultant shall complete the safety audit within a period of 1 (one) month and submit a Safety Report recommending specific improvements, if any, required to be made in the XXX Ropeway. Such recommendations shall be processed, *mutatis mutandis*, and acted upon in the manner set forth in Paragraphs 4.3, 4.4 and 4.5 of this Schedule-M.
- 5.6 The Safety Manual and the corresponding notes shall be drawn up in a vernacular language of a Member State or any language which can be easily understood by Users, as determined by the Member State in the territory of which the XXX Ropeway is constructed and installed.
- 5.7 The workspace for the construction and operation of the XXX Ropeways shall be designed in such a way so as to prevent trained personnel from any accidents by way of falling. The Safety Consultant shall provide its appointed personnel with adequate protective gear to prevent workplace accidents.

- 5.8 Safety in the event of immobilization of the ropeway installation: all technical provisions and measures shall be adopted to ensure that passengers and operating personnel can be brought to safety within a set time appropriate to the type of ropeway installation and its surrounding is immobilized and cannot be restarted quickly.
- 5.9 Operators' stands and workplaces: Movable part which are normally accessible in the Stations shall be designed, constructed and installed in such a way as to preclude any risks or, where such risks exist, be fitted with protective devices so as to prevent any contact with parts of the ropeway installation which may cause accidents. Those devices shall be of a type that cannot easily be removed or rendered inoperative.

## **6 Costs and expenses**

Costs and expenses incurred in connection with the Safety Requirements set forth herein, including the provisions of Paragraph 2 of this Schedule, shall be met in accordance with Article 18, and in particular, the remuneration of the Safety Consultant, safety audit, and costs incidental thereto, shall be met by the Concessionaire.

## **7 Dimensions**

The ropeway installation, the subsystems and all its safety components shall be dimensioned, designed and constructed to withstand, with a sufficient degree of safety, all stresses encountered under all foreseeable conditions, including those which occur when not in operation, and taking account in particular of outside influences, dynamic effects and fatigue phenomena, while complying with the acknowledged rules of design, in particular with regard to the choice of materials.

## **8 Assembly**

- 8.1 The ropeway installation, the subsystems and all the safety components shall be designed and constructed in such a way as to ensure that they can be safely assembled and put into place.
- 8.2 The safety components shall be designed as to make assembly mistakes impossible either as a result of construction or by means of appropriate markings on the components themselves.

## **9 Integrity of the Ropeway Installation**

- 9.1 The safety components shall be designed and constructed and be useable in such a way as to ensure that, in every case, their own operational integrity and/or the safety of the ropeway installation is ensured, so that their failure is avoidable and with an acceptable safety margin.
- 9.2 Safety analysis and Safety Report for Planned Ropeway Installations.
- 9.2.1 The bidder responsible for the ropeway installation, shall carry out a safety analysis of the planned ropeway installation or have such a safety analysis carried out.
- 9.2.2 The safety analysis required for each ropeway installation shall:
- (a) take into account all modes of operation envisaged;
  - (b) follow a recognized or established method;

- (c) take into account the design parameters and the complexity if the ropeway installation in question;
  - (d) ensure that the design and configuration of the ropeway installation takes account of the local surroundings and the most adverse situations in order to ensure satisfactory safety conditions;
  - (e) cover all safety aspects of the ropeway installation and its external factor sin the context of the design, construction and entry into service;
  - (f) make it possible to identify from past experience risks liable to occur during the operation of the ropeway installation.
- 9.2.3 The safety analysis shall also cover the safety devices and their effects on the ropeway installation and related subsystems that they bring into action so that the safety devices:
- (a) are capable of reacting to an initial breakdown or failure detected so as to remain either in a state that guarantees safety, in a lower operation mode or in a fail-safe state;
  - (b) are redundant and are monitored; or
  - (c) are such that the probability of their failure can be evaluated, and their effects are of a standard equivalent to that achieved by safety devices that meet the criteria set out in points (a) and (b).
- 9.2.4 The safety analysis shall be used to draw up the inventory of risks and dangerous situations, to recommend the measure envisaged to deal with such risks and to determine the list of subsystems and safety components to be incorporated into the ropeway installation.
- 9.2.5 The result of the safety analysis shall be included in a safety report.
- 9.3 The safeguards referred to in Clause 10.2 2. Shall apply throughout the period between two scheduled inspections of the competent concerned. The time period for the scheduled inspection of the safety components shall be clearly indicated in the instruction manual.
- 9.4 Safety components which are incorporated as spare parts shall satisfy the essential safety requirements and the conditions relating to the smooth interaction with the other parts of the ropeway installations.
- 9.5 Measures shall be taken to ensure that the effects of a fire in the ropeway installation do not endanger the safety of persons.
- 9.6 Special measures shall be taken to protects ropeway installations and persons from the effects of lightning.

## **10 Safety Devices**

- 10.1 Any defect in the ropeway installation which could result in a failure endangering safety shall, where practicable, be detected, reported and processed by a safety device. The same applies to any normally foreseeable external event which may endanger safety.
- 10.2 It shall be possible at all times to shut down the ropeway installation manually.

- 10.3 After the ropeway installation has been shut down by a safety device, it shall not be possible to restart it unless appropriate action has been taken.

## **11 Maintainability**

The ropeway installation shall be designed and constructed for routine or special maintenance and repair operations and procedures to be carried out safely.

## **12 Equipment for passengers and operating personnel**

- 12.1 The access to embarkation areas and exit and disembarkation areas and the embarkation and disembarkation of passengers and operating personnel shall be organized with regard to the movement and stopping of vehicles in such a way as to ensure the safety of passengers and operating personnel, in particular in areas where there is a risk of falling.
- 12.2 It must be possible for children and persons with reduced mobility to use the ropeway installation safely if the ropeway installation is designed for the transport of such persons.

Annex - I  
(Schedule-M)

**Safety Guidelines**

**1. Safe movement**

- 1.1. In the design, construction and operation of Stations and ropeway system, particular care shall be taken to ensure safety of Users in entry and exit; while waiting, boarding or alighting; and in moving systems in case of any immobilization. This shall include facilities for safe and efficient evacuation in case of Emergency. In particular, ropeways shall be designed and tested for safe movement.

**2. System integrity**

- 2.1. In the design of power supply, ropeway, circuits and equipments, particular care shall be taken to minimise the likely incidence of failure.
- 2.2. All noxious gases, noise emissions and vibrations fall within the prescribed limit set by the Member State in whose territory the ropeway system is installed and should be in accordance with Applicable Law.

**3. Safety management**

- 3.1. A safety statement shall be prepared by the Concessionaire once every quarter to bring out clearly the system of management of checks and maintenance tolerances for various assets including carriers, and compliance thereof. The statement shall also bring out the nature and extent of, staff training and awareness in dealing with such checks and tolerances. Two copies of the statement shall be sent to the Independent Engineer within 15 (fifteen) days of the close of every quarter.

**4. Safety equipment**

- 4.1. The following equipment shall be provided at every Station:
- a. Fire extinguishers and fire alarms at the appropriate locations on the platforms;
  - b. Two fire extinguishers in the station office;
  - c. Two stretchers and two standard first aid boxes; and
  - d. Such other equipment as may be required in conformity with Good Industry Practice.
- 4.2. Any defect in the ropeway installation which could result in a failure endangering safety shall, where practicable, be detected, reported and processed by a safety device.
- 4.3. The ropeway installation shall be designed in a way to ensure that it can be shut down manually

**5. Emergency**

- 5.1. A set of emergency procedures shall be formulated to deal with different Emergency situations and the operations staff shall be trained to respond appropriately during emergency through periodic simulated exercises as laid down in a manual for management of disasters (the “**Disaster Management Manual**”) to be prepared and published by the Concessionaire prior to COD. The Disaster Management Manual shall form part of the Safety Manual. The Concessionaire shall provide 5 (five) copies each of the Disaster Management Manual to the Authority and the independent expert no later than 30 (thirty) days prior to COD.

**6. Fire safety**

- 6.1. The Concessionaire shall adopt provisions in a combination of the National Fire Protection Association (NFPA) 130 standard & Fire Safety Recommendations for Passenger Ropeway Systems.
- 6.2. To prevent fire in the passenger areas, the Concessionaire shall use fire resistant materials in the construction thereof and shall avoid use of materials which are to some extent flammable, or which emit smoke and harmful gases when burning.
- 6.3. Emergency exit should be accessible without any obstructions and the exit doors should be kept locked in the ordinary course. The exit doors shall be easy to open from inside the Station in case of Emergency.
- 6.4. Escape routes shall be clearly marked by arrows in the correct direction and no cryptic symbols shall be used. In complying with the provisions of this Clause 6.4, the possibility of poor visibility due to smoke shall be duly taken into account. All notices and signages shall be uniform and standardized.
- 6.5. Provisions regarding fire safety as laid down in this Clause 6 shall form part of the Safety Manual.

**7 User safety and information system:**

- 7.1 The Independent Engineer / Safety Consultant shall provide the RSMU with the facilities required for supervising passenger areas and carriers, and shall provide visual information to Users, both onboard and on the Stations. The Independent Engineer / Safety Consultant shall also provide one way communication to Users at the Stations through a Public Announcement (PA) system. The User call points should be located on all platforms at convenient locations to allow Users to contact the RSMU in emergencies.
- 7.2 The User information system shall comprise dynamic visual displays and loudspeakers.

**SCHEDULE – N**

*(See Clause 39.4)*

**VESTING CERTIFICATE**

The Chairman, Department of Tourism, XXX State (the “**Authority**”) refers to the Concession Agreement dated ..... (the “**Agreement**”) entered into between the Authority and ..... (the “**Concessionaire**”) for \*\*\* ropeway (the “**XXX Ropeway**”) on design, build, finance, operate and transfer (the “**DBFOT**”) basis.



The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Clause 39.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the XXX Ropeway shall be deemed to have vested unto the Authority, free from any Encumbrances, charges and liens whatsoever.

Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

Signed this ..... day of ....., 20..... at Delhi.

AGREED, ACCEPTED AND SIGNED

For and on behalf of

CONCESSIONAIRE by:

(Signature)  
(Name)  
(Designation)  
(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

AUTHORITY by:

(Signature)  
(Name)  
(Designation)  
(Address)

In the presence of:

1.

2.

## **SCHEDULE – O**

*(See Clause 24.3.1)*

### **TRAFFIC SAMPLING**

#### **1 Traffic sampling**

The Authority may, in its discretion and at its own cost, undertake traffic sampling, pursuant to Clause 24.3, in order to determine the actual traffic on the XXX Ropeway. In particular, the Authority may undertake traffic sampling for determining PHPDT. Such traffic sampling shall be undertaken through the Independent Engineer in the manner set forth below or in such manner as the Parties hereto may agree upon.

#### **2 Manual traffic count**

The Independent Engineer shall employ the required number of enumerators who shall count, classify and record all the Users as they pass by, and divide the survey into fixed time periods. The count stations shall be located near the Fee collection gates at all stations of the XXX Ropeway. The survey shall be conducted continuously for a minimum of 24 (twenty four) hours and maximum of 7 (seven) days at a time. Special surveys may also be undertaken for determining the PHPDT and such surveys may be carried out for upto 4 (four) Peak Hours in a day for a continuous period of 7 (seven) days. The count period shall be 15 (fifteen) minutes with results summarised hourly. All surveys shall be conducted substantially in the manner specified in this Schedule – O or in such manner as the Parties may agree upon.

#### **3 Automatic traffic count**

For automatic traffic count to be conducted on intermittent (non-continuous) basis, the Independent Engineer shall use suitable and standardised equipment to classify and record the Users passing through the Fee collection gates and the gates. For this purpose, the counter shall be checked with at least [1,000 (one thousand)] Users to ensure that Users are being counted and classified correctly.

#### **4 Variation between manual and automatic count**

Average Daily Traffic (ADT) shall be determined separately by the aforesaid two methods and in the event that the number of Users, as counted by the manual method, varies by more than 1% (one per cent) of the number of such Users as counted by the automatic method, the manual and automatic count shall be repeated, and in the event of any discrepancy between the two counts in the second enumeration, the average thereof shall be deemed to be the actual traffic. For the avoidance of doubt, it is expressly agreed that the Authority may, in consultation with the Concessionaire, adopt modified or alternative processes of traffic sampling for improving the reliability of such sampling.

## **SCHEDULE – P**

*(See Clause 44.3)*

### **SUBSTITUTION AGREEMENT**

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

**AMONGST**

1 The Chairman, Department of Tourism, XXX State and having its principal offices at xxx, State Capital – Pin code (hereinafter referred to as the “**Authority**” which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);

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

3 .....name and particulars of Lenders’ Representative and having its registered office at ....., acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**”, which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

**WHEREAS:**

- (A) The Authority has entered into a Concession Agreement dated ..... with the Concessionaire (the “**Concession Agreement**”) for \*\*\*\*\* ropeway (“**XXX Ropeway**”) on design, build, finance, operate and transfer basis (the “**DBFOT**”), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.
- (D) In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

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

1 **DEFINITIONS AND INTERPRETATION**

1.1 Definitions

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

“**Agreement**” means this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

**“Financial Default”** means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months;

**“Lenders’ Representative”** means the person referred to as the Lenders’ Representative in the foregoing Recitals;

**“Nominated Company”** means a company, incorporated under the provisions of the Companies Act, 1956, selected by the Lenders’ Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/transfer of the Concession as provided in this Agreement;

**“Notice of Financial Default”** shall have the meaning ascribed thereto in Clause 3.2.1; and

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

## 1.2 INTERPRETATION

1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.

1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.3 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

## 2 ASSIGNMENT

2.1 Assignment of rights and title

The Concessionaire hereby agrees to assign the rights, title and interest in the Concession to, and in favour of, the Lenders’ Representative pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

## 3 SUBSTITUTION OF THE CONCESSIONAIRE

3.1 Rights of substitution

3.1.1 Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders’ Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

- 3.1.2 The Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. For the avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the XXX Ropeway as Concessionaire either individually or collectively.
- 3.2 Substitution upon occurrence of Financial Default
- 3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "**Notice of Financial Default**") along with particulars thereof and send a copy to the Authority for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.
- 3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.
- 3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the XXX Ropeway in accordance with the provisions of Article 40 of the Concession Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days. For the avoidance of doubt, the Authority expressly agrees and undertakes to terminate the Concession Agreement forthwith, upon receipt of a written request from the Lenders' Representative at any time after 240 (two hundred and forty) days from the date of Suspension hereunder.
- 3.3 Substitution upon occurrence of Concessionaire Default
- 3.3.1 Upon occurrence of a Concessionaire Default, the Authority shall, by a notice, inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days' time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.
- 3.3.2 In the event that the Lenders' Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the

Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

### 3.4 **Procedure for substitution**

3.4.1 The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the XXX Ropeway including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.

3.4.2 To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Authority for shortlisting the bidders for award of the Concession; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any Material Adverse Effect on the Project, it may waive all or any of such eligibility criteria.

3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall request the Authority to:

- (a) accede to transfer to the Nominated Company the right to construct, operate and maintain the XXX Ropeway in accordance with the provisions of the Concession Agreement;
- (b) endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
- (c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.

3.4.4 If the Authority has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority thereupon shall transfer and endorse the Concession within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority,

the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

### 3.5 **Selection to be binding**

The decision of the Lenders' Representative and the Authority in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Authority taken pursuant to this Agreement

including the transfer/assignment of the Concession in favour of the Nominated Company. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Authority and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Authority or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

#### **4 PROJECT AGREEMENTS**

##### **4.1 Substitution of Nominated Company in Project Agreements**

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Company's assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

#### **5 TERMINATION OF CONCESSION AGREEMENT**

##### **5.1 Termination upon occurrence of Financial Default**

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 41 of the Concession Agreement.

##### **5.2 Termination when no Nominated Company is selected**

In the event that no Nominated Company acceptable to the Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2, the Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

##### **5.3 Realisation of Debt Due**

The Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement. For realisation of the Debt Due, the Lenders' Representative shall be entitled to make its claim from the Escrow Account in accordance with the provisions of the Concession Agreement and the Escrow Agreement.

#### **6 DURATION OF THE AGREEMENT**

##### **6.1 Duration of the Agreement**

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- (a) Termination of the Agreement; or

- (b) no sum remains to be advanced and no sum is outstanding to the Senior Lenders, under the Financing Agreements.

## 7 INDEMNITY

### 7.1 General indemnity

- 7.1.1 The Concessionaire will indemnify, defend and hold the Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.
- 7.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.
- 7.1.3 The Lenders' Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

### 7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct

the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

## 8 DISPUTE RESOLUTION

### 8.1 Dispute resolution

- 8.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Concessionaire and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the



“**Rules**”) or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.

8.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Delhi and the language of arbitration shall be English.

## 9 MISCELLANEOUS PROVISIONS

### 9.1 Governing law and jurisdiction

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

### 9.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

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

### 9.3 Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

### 9.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

### 9.5 Waiver

9.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

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

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

#### 9.6 **No third party beneficiaries**

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

#### 9.7 **Survival**

9.7.1 Termination of this Agreement:

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

9.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

#### 9.8 **Severability**

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

#### 9.9 **Successors and assigns**

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

#### 9.10 **Notices**

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

#### 9.11 **Language**

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

#### 9.12 **Authorised representatives**

Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

#### 9.13 **Original Document**

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

*[Signature page follows]*

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

THE COMMON SEAL OF SIGNED, SEALED AND DELIVERED CONCESSIONAIRE has been affixed For and on behalf of

pursuant to the resolution passed by the Board AUTHORITY by: of Directors of the Concessionaire at its meeting held on the ..... day of 20..... hereunto affixed in the presence of ....., Director, who has signed these presents in token thereof and ....., Company Secretary / Authorised Officer who has countersigned the same in token thereof <sup>23</sup>:

(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax No.)  
(e-mail address)

---

<sup>23</sup> To be affixed in accordance with the articles of association of the Concessionaire.

SIGNED, SEALED AND DELIVERED

For and on behalf of

SENIOR LENDERS by the Lenders' Representative:

(Signature)

(Name)

(Designation)

(Address)

(Fax)

(e-mail address)

In the presence of:

1.

2.

## **SCHEDULE – Q**

*(See Clause 28.1.1)*

### **FEE NOTIFICATION**

*[The Fee Rules/Notification issued by the State Government shall constitute Schedule- Q of the Agreement and shall be in accordance with the local legislation governing ropeways in the applicable state.]*

[Note 1: Fee Rules/ Notification shall be included in the draft concession agreement to be provided to the bidders before inviting Bids and would broadly cover the following:

The notification shall specify the fee payable for each category of Users using the XXX Ropeway. The fee shall be based on the rates approved by Government/Authority and escalated to reflect the increase in price index as specified therein.

The notification shall specify that the fee structure shall be modified to reflect the variation in price index as specified in Clause 28.2 and the Fee Notification shall be issued and gazetted by the concerned department.

The notification shall provide for rounding off of the fee to the nearest one rupee, and for escalation of fee, in line with the provisions of Article 30.

Discounted fee rates for frequent Users, additional charge for evasion of fee and differential fee structure for peak and off- peak hours should be provided in the notification.]

[Note 2: For assistance in drafting the fee rules for the project, a model notification is provided at Annex-I for consideration of the respective State Governments.]

Annex - I

(Schedule-Q)

[Model Rules/Notification]27

GOVERNMENT OF \*\*\*

\*\*\*\*\* DEPARTMENT

The Passenger Ropeway (Collection of Fee by Concessionaires) Rules, 20\*\*

In exercise of the powers conferred by [section \*\* of the \*\*\*\*\* Act, 20\*\*] (hereinafter referred to as the “**Act**”), and all other powers enabling him in this behalf, the Governor of \*\*\* makes the following rules (hereinafter referred to as the “**Rules**”) for collection of fee for use of passenger ropeway system, namely: -

**1. Short title, commencement and application:**

These Rules may be called the Passenger Ropeway (Collection of Fee by Concessionaires) Rules, 20\*\*.

These Rules shall come into force on the date of their publication in the Official Gazette and shall apply to all concessions granted by the State Government after such date.

**2. Definitions**

2.1 In these Rules, unless the context otherwise requires,

- (a) “**Act**” means the \*\*\*\*\* Act, 20\*\*
- (b) “**Appellate Authority**” means any officer not below the rank of superintending engineer or equivalent designated as such by the Government;
- (c) “**Authority**” means an agency appointed by the Government under the provisions of the Act, which will enter into an agreement with the Concessionaire for construction, operation or maintenance of a Ropeway system for transportation;
- (d) “**CPI (IW)**” means the Consumer Price Index for Industrial Workers as published by the Labour Bureau, Government of India or any Index published in substitution thereof by the Government of India;
- (e) “**Concession Agreement**” means an agreement entered into between the Authority and any person or persons for construction, operation or maintenance of a Ropeway system for transportation;
- (f) “**Concessionaire**” means a person who has entered into a Concession Agreement with the Authority under the provisions of the Act;
- (g) “**Government**” means the Government of \*\*\*;
- (h) “**Price Index**” shall comprise:

[(a) 70% (seventy per cent) of WPI; and

(b) 30% (thirty per cent) of CPI (IW)],

which constituents may be substituted by such alternative index or indices as the Parties may by mutual consent determine;

- (i) “**Ropeway system**” means the Ropeway system that is constructed, operated or maintained under a Concession Agreement for transporting commuters;
- (j) “**Unauthorised Collection**” means the collection of any amount not provided for in these Rules, by the concessionaire;
- (k) “**User**” means a person who uses the Ropeway system or any part thereof on payment of fee; and
- (l) “**WPI**” means the Wholesale Price Index as published by the Ministry of Industry, Government of India or any Index published in substitution thereof by the Government of India.
- (m) “**Year**” means a period from 1st April of a year and ending on 31st March of the following year.

Words and expressions used herein but not defined in these Rules shall have the meaning respectively assigned to them in the Act.

### **3. Levy and Collection of Fee**

3.1 It shall be levied and paid to the Concessionaire by every User, a fee under and in accordance with the provisions of these Rules.

3.2 Every User, upon payment of the fee shall be issued a ticket / token / smart card by the Concessionaire.

### **4. Basic Fee**

4.1 The Concessionaire will communicate the fee for Ropeway system in the Concession Agreement. Basic fee for parking at any designated parking area within a Station of the Ropeway system shall be as specified in column (4) below and will be revised from time to time.

<b>Serial No. (1)</b>	<b>Vehicle (2)</b>	<b>Time period of parking (3)</b>	<b>Basic fee (in Rs.) (4)</b>
1.	Car	Upto 2 hours For every hour in excess of the first 2 hours 105	10 5
2.	Motorised 2wheeler	Upto 2 hours For every hour in excess of the first 2 hours	4 2

The basic fee for parking specified in sub-rule (2) above shall be increased by 50% (fifty per cent) thereof for parking provided in the basement or on a floor above the ground floor.

**5. Annual revision of basic fee**

- 5.1 The basic fee referred to in Rule 4 shall be increased annually, without compounding, by 5% (five per cent) thereof for a period of 15 (fifteen) successive years commencing from April 1, 2019. The first increase of 5% (five per cent) hereunder shall take effect on April 1, 2020, and the last and fifteenth such increase shall be affected on April 1, 2034. Such increased rates shall be deemed to be the base rates for the purpose of these rules.

**6. Peak and off-peak fee**

- 6.1 Every Concessionaire may, after obtaining prior written approval of the Authority, which approval the Authority may in its discretion deny, levy and collect a higher and discounted fee (the “**Differential Fee**”) for use of the Ropeway system, during peak and off-peak hours respectively in accordance with this Rule 6:

Provided, however, that such Differential Fee shall not apply to Users availing of a lower fee under Rule 9.

- 6.2 The Concessionaire shall, for the purposes of these Rules, designate not more than 4 (four) hours in a day as peak hours and a period equal to twice the peak hours as off-peak hours. During peak hours, the Concessionaire may levy and collect a premium of upto 25% (twenty-five per cent) on the applicable fee or such higher premium as the Authority may by order permit. Simultaneously, with levy of such premium for peak hours, the Concessionaire shall offer a discount during off-peak hours for an amount equal to the premium for peak hours. For the avoidance of doubt, the determination of Differential Fee shall be with reference to the time of entry of a User in the Ropeway system.

- 6.3 If the determination and collection of Differential Fee results in an increase in the fee revenues of the Concessionaire, then 80% (eighty per cent) of the additional revenue in each year resulting from the Differential Fee shall be deposited in the Safety Fund and used in accordance with provisions of the respective concession agreement. For the purposes of this Rule 6.3, additional revenue from Differential Fee shall mean the gross amount collected at differential fee pursuant to this Rule 6, less gross revenues which would have been collected at the applicable fee on footing that the option to levy and collect Differential Fee pursuant to this Rule 6 has not been exercised by the Concessionaire.

**7. Fee collection points**

- 7.1 For collection of fee under these Rules, the Concessionaire shall establish and operate ticket counters and ticket vending machines in accordance with the provisions of its Concession Agreement. The Concessionaire may install fee collection gates for checking evasion of fee.

**8. Remittance and Utilisation of fee**

- 8.1 The fee collected shall be appropriated by the Concessionaire in accordance with and for the performance of its obligations under and in accordance with the provisions of the Concession Agreement.

**9. Discounted rates for frequent Users**



- 9.1 Upon request from any person, the Concessionaire shall issue a return ticket on payment of a sum equal to 180% (one hundred and eighty per cent) of the fee payable if it were to undertake a single one-way trip on the Ropeway system. Such return pass shall entitle the User to undertake a return journey on the same day as the outward journey.
- 9.2 Upon request from any person, the Concessionaire shall issue a daily pass on payment of a sum equal to twice the fee payable if it were to undertake a single one-way trip on the longest route of the Ropeway system. Such daily pass shall entitle the user to unlimited travel on the Ropeway system for the date of issue.
- 9.3 The Concessionaire shall, upon request from any person for issue of a weekly pass, issue such pass on payment of a sum equal to ten times the fee payable if it were to undertake a single one-way trip on the selected section of the Ropeway system. Such weekly pass shall entitle the user to unlimited travel on such section of the Ropeway system for one week from the date of issue. The Concessionaire shall, upon request from any person for issue of a monthly pass, issue such pass on payment of a sum equal to forty times the fee payable if it were to undertake a single one-way trip on the selected section of the Ropeway system. Such monthly pass shall entitle the user to unlimited travel on such section of the Ropeway system for one month from the date of issue.

[In addition to the above, the Authority may prescribe any other scheme of discounted fee under these Rules.]

## **10. Luggage**

- 10.1 A User may carry upto 7 (seven) kg of hand luggage without any payment for such luggage. A User can carry 50 (fifty) kg of luggage on a payment of an amount equal to the cost of one ticket. The carriers are designed to carry a fixed number of riders. The assumption for luggage is that the weight of 50 (fifty) kg luggage will occupy one seat equivalent of weight in the carriers. Therefore, one person carrying 50 (fifty) kg luggage will be deemed to buy tickets for 2 (two) travelling riders. The Concessionaire can levy a per kilogram charge equal to or more than the cost of ticket for a single rider. e.g. users may, at any time other than peak hours, carry luggage in excess of 7 (seven) kilograms, but not exceeding 50 (fifty) kg, upon payment of basic fee calculated at the rate of Rs. 2 (two) per kilogram, which rate may be revised by the Concessionaire in accordance with Rule 5; provided that any luggage which is hazardous, unhygienic or in any manner offensive to other users shall not be permitted on the train.

## **11. Increase in fee due to increase in insurance premium**

- 11.1 In the event of a significant rise in the risk premium for insurance on account of a change in the security environment, the Concessionaire shall be entitled to recover 80% (eighty percent) of such increase in premium from the Users by means of a corresponding increase in fee with the prior written approval of the Authority which approval shall not be unreasonably withheld.

## **12. Additional charge for evasion of fee**

- 12.1 The Concessionaire shall be entitled to levy and collect an additional sum equal to the greater of three times the applicable fee [or Rs. 200] from a person found to be evading payment of fee due. Such additional sum shall be deemed to be fee due and payable under these Rules and may be used for defraying the expenses on prevention of such evasion.

Provided that the Concessionaire shall not be entitled to any reduction in its liability on account of any amount payable by it to the Authority or to any other relief from or any claim against the Authority for its failure to stop evasion of fee; and its failure to collect fee prescribed under these Rules.

**13. Rounding off of the fee**

13.1 Fee to be collected under these Rules shall be rounded off to the nearest Rupee.

**14. Commencement of fee collection**

14.1 Levy and collection of fee shall commence upon completion/ provisional completion of construction of the Ropeway system for entry into commercial service, in accordance with the provisions of the Concession Agreement.

**15. Display of Fee**

15.1 The Concessionaire shall, near the entry point of each Station, prominently display the applicable fee for information of Users approaching from either side of the Station. The Concessionaire shall from time to time, by written notice, inform the Authority of the applicable fee and the detailed calculation thereof. Such information shall be communicated at least 30 (thirty) days prior to the date of initial levy of fee or revision thereof, as the case may be.

15.2 The Concessionaire shall, at least 15 (fifteen) days prior to the commencement of collection of fee or revised fee, as the case may be, publish a notice specifying the actual amount of fee to be charged from Users, in at least one newspaper each in English and local language of the area and having a wide circulation in such area.

**16. Unauthorised collection**

16.1 In the event that a Concessionaire collects from any person a sum of money not due and payable hereunder, the Concessionaire shall be liable to refund to such person forthwith the amount so collected along with a sum computed @ 0.5 % (zero point five per cent) of the amount so collected, for each day from the date of collection till the date of refund, by way of damages. In the event that such amount together with damages computed in the manner as aforesaid is not paid to such person for any reason whatsoever, the same shall be deposited with the Authority within a period of 15 (fifteen) days from the date of such collection.

16.2 Any User aggrieved with the collection of unauthorised fee, may lodge a complaint with the authorised representative of the Concessionaire who shall, after hearing the Parties pass an order on such complaint within 30 (thirty) days of receiving the complaint and appeal, if any, against such order may be made to the Appellate Authority designated as such by the Authority within 45 (forty five) days of the date on which the order of the authorised representative was received by such User. In passing an order under this Rule, the authorised representative or the Appellate Authority may, after giving an opportunity of hearing to the complainant and the Concessionaire, direct the Concessionaire to refund the excess payment and may also award damages for the inconvenience suffered by an applicant.

16.3 The Concessionaire shall keep a record of all complaints received and action taken thereon with respect to the fee collection, and forward a copy on a fortnightly basis to the authorised representative of the Authority.

16.4 The Authority may assess the excess fee collection, if any, made by a Concessionaire and take appropriate action for recovering the same from such Concessionaire along with an additional sum equal to the 25% (twenty five per cent) of the excess fee collection. Such additional sum shall be deemed to be predetermined liquidated damages for assessment and recovery of the excess fee collection.

**17. Power of Authority to verify records**

17.1 The Authority shall have the power to verify, through any of its designated officers, the collection of fee and for this purpose, inspect any document, records, other information or reports of the Concessionaire.

**18. Exempted Users**

18.1 The following categories of Users shall be exempted from payment of fee:

- Employees of the concessionaire on duty; and
- Security personnel on Station duty.

**SCHEDULE – R**

*(See Clause 19.5)*

**MONTHLY FEE STATEMENT<sup>24</sup>**

**Ropeway System:**

**Month:**

For corresponding month of previous year		For preceding month		For the month reported upon		
No. of Users (2)	Fee collected (in lakh Rs.) (3)	No. of Users (4)	Fee collected (in lakh Rs.) (5)	Fee per User (in Rs.) (6)	No. of Users (7)	Fee collected (in lakh Rs.) (8)

Note 1: Monthly Fee Statements for Monthly Passes and Daily Passes have been prepared separately in the above format and are enclosed.

Remarks, if any:

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<sup>24</sup> **HSA Note:** NITI Aayog to confirm if weekly and daily reports are to be included to the schedule.

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**SCHEDULE – S**  
(See Clause 32.1.2)

**ESCROW AGREEMENT**

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

**AMONGST**

- 1 ..... Limited, a company incorporated under the provisions of the Companies Act, 1956/ Companies Act, 2013 and having its registered office at .....(hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
- 2 ..... (name and particulars of Lenders’ Representative) and having its registered office at ..... acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
- 3 ..... (name and particulars of the Escrow Bank) and having its registered office at ..... (hereinafter referred to as the “**Escrow Bank**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
- 4 The Governor of \*\*\*\*\*, represented by [Secretary, Public Works Department and having its principal offices at \*\*\*\*\*] (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

**WHEREAS:**

- (A) The Authority has entered into a Concession Agreement dated ..... with the Concessionaire (the “**Concession Agreement**”) for \*\*\*\* ropeway (the “**XXX Ropeway**”) in the State on design, build, finance, operate and transfer (“**DBFOT**”) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) The Concession Agreement requires the Concessionaire to establish an Escrow Account, inter alia, on the terms and conditions stated therein.

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

**1 DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

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

“**Agreement**” means this Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

“**Concession Agreement**” means the Concession Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

“**Cure Period**” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Concessionaire, and shall commence from the date on which a notice is delivered by the Authority or the Lenders’ Representative, as the case may be, to the Concessionaire asking the latter to cure the breach or default specified in such notice;

“**Escrow Account**” means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

“**Escrow Default**” shall have the meaning ascribed thereto in Clause 6.1;

“**Lenders’ Representative**” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

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

“**Payment Date**” means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

“**Sub-Accounts**” means the respective Sub-Accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective Sub Accounts and paid out therefrom on the Payment Date(s).

## **1.2 Interpretation**

1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.

1.2.2 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

1.2.3 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

## **2 ESCROW ACCOUNT**

### **2.1 Escrow Bank to act as trustee**

2.1.1 The Concessionaire hereby appoints the Escrow Bank to act as trustee for the Authority, the Lenders' Representative and the Concessionaire in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.

2.1.2 The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority, the Lenders' Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Authority, the Lenders' Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of, or as third-party beneficiaries under this Agreement.

### **2.2 Acceptance of Escrow Bank**

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Senior Lenders or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, the Lenders' Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

### **2.3 Establishment and operation of Escrow Account**

2.3.1 Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Concessionaire shall open and establish the Escrow Account with the \*\*\*\* (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.

2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.

2.3.3 The Escrow Bank and the Concessionaire shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

### **2.4 Escrow Bank's fee**

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Concessionaire. For the



avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with Clause 4.1.

## **2.5 Rights of the parties**

The rights of the Authority, the Lenders' Representative and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority, the Lenders' Representative and the Concessionaire shall have no other rights against or to the monies in the Escrow Account.

## **2.6 Substitution of the Concessionaire**

The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Concessionaire under this Agreement on and with effect from the date of substitution of the Concessionaire with the Nominated Company.

## **3 DEPOSITS INTO ESCROW ACCOUNT**

### **3.1 Deposits by the Concessionaire**

3.1.1 The Concessionaire agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

- (a) all monies received in relation to the Project from any source, including the Senior Lenders, lenders of Subordinated Debt and the Authority;
- (b) all funds received by the Concessionaire from its share-holders, in any manner or form;
- (c) all Fee levied and collected by the Concessionaire;
- (d) any other revenues, rentals, deposits or capital receipts, as the case may be, from or in respect of the XXX Ropeway; and
- (e) all proceeds received pursuant to any insurance claims.

3.1.2 The Concessionaire may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

### **3.2 Deposits by the Authority**

The Authority agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

- (a) Grant and any other monies disbursed by the Authority to the Concessionaire;
- (b) all Fee collected by the Authority in exercise of its rights under the Concession Agreement; and
- (c) Termination Payments:

Provided that, notwithstanding the provisions of Clause 4.1.1, the Authority shall be entitled to appropriate from the aforesaid amounts, any Concession Fee due and payable to it by the Concessionaire, and the balance remaining shall be deposited into the Escrow Account.

### **3.3 Deposits by Senior Lenders**

The Lenders' Representative agrees, confirms and undertakes that the Senior Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project; provided that notwithstanding anything to the contrary contained in this Agreement, the Senior Lenders shall be entitled to make direct payments to the EPC Contractor under and in accordance with the express provisions contained in this behalf in the Financing Agreements.

### **3.4 Interest on deposits**

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Concessionaire in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

## **4 WITHDRAWALS FROM ESCROW ACCOUNT**

### **4.1 Withdrawals during Concession Period**

4.1.1 At the beginning of every month, or at such shorter intervals as the Lenders' Representative and the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):

- (a) all taxes due and payable by the Concessionaire for and in respect of the XXX Ropeway;
- (b) all payments relating to construction of the XXX Ropeway, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- (d) O&M Expenses incurred by the Authority, provided it certifies to the Escrow Bank that it had incurred such expenses in accordance with the provisions of the Concession Agreement and that the amounts claimed are due to it from the Concessionaire;
- (e) Concession Fee due and payable to the Authority;
- (f) monthly proportionate provision of Debt Service due in an Accounting Year;
- {(g) Premium due and payable to the Authority;}

- (h) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement;
- (i) monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- (j) any reserve requirements set forth in the Financing Agreements; and
- (k) balance, if any, in accordance with the instructions of the Concessionaire.

4.1.2 No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

#### **4.2 Withdrawals upon Termination**

Upon Termination of the Concession Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

- (a) all taxes due and payable by the Concessionaire for and in respect of the XXX Ropeway;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) outstanding Concession Fee;
- (d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement, including {Premium,} and any claims in connection with or arising out of Termination;
- (e) retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in Article 43 of the Concession Agreement;
- (f) outstanding Debt Service including the balance of Debt Due;
- (g) outstanding Subordinated Debt;
- (h) incurred or accrued O&M Expenses;
- (i) any other payments required to be made under the Concession Agreement; and (j)

balance, if any, in accordance with the instructions of the Concessionaire:

Provided that the disbursements specified in Sub-clause (j) of this Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by the Authority.

#### **4.3 Application of insufficient funds**

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all

the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

#### **4.4 Application of insurance proceeds**

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the XXX Ropeway, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

#### **4.5 Withdrawals during Suspension**

Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 40 of the Concession Agreement. Any instructions given by the Authority to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

### **5 OBLIGATIONS OF THE ESCROW BANK**

#### **5.1 Segregation of funds**

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank.

#### **5.2 Notification of balances**

7 (seven) business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire and/or the Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lenders' Representative of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

#### **5.3 Communications and notices**

In discharge of its duties and obligations hereunder, the Escrow Bank:

- (a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;
- (b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- (c) shall, within 5 (five) business days after receipt, deliver a copy to the Lenders' Representative of any notice or document received by it in its capacity as the Escrow Bank from the Concessionaire or any other person hereunder or in connection herewith; and
- (d) shall, within 5 (five) business days after receipt, deliver a copy to the

Concessionaire of any notice or document received by it from the Lenders' Representative in connection herewith.

#### **5.4 No set off**

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

#### **5.5 Regulatory approvals**

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

### **6 ESCROW DEFAULT**

#### **6.1 Escrow Default**

6.1.1 Following events shall constitute an event of default by the Concessionaire (an "**Escrow Default**") unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority or the Lenders' Representative:

- (a) the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;
- (b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any SubAccount in which such transfer should have been made, within a Cure Period of 5 (five) business days; or
- (c) the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.

6.1.2 Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Concession Agreement.

### **7 TERMINATION OF ESCROW AGREEMENT**

#### **7.1 Duration of the Escrow Agreement**

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the debt, guarantee or financial assistance received by it from the Senior Lenders, or any of its obligations to the

Authority remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

## **7.2 Substitution of Escrow Bank**

The Concessionaire may, by not less than 45 (forty five) days prior notice to the Escrow Bank, the Authority and the Lenders' Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Lenders' Representative and arrangements are made satisfactory to the Lenders' Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank.

The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

## **7.3 Closure of Escrow Account**

The Escrow Bank shall, at the request of the Concessionaire and the Lenders' Representative made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement and the Financing Agreements including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

# **8 SUPPLEMENTARY ESCROW AGREEMENT**

## **8.1 Supplementary escrow agreement**

The Lenders' Representative and the Concessionaire shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, inter alia, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to Clause 4.1.1 and for matters not covered under this Agreement such as the rights and obligations of Senior Lenders and lenders of Subordinated Debt, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

# **9 INDEMNITY**

## **9.1 General indemnity**

- 9.1.1 The Concessionaire will indemnify, defend and hold the Authority, Escrow Bank and the Senior Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

- 9.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.
- 9.1.3 The Escrow Bank will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

## **9.2 Notice and contest of claims**

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

## **10 DISPUTE RESOLUTION**

### **10.1 Dispute resolution**

10.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules") or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996, as amended from time to time.

10.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be [\*\*\*] and the language of arbitration shall be English.

## **11 MISCELLANEOUS PROVISIONS**

### **11.1 Governing law and jurisdiction**

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

## **11.2 Waiver of sovereign immunity**

The Authority unconditionally and irrevocably:

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

## **11.3 Priority of agreements**

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

## **11.4 Alteration of terms**

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

## **11.5 Waiver**

11.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

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

11.5.2 Neither the failure by any Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by any Party to another Party shall be treated or deemed as



waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

#### **11.6 No third-party beneficiaries**

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

#### **11.7 Survival**

##### **11.7.1 Termination of this Agreement:**

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

11.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

#### **11.8 Severability**

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 10.1 of this Agreement or otherwise.

#### **11.9 Successors and assigns**

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

#### **11.10 Notices**

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed

and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

**11.11 Language**

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

**11.12 Authorised representatives**

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

**11.13 Original Document**

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

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

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

presence of<sup>s</sup>:

SIGNED, SEALED AND  
DELIVERED

For and on behalf of  
ESCROW BANK by:

(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax No.)  
(e-mail address)

In the presence of:

1.

---

SIGNED, SEALED AND DELIVERED  
For and on behalf of  
SENIOR LENDERS by the  
Lenders' Representative:

(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax No.)  
(e-mail address)

SIGNED, SEALED AND  
DELIVERED

For and on behalf of  
THE GOVERNMENT OF \*\*\* by:

(Signature)  
(Name)  
(Designation)  
(Address) (Fax  
No.)

(e-mail  
address)

2.

<sup>s</sup> To be affixed in accordance with the articles of association of the Concessionaire.

## **SCHEDULE – T**

*(See Clause 34.2.1)*

### **PANEL OF CHARTERED ACCOUNTANTS**

#### **1. Panel of Chartered Accountants**

Pursuant to the provisions of Clause 34.2.1 of the Agreement, the Authority and the Concessionaire shall prepare a mutually agreed panel of 10 (ten) reputable firms of Chartered Accountants having their registered offices in India (the “**Panel of Chartered Accountants**”). The criteria for preparing such Panel and the procedure to be adopted in this behalf shall be as set forth in this Schedule- T

#### **2. Invitation for empanelment**

2.1 The Authority shall invite offers from all reputable firms of Chartered Accountants who fulfil the following eligibility criteria, namely:

- (a) the firm should have conducted statutory audit of the annual accounts of at least one hundred companies registered under the Companies Act, 1956 or Companies Act 2013, as the case may be, of which at least ten should have been public sector undertakings;
- (b) the firm should have at least 5 (five) practicing Chartered Accountants on its rolls, each with a minimum experience of ten years in the profession;
- (c) the firm or any of its partners should not have been disqualified or black-listed by the Comptroller and Auditor General of India or the Authority; and
- (d) the firm should have an office in the State or in an adjacent State with at least 2 (two) practicing Chartered Accountants on its rolls in such State.

2.2 Interested firms meeting the eligibility criteria shall be required to submit a statement of their capability including the bio-data of all the practicing Chartered Accountants on its rolls. In particular, each firm shall be required to furnish year-wise information relating to the names of all the companies with an annual turnover exceeding Rs. 25,00,00,000 (Rs. twenty-five crore) whose annual accounts were audited by such firm in any of the preceding 5 (five) Accounting Years.

#### **3. Evaluation and selection**

3.1 The information furnished by each firm shall be scrutinised and evaluated by the Authority and 1 (one) point shall be awarded for each annual audit of the companies specified in Paragraph 2.2 above. (For the avoidance of doubt, a firm which has conducted audit of the annual accounts of any such company for five years shall be awarded five points).

3.2 The Authority shall prepare a list of all the eligible firms along with the points scored by each such firm and 10 (ten) firms scoring the highest points shall be identified and included in the draft Panel of Chartered Accountants.

#### **4. Consultation with the Concessionaire**

The Authority shall convey the aforesaid panel of firms to the Concessionaire for scrutiny and comments, if any. The Concessionaire shall be entitled to scrutinise the relevant records of the Authority to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Authority within 15 (fifteen) days of receiving the aforesaid panel.

**5. Mutually agreed panel**

- 5.1 The Authority shall, after considering all relevant factors including the comments, if any, of the Concessionaire, finalise and constitute a panel of 10 (ten) firms which shall be deemed to be the mutually agreed Panel of Chartered Accountants.
- 5.2 After completion of every five years from the date of preparing the mutually agreed Panel of Chartered Accountants, or such earlier period as may be agreed between the Authority and the Concessionaire, a new panel shall be prepared in accordance with the provisions of this Schedule-T.

## **SCHEDULE- U**

(See Clause 22.8)

### **PASSENGER CHARTER**

#### **XXX Ropeways**

At your service

Our Passenger Charter explains our commitments to you and sets out the targets that these are based upon. It is not legally binding and does not affect your legal rights, which are set under the Applicable Law. Copies of the conditions can be obtained from all staffed Stations or from our customer service center. They can also be viewed online at [www \[please mention the website\]](#)

#### **Contents**

- 1 Introduction
- 2 Our standards for ropeway service performance
- 3 Information and planning for your journey
- 4 Passengers who require assistance
- 5 Buying a ticket
- 6 Your journey
- 7 Claims for delays and cancellations
- 8 Listening to your views

#### **1. Introduction**

We want to give our passengers excellent service!

This is a bold statement, but its intention is to focus the mind of every employee of the ..... XXX Ropeway, on what is important - our passengers. We aim to provide you with:

- i. Safe, clean, reliable services
- ii. Clean and safe Stations
- iii. Reliable, timely and easy to understand information
- iv. Polite, friendly and helpful staff

Inevitably, there will be times when problems occur, and we are not able to achieve the standards we aim for. Our charter explains what we will do for you when this happens.

#### **2. Our Standards for Ropeway Service Performance**

We will continue to work hard at improving our performance to provide you with a consistently reliable service.

## **2.1 Peak Hour Operation**

The Concessionaire will define the peak hours based on the RFP specifications and ridership. Typically, [0600 and 1000] hours inclusive, or between [1700 and 2100] inclusive, Monday to Friday only are peak hours. The aforesaid time definition may be modified from time to time depending on average daily traffic volumes during these hours. The peak hour operation will be suitably dealt by increasing or decreasing the maximum speed limit of the ropeway system.

## **2.2 Reliability**

Our target is 99% (Ninety-nine) percent availability of the transport system for all the 7 (seven) days of the week. You can view our performance results for the previous four weeks and 12 (twelve) months on 'Track Record' posters displayed at every Station of the ..... XXX Ropeway. The results are also available for inspection on request, at all our Stations and are published in our season ticket (discounted fee) section.

The method of monitoring our performance is independently audited annually. We do not include disruption caused by matters out of the ropeway industry's control, such as trespass, vandalism and terrorism.

## **3. Information and Planning the Usage of the Ropeway**

We will provide you with accurate information about the ropeway services, fees and facilities to help you plan your journey. You can obtain this information in a number of ways.

..... Ropeway Enquiries - telephone: ..... (24 hours)

..... Ropeway Enquiries on the fees applicable for the system

Calls are charged at a local rate and may be monitored.

You can also obtain online information about train times and up-to-the- minute trainrunning information by visiting [www. ....](http://www. ....) Customer Service Centre – Tel: .....

In addition to the ropeway enquiries, customer service centre also provides information on the ropeway service. The customer service centre is open 24 hours a day except on national holidays. Calls are charged at a local rate and may be monitored.

### **3.1 At Stations**

Staff in our ticket offices and travel centres can provide you with information to help you plan your journey. We will display up-to-date timetable posters at all Stations. These will include the locations serviced by the ropeway and connecting transport systems available at each ropeway Station locations to plan your journey ahead.

### **3.2 Engineering work**

#### **Planned engineering work**



From time to time, ..... XXX Ropeway has to carry out planned engineering and improvement work to maintain the system. This can cause alterations to our services, especially on weekends and public holidays.

The maintenance work on ropeway systems is done during shutdown hours which means that system functions at peak performance during the operation hours. However, in case of any specific instances when planned engineering work time extends beyond the shutdown time viz affecting operations during service time, advance information along with notification will be posted on the display system and website.

Information on services will also be available from:

Ropeway Enquiries  
Customer Service Centre

Under best effort circumstances, we will try to post information well in advance for you to plan your trips.

### **3.3 Help and advice during your journey**

Our customer service helpline is available during operation hours and equipped to handle all enquiries.

## **4. Passengers who Require Assistance**

We are committed to meeting the travelling needs of our disabled passengers. We recognise that many of our passengers may have special needs which require us to adjust the way we provide our service. The ropeway Station is equipped to handle requirements of all riders and the ropeway system, carriers are designed to accommodate wheel chairs, baby prams, prosthetics etc. The design facilitates seamless travel from start to finish.

### **4.1 Advance information and assistance for disabled passengers**

We advise passengers who would like assistance to contact our customer service centre in advance.

Telephone (24 hours): .....  
Fax: .....  
Textphone: .....  
Ropeway Enquiries textphone: .....

### **4.2 Car Parking**

Every Station that has a tarmac or concrete surfaced car park for customers has designated parking spaces [for either blue or orange badge holders].

### **4.3 On-Board Information**

We are committed to providing information to provide a safe and pleasurable ride in a variety of ways so that it can be accessed by as wide a group of passengers as possible.

Carriers are equipped with public address systems to provide audible announcements to hearing passengers and equipped with a passenger information system that uses visual displays to enable hearing-impaired passengers to access information.

We recognize that good announcements are essential to visually impaired passengers, so our employees are trained to speak clearly.

#### **4.4 Disability awareness training**

All our frontline staff and managers receive training in disability awareness.

##### **Further Information**

..... XXX Ropeway Disabled Persons' Protection Policy (DPPP) sets out our full arrangements for passengers with disabilities. It can be supplied in a range of formats (large print, braille and audio), available from our customer service centre.

We have also produced a leaflet containing useful information, called 'Our Service for Passengers with Impairments'. It is available at staffed Stations and from our customer service centre.

#### **5. Buying a ticket**

We will sell you the most appropriate ticket for your journey. To purchase a ticket, visit any of our staffed Stations or telephone our customer service centre.

##### **5.1 At Stations**

- Our ticket office opening hours are displayed at every staffed Station. They are also available from our website or by telephoning our customer service centre.
- You can pay by cash or major credit and debit cards.
- Many Stations also have self-service ticket machines, which sell a range of tickets to main destinations.

We will try to ensure that you do not need to queue for more than five minutes at busy times and no more than three minutes during less busy times. Details of busy times are displayed at each staffed Station.

At major Stations, our travel centres enable you to buy tickets, get travel information and also purchase other travel services.

Tickets can also be purchased from our authorised travel agents.

##### **5.2 By Telephone**

Season tickets can also be purchased over the telephone by calling our customer service centre. We accept most major credit and debit cards. Please allow at least five working days for delivery of your tickets.

##### **5.3 Tickets online**

You can also buy your season ropeway tickets (Discounted Fee) online.

#### **5.4 Penalty fees**

..... XXX Ropeway has a duty to its fee-paying passengers to ensure that no-one travels for free.

To help us achieve this, we operate a penalty fees scheme across our network. If you travel without a valid ticket you may be liable to a penalty fee of [Rs.200 or three times of the single fee (whichever is the greater)].

### **6. Your journey**

Getting a seat

We operate a 'walk-on' service, which means you can board the next arriving carrier provided you have a valid ticket. The seat is guaranteed as the ropeway carrier is designed not to allow more people to board than its capacity. In Aerial Tramway (ATW), Cable Liners (Automated People Movers) are designed to allow sitting and standing passengers.

#### **6.1 Security**

We work very closely with the local authorities to improve security at our Stations and car parks.

We aim to reduce levels of crime, trespass and vandalism and we are investing to achieve this. Initiatives include:

- Teams of Travel Safe Officers, trained and co-ordinated by the Police
- Installation of CCTV at Stations
- Installation of CCTV in the carriers
- Lighting at Stations and car parks
- Help points at our Stations
- Security guards at key locations.

More information can be found in the safety and security section of our website.

#### **6.2 Cycles**

We welcome the opportunity to integrate ropeway and cycle travel by providing cycle parking at most of our Stations.

Cycles are also welcome on our services, except during peak hours.

Our guards do have the right to refuse a cycle if there is insufficient space available or where the cycles cannot be accommodated safely.

Our cycle policy is published in our timetable book and shows those services where cycles are not permitted. Information can be found at staffed Stations and from our customer service centre, and in our travel information section.

### **6.3 Smoking**

Smoking is not permitted anywhere on the XXX Ropeway.

### **6.4 Lost Property**

Our lost property office at ..... is open from 0730 -1900 Monday to Friday. Telephone the office on ..... All property found on our services and at our Stations is forwarded to our lost property office.

To make an enquiry, complete our lost property online form.

### **6.5 Service Disruption**

Unfortunately, things do sometimes go wrong, causing disruption that cannot always be foreseen or avoided. In case emergency maintenance is required, we will host the information on relevant media to ensure that the riders of the ropeway are informed well in advance to avoid any inconvenience.

Other causes of disruption include:

- Emergency engineering work • Trespass and vandalism
- Security alerts.

Under such circumstances we may have to make changes to our services without giving prior warning to protect your safety and that of our staff. We will always try to minimise disruption, keep you informed and provide or recommend alternative means of travel.

If a problem does occur mid-way in the ropeway journey, we will ensure that you reach the nearest Station with minimum inconvenience.

All our carriers are fitted with public address systems are equipped to provide all information on real time basis and most of our staff are linked by telephone systems. We aim to let you know what is happening.

## **7. Claims for delays or cancellations**

### **7.1 Season Tickets Valid for one month or longer ‘Void’ day refunds**

As a holder of a season ticket valid for one month or longer, we may provide you with the appropriate refund for exceptional days when there has been widespread serious, extended disruption. This is known as a ‘void’ day. In these cases, the period of disruption will be excluded from our performance statistics.

When we have declared a ‘void’ day we will tell you through ‘Track Record’ posters displayed at key Stations.

When you renew your season ticket you will be advised by staff at your local ticket office to apply for 'void' day refunds if they have been declared. You will be given a 'void' day refund application form, which you can complete and submit along with your expired season ticket.

## **7.2 Availability and Reliability discounts for Season Tickets (Discounted Fee)**

We have certain performance standards for reliability. If we fail to meet these standards, we will offer you a discount from the cost of your season ticket renewal. Discounts will be paid automatically at the time of renewal.

Delays and cancellations that are caused by incidents beyond the control of the ropeway industry are excluded from our performance results. Incidents that are beyond our control include security alerts, vandalism and trespass. We will display the number of trains affected on posters at key Stations and also on our website.

### **5% discount**

We will offer you a 5% discount if, on average, over the previous 12 months if there is deficient service as per the performance parameters (system availability of 99%) has been more than 10% below the standard or reliability has been more than 5% below the standard.

### **10% discount**

We will offer you a 10% discount if performance parameters for system availability are below these discount threshold levels.

To obtain your discount, you must renew your season ticket within four weeks of the previous ticket's expiry.

### **Other tickets and weekly seasons**

We will treat all claims on their merits and give consideration to any problems you encounter. However, for your guidance, you can expect us to offer the following:

Please send us your travel tickets to support your claim. This will also help to speed up your claim. Completed claims should be sent to our customer service centre.

## **8. Listening to your views**

We carry out and analyse passenger survey research to provide information about what you think of different aspects of our service.

We hold regular 'Meet the Manager' events, which enable you to speak directly to managers to put your views to them or ask them questions. Details of Meet the Manager events will be advertised on Station posters, in our passenger magazine e-motion, through our customer service centre and also online.

We will listen to your views and communicate through correspondence and by telephone. We have a specially trained customer service centre team able to respond to you and we

also liaise with passenger representative bodies and user groups that exist to protect your interests.

### **Making a comment or complaint**

We welcome your comments, suggestions, complaints and praise about any aspect of our service. We also welcome comments about our charter. Senior managers monitor the number and type of complaints and comments that you make. They are also responsible for delivering continuous improvement to customer service. Your feedback can therefore help us to achieve this. If you are commenting on a journey, please remember to include your ropeway tickets and any other details, as this will help us to provide you with a swift response.

#### **Further information:**

We have a full Customer Comments and Complaints Handling Procedure (CCCHP). copies which can be obtained from our customer service centre or from our website [www.](#)

.....

### **Contacting our Customer Service Centre**

Please visit 'Contact Us' section for details.

### **Our promised response times**

If you write to us, you should hear from us within five working days of us receiving your communication.

However, it may take longer to provide a full reply (e.g. if an investigation is required) and if this happens, we will send you an acknowledgement within five working days and reply within twenty working days.

If a full reply cannot be made within twenty working days, we will contact you again to update you.

### **If you are unhappy with our reply**

We will work hard to deal with your concerns to your satisfaction but if you are unhappy with our response, please let us know.

Alternatively, you can approach the consumer courts or other similar for set up under Applicable Laws.

**SCHEDULE –V**  
(See Clause 5.4.1)

**SHAREHOLDERS' AGREEMENT**

THIS SHAREHOLDERS' AGREEMENT (the "**Agreement**") is made on this ..... day of ....., 20.....,

**AMONGST**

1. [THE GOVERNOR OF \*\*\*] represented by \*\*\* and having its principal offices at \*\*\* (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. The Parties listed in Annex I hereto (hereinafter individually referred to as "**Private Participant**" and collectively referred to as "**Private Participants**") (which expression shall, unless it be repugnant or contrary to the subject or context thereof, be deemed to mean and include their respective legal representatives and successors) of the **Second Part**; and
3. {..... LIMITED} a company incorporated under the provisions of the Companies Act, 1956 having its registered office at ..... (hereinafter referred to as the "**Company**" or the "**Concessionaire**", which expression shall, unless it be repugnant or contrary to the subject or context thereof, be deemed to mean and include its legal representatives, successors and permitted assign) of the **Third Part**.

The Private Participants, the Authority and the Concessionaire are hereinafter collectively referred to as the "**Parties**" and individually as "**Party**". The Private Participants and the Authority are collectively referred to as the "**Shareholders**" and individually as "**Shareholder**".

**WHEREAS:**

- A. The Authority had procured the in-principle approval from Authority of India (hereinafter referred to as "In-Principle Approval") for establishment of a ropeway for public use at \*\*\*\*\* in the State of \*\*\*\*\* (hereinafter referred to as "**XXX Ropeway**" or "**Project**"), subject to the terms and conditions stipulated in the In-Principle Approval, and the Authority decided to undertake development of the XXX Ropeway through private participation on Design, Build, Finance, Operate and Transfer (the "**DBFOT**") basis.
- B. The Authority invited proposals by its Request for Qualification No. \*\*\* dated \*\*\* (the "**Request for Qualification**" or "**RFQ**") for short listing of bidders for construction, operation and maintenance of the XXX Ropeway on DBFOT basis and subsequently the Authority had prescribed the technical and commercial terms and conditions, and invited bids (the "**Request for Proposals**" or the "**RFP**") from the bidders shortlisted pursuant to the RFQ, for selection of the successful bidder who would have the right to incorporate a company to act as a special purpose vehicle to undertake the Project.
- C. The Private Participants include the [Members of the] Selected Bidder, which had bid, and was/ were thereafter short listed and eventually selected by Authority, pursuant to which the Authority issued the Letter of Award No. .... dated ..... to incorporate the special

purpose vehicle which would execute the Concession Agreement for undertaking the Project (the "**Concessionaire**").

- D. The Selected Bidder has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 2013, and has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the concessionaire under the Concession Agreement and the Authority has agreed to this request.
- E. As part of the Request for Proposal it was contemplated that the Authority would hold one non-transferable Golden Share (as defined hereinafter), on terms and conditions as set out in this Shareholders' Agreement.
- F. The Authority and the Private Participants are therefore desirous of setting forth in this Agreement, the terms and conditions to govern the relationships in their mutual capacity as the Shareholders of the Concessionaire and to record their respective rights and obligations in relation to the management and functioning of the Concessionaire and other matters incidental thereto.

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

## **1 DEFINITIONS AND INTERPRETATIONS**

### **1.1 Definitions**

In this Agreement, (including any recitals, annexure, schedules or exhibit attached thereto), except where the context otherwise requires, the following words and expressions shall have the following meaning:

**"Affected Party"** shall have the meaning ascribed to the term in Clause 11.3 hereunder;

**"Alternate Director"** shall have the meaning ascribed to the term in Clause 5.7.1 hereunder;

**"Board of Director(s)"** or **"Board"** means the board of director(s) of the Concessionaire;

**"Chairman"** means chairman of the Board of the Company;

**"Charter Documents"** means the memorandum of association and articles of association of the Concessionaire, incorporating as appropriate, and consistent with, to the extent permitted by law, the terms and conditions of this Agreement.

**"Companies Act"** means the Companies Act, 2013, as amended from time to time, or any enactment substituting the said Companies Act;

**"Concession Agreement"** shall mean the Concession Agreement entered into between the Authority and the Concessionaire with respect to the Project;

**"Consequential Loss"** shall have the meaning ascribed to the term in Clause 11.14 hereunder;



**"Defaulting Party"** shall have the meaning ascribed to the term in Clause 8.2.1 hereunder;  
**"Director"** means a director on the Board of Directors of the Concessionaire;

**"Equity Shares"** means the fully paid up equity share of a par value of Rs.\*\*\*\*\* each of the Concessionaire;

**"Golden Share"** means the fully paid up equity share of a par value of Rs. \*\*\* of the Concessionaire issued/ to be issued to the Authority;

**"Managing Director"** means the whole time managing director of the Concessionaire;

**"Private Participants"** shall have the meaning ascribed to it in the preamble of this Agreement;

**"Private Participants Agreement"** shall have the meaning ascribed to the term in Clause 4.2.4 hereunder;

**"Project"** shall have the meaning ascribed to it in Recital A.

**"Proprietary Information"** shall have the meaning ascribed to the term under Clause 9.1 hereunder;

**"Reserved Matters"** means the matters listed under Annex II hereto;

**"Shareholder"** or **"Shareholders"** shall have the meaning ascribed to the term in the preamble of this Agreement;

**"Shareholders' Agreement"** or **"Agreement"** means this shareholders' agreement;

**"Third Party"** means any entity not a Party to this Agreement;

**"Transfer"** shall include (i) any transfer or other disposition of such securities or voting interests or any interest therein, including, without limitation, by operation of Applicable Laws, by court order, by judicial process, or by foreclosure, levy or attachment; (ii) any sale, assignment gift, donation, redemption, conversion or other disposition of such securities or any interest therein, pursuant to an agreement, arrangement, instrument or understanding by which legal title to or beneficial ownership of such securities or any interest therein passes from one entity to another entity or to the same entity in a different legal capacity, whether or not for value; (iii) the granting of any encumbrance (whether by way of mortgage, pledge, lien, hypothecation or otherwise) or charge in or extending or attaching to such securities or any interest therein or any privilege or priority of any kind having the effect of security.

## **1.2 Interpretations**

1.2.1 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the RFQ, the RFP, the Concession Agreement or the Companies Act, as the case may be, shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement or the Companies Act.

1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

- 1.2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

## **2 EFFECTIVE DATE**

Except for the provisions of Clauses 2, 3, 7, 9 and 10 which shall become effective immediately upon the execution hereof, the provisions of this Agreement shall become effective upon the completion, to the satisfaction of the Authority, of the following actions (such date being the effective date "**Effective Date**"):

- (i) The Concessionaire shall have resolved by way of special resolution, in an extraordinary General Meeting of the Shareholders of the Concessionaire, alteration of the Charter Documents of the Concessionaire, as necessary, to reflect the terms of this Agreement;
- (ii) The Concessionaire shall have filed with the concerned Registrar of Companies, amended Charter Documents as above, as necessary, and provided the Authority with the receipt issued by the said Registrar of Companies evidencing filing of the Chartered Documents amended as above;
- (iii) The Concessionaire shall have delivered and the Private Participants shall have caused the Concessionaire to deliver to the Authority a certified true copy of all such resolutions and/or any other document(s) evidencing performance of the actions contemplated in this Clause.

## **3 CAPITAL STRUCTURE AND ISSUANCE OF THE GOLDEN SHARE**

### **3.1 Issuance of the Golden Share to the Authority**

- 3.1.1 The Concessionaire hereby undertakes to issue and allot, and the Private Participants hereby agree to cause the Concessionaire to issue and allot to the Authority, simultaneously with the execution of this Agreement, the Golden Share, for a consideration equal to the par value of such Golden Share, and deliver the share certificate representing the Golden Share to the Authority.
- 3.1.2 The Concessionaire shall make all filings as may be required under the provisions of the Companies Act and comply with all other requirements of Applicable Laws, in connection with the issuance of the Golden Share.
- 3.1.3 The Parties agree that the nominee Director of the Authority shall have a right of affirmative vote in the meetings of the Board of Directors of the Company, and the Authority shall have a right of affirmative vote in the General Meeting of Shareholders, in respect of the Reserved Matters. For the avoidance of doubt, the rights of the Authority under this Agreement shall be in addition to any other rights that the Authority may have under the Concession Agreement or any other Project Agreement.
- 3.1.4 The Parties expressly agree that the Golden Share shall, unless otherwise provided for under this Agreement, have identical rights and privileges of Equity Shares, with respect to dividend and all other matters.

### **3.2 Transfer restrictions**

3.2.1 Any Shareholder (other than the Authority) may, subject to the provisions of this Agreement, and in compliance with the Applicable Laws, Transfer, whether directly or indirectly, all or any of its/their Equity Shares or their rights under this Agreement to a

Third Party provided that (i) such Transfer shall not cause the Concessionaire to be in breach of the Concession Agreement; and (ii) such Third Party purchaser shall agree and undertake to be bound by the terms and conditions of this Agreement and executes a deed of adherence in the form and manner attached in Annex III ("**Deed of Adherence**").

3.2.2 It is hereby expressly clarified that where Private Participant is a special purpose vehicle established primarily for the purposes of holding Equity Shares in the Concessionaire (such Private Participant being an "**SPV PP**"), a Transfer of any shareholding in such SPV PP shall constitute an indirect Transfer of Equity Shares by the SPV PP for the purposes of this Agreement and be subject to the restrictions on Transfer of shares as set forth in this Agreement, including (i) the requirement of the execution of a Deed of Adherence by a third party transferee.

3.2.3 The Parties expressly agree that the Authority shall not be entitled to Transfer the Golden Share at any time, save and except when a successor entity of the Authority assumes the rights and obligations of the Authority under the Concession Agreement.

## **4 SCOPE AND OBJECTIVE OF THE CONCESSIONAIRE**

### **4.1 Purpose of the Concessionaire and scope of this Agreement**

The purpose of the Concessionaire is to undertake and perform the obligations and exercise the rights of the Concessionaire in accordance with and subject to the provisions contained in the Concession Agreement.

### **4.2 Shareholder commitments**

4.2.1 Each Shareholder hereby agrees to cooperate with each other Shareholder and with the Concessionaire and to use its reasonable efforts to the extent that it has the authority and ability to do so to promote the success of the Concessionaire: Provided, however, the Parties hereby expressly acknowledge and agree that the responsibilities and obligations of the Authority shall be restricted and limited to the matters expressly set forth in the Concession Agreement: Provided further that, nothing contained in this Article 4.2.1 shall be construed as creating any obligation on the Authority other than as expressly set forth in the Concession Agreement, nor will it imply any joint and several liability of the Authority.

4.2.2 Each Shareholder hereby undertakes towards the other Shareholders and to the benefit of the Concessionaire:

- (a) To perform and observe all of the provisions of this Agreement and the Charter Documents; and
- (b) Subject to Authority's right of affirmative vote (which may be exercised through a nominee of the Authority) in relation to the Reserved Matters, and without prejudice to the foregoing, to procure that (i) every person for the time being representing it in its capacity as Shareholder, and (ii) every person appointed as a Director in terms of this Agreement will exercise any power of vote or cause the power to vote to be exercised, at any meeting

of the Shareholders or the Board of the Concessionaire, as the case may be, so as to ensure the approval of any and every resolution necessary or desirable to procure that the affairs of the Concessionaire are conducted in accordance with the Concession Agreement and otherwise to give full effect to this Agreement, and likewise so as to ensure that no resolution is passed which is not in accordance with the Concession Agreement and/or the provisions of this Agreement; provided, however, that except as expressly directed or as otherwise contemplated by any provisions in this Agreement, each Shareholder shall have

full discretion on how to vote the Equity Shares which such Shareholder owns or on how to cause any person appointed by such Shareholder to act in operating the Concessionaire, subject only to Applicable Laws.

4.2.3 If any Director nominated by a Shareholder pursuant to Clause 5, for any reason refuses to exercise his discretion in accordance with the provisions of this Agreement, such Shareholder shall forthwith take all action within its power or control to substitute such Director.

4.2.4 The Parties agree that the Charter Documents shall, to the extent permissible under Applicable Laws, incorporate the provisions of this Agreement including without limitation Authority's right of affirmative vote and to the extent that the Charter Documents are inconsistent with the Agreement, the Shareholders shall exercise their power as shareholders of the Concessionaire to ensure that the Charter Documents are amended to the extent permissible under Applicable Law to remove any such inconsistencies. Further, the Parties also agree that the Private Participants may enter into any agreement amongst themselves to regulate their inter-se relationship as shareholders of the Concessionaire ("**Private Participants Agreement**"), provided that the provisions of such Private Participants Agreement shall not be contrary to or inconsistent with the provisions of this Agreement, or detrimental, in any way, to the interest of the Authority under this Agreement and/or the Concession Agreement and shall be permissible under Applicable Laws. For the avoidance of doubt, it is hereby expressly agreed between the Parties that in the event of a conflict or inconsistency between the Private Participants Agreement and this Agreement, the provisions of this Agreement shall take precedence.

4.2.5 The Private Participants hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project, till such time as the Financial Close for the Project is achieved in accordance with the Concession Agreement.

## **5 MANAGEMENT AND THE BOARD OF DIRECTORS**

### **5.1 Management**

The Concessionaire shall be managed and governed under the overall superintendence, direction and control of the Board. The Board shall have overall authority with respect to development and management of the Concessionaire and the Project. The officers of the Concessionaire shall have the authority and responsibilities specified by the Board of Directors, consistent with the Charter Documents and this Agreement.

### **5.2 Composition of the Board**

5.2.1 The Board composition shall be determined as under:

- (a) The Authority shall at all times be entitled to nominate a person of its choice for appointment as a Director on the Board of the Concessionaire,

and upon such nomination, the Concessionaire shall appoint such person as a non-retiring Director in accordance with the Applicable Laws.

- (b) Private Participants and Shareholders other than the Authority shall have the right to nominate the remaining Directors.

5.2.2 The Shareholders hereby acknowledge and agree to vote their respective shareholding in the Concessionaire in such manner so as to ensure appointment of the nominee of Authority and the Private Participants, as Directors from time to time

### **5.3 Chairman**

The Parties hereby undertake and agree that the Private Participants shall have the right to nominate the Chairman of the Concessionaire, who shall be appointed by the Board.

### **5.4 Managing Director**

5.4.1 The Private Participants shall also nominate the Managing Director of the Concessionaire, who shall, following a Board resolution, be appointed by the Board.

5.4.2 The Managing Director shall be responsible for day-to-day management of the Concessionaire and for implementing the Project. The Managing Director will exercise his powers subject to the overall superintendence, direction and control of the Board. **5.5 Qualification**

The Directors need not hold any qualification shares in the Concessionaire.

### **5.6 Resignation and removal**

Except where a Director is required under Applicable Law or the Charter Documents to vacate office, no Director shall be removed during the term for which he was elected without the consent of the Shareholder that recommended his appointment on the Board. Notwithstanding the foregoing, a Shareholder may ask for removal, substitution or recall for any reason, of any of the Directors nominated by such Shareholder and such Director shall be bound by the direction of removal, substitution or recall. Each Shareholder agrees to co-operate with the other Shareholders in convening a meeting of the Shareholders of the Concessionaire to effect such removal and to vote in favour thereof, if so required.

### **5.7 Alternate Director**

5.7.1 A Director, other than the Managing Director, (the "**Original Director**") shall be entitled at any time and from time to time, to appoint any person to act as the Original Director's alternate ("**Alternate Director**") (and the Shareholders shall procure that the Board appoints such person as his alternate) and to direct the termination of the appointment of such Alternate Director (and the Shareholders shall procure that the Board terminates the appointment of such Alternate Director).

5.7.2 The Alternate Director shall be entitled, while holding office as such, to receive notices of meetings of the Board or any committee thereof to which the Original Director has been appointed, and to attend and vote as a Director at any such meetings at which the Original Director is not present and generally to exercise all the powers, rights (other than the right to appoint an Alternate Director as provided in Clause 5.7.1), duties and authorities and to

perform all the functions of the Original Director. Further, such Alternate Director shall be entitled to be counted for the purpose of constituting quorum, exercise the vote and sign a written resolution on behalf of the Original Director at any meeting of the Board or any committee thereof and to the extent permitted by Applicable Laws, his signature, vote, presence and consent shall be deemed to be that of himself (as if he is a Director in his own right) and the Original Director for whom he is an Alternate Director.

## **5.8 Vacancy**

If a vacancy in any such office should occur for whatever reason, or a Director is absent for a continuous period of 1 (one) month from the place where meetings of the Board are regularly held and no Alternate Director has been appointed in his place, then the Shareholder that nominated such Director shall be entitled to nominate a replacement Director, and the Shareholders agree to vote their Shares unanimously for the removal of such Director and election of such replacement Director.

## **5.9 Mode of conduct of Board meeting**

Board meetings shall be held at least once every quarter at such places in India as the Board may determine and failing any such determination at the Concessionaire 's registered office located at ..... If and when permitted under Applicable Laws, a Director may participate in a Board meeting or a committee/sub-committee meeting of the Board by means of telephone, audio and/or video conferencing or other communication facilities, and a Director participating in such a meeting by such means shall be deemed for the purposes of this Agreement, to be present at that meeting.

## **5.10 Notice and Agenda for meeting**

5.10.1 Unless the requirement of notice is waived by all Directors, a minimum of 14 (fourteen) days written notice (or such shorter period as all the Directors may agree) of the Board meetings shall be given to all Directors and their Alternate Directors. Each notice of a meeting of the Board shall contain, *inter alia*, an agenda specifying in reasonable detail, the matters to be discussed at the relevant meeting and shall be accompanied by all necessary written information.

5.10.2 The Board shall only transact the business set out in the agenda accompanying the notice to the Directors. Provided however that with the unanimous consent of all the Directors with Director nominated by Authority in attendance and voting in favour, the Board may transact business that is not set out in the agenda.

## **5.11 Quorum for Board meetings**

5.11.1 The quorum for the meetings of the Board or any adjournment thereof shall necessarily include the Director nominated by Authority if any Reserved Matter is to be considered in such meeting; and no Reserved Matter shall be taken into consideration at such meeting if the Director nominated by the Authority is not present at such meeting.

5.11.2 All items of business transacted or decisions taken at meetings where the quorum is not so constituted shall be null and void.

## **5.12 Committees of the Board**

If the Board finds it necessary to constitute a committee or sub-committee, the Board shall determine the powers (including scope, termination, amendment of and withdrawal

thereof) of such committee or sub-committee. The committee or sub-committee shall be subject to and be under the supervision of the Board. Notwithstanding anything to the contrary contained herein, the Authority shall have the right to nominate its nominee to each and every committee and sub-committee constituted by the Board: Provided, however, that no Reserved Matters shall be delegated to such committee and/or subcommittee.

### **5.13 Decisions**

5.13.1 Subject to the provisions of the Companies Act, a resolution of the Board of Directors shall be adopted by the affirmative vote of the simple majority of the Directors present at a meeting at which a quorum of the Board of Directors is present. *Provided, however,* that all resolutions on the Reserved Matters to be passed in the meeting of Board of Directors

of Concessionaire shall be subject to the affirmative vote of the Director nominated by the Authority and no such resolution shall be passed if no such Director nominated by the Authority is present and voting in favour of such resolution.

5.13.2 The Concessionaire or any of its Directors, officers, agents or representatives shall not undertake any Reserved Matter without the prior approval by the Board in the manner provided in Clause 5.13.1 above and any act done by the Concessionaire or any of its Directors, officers, agents or representatives without such prior approval shall be null and void.

### **5.14 Resolution by circulation**

Subject to Applicable Laws and for matters other than Reserved Matters, resolutions of the Board may be passed by circulation, if the resolution has been circulated in draft, together with necessary papers, if any, to all the Directors, then in India or outside India, and has been signed by a majority of the Directors. Such resolutions may be signed by the Directors as single document or in counterparts.

### **5.15 Authority**

Unless otherwise authorised by the Board, none of the Directors shall be empowered to bind the Concessionaire individually.

### **5.16 Disqualification of Directors**

Subject to Applicable Laws, a Director shall not be deemed disqualified to serve by reason of his being officer, director or shareholder of any other body corporate.

### **5.17 Inspection and information**

5.17.1 It is hereby agreed between the Parties that the Authority shall have the right to examine the books, records and accounts to be kept by the Concessionaire and shall be entitled to receive all information, including monthly management accounts and operating statistics and other trading and financial information.

5.17.2 Without prejudice to the generality of Clause 5.17.1, the Concessionaire shall supply the Authority with copies of:

- (a) audited accounts of the Concessionaire (complying with all relevant legal requirements); and

- (b) monthly/quarterly management accounts of each principal division of the Concessionaire; these shall include a consolidated profit and loss account, balance sheet and cash flow statement broken down according to the principal divisions of the Concessionaire including a statement of progress against the relevant business plan, a statement of any variation from the quarterly revenue budget and up-to-date forecasts for the balance of the relevant Accounting Year and itemising all expenditure in relation to the Concessionaire's capital programme entered into by each principal division of the Concessionaire during that period.

## **6 SHAREHOLDERS' RIGHTS AND OBLIGATIONS**

### **6.1 General Meeting and matters requiring the approval of Shareholders**

- 6.1.1 The Board may whenever it thinks fit convene a General Meeting of the Concessionaire.

The Board shall also proceed to convene a General Meeting if so requisitioned by the Shareholders of the Concessionaire in accordance with the provisions of the Companies Act and the Charter Documents.

- 6.1.2 Notwithstanding anything to the contrary contained in this Agreement and the Charter Documents, no decision shall be made and no action shall be taken by or with respect to a Reserved Matter, which is subject to the affirmative vote rights of the Authority as provided in Clause 3.1.3 above, unless approved by an affirmative vote of authorized representative of the Authority. The Parties specifically agree that a resolution relating to the Reserved Matters shall be passed in a meeting of Shareholders only and not by way of circulation.
- 6.1.3 The quorum for any Shareholders meetings or any adjournment thereof shall necessarily include a representative of the Authority if any Reserved Matter is to be considered in such meeting; and no Reserved Matter shall be taken into consideration at such meeting, if a representative of the Authority is not present at such meeting.
- 6.1.4 All items of business transacted or decisions taken at meetings where the quorum is not so constituted shall be null and void.

## **7 UNDERTAKINGS, REPRESENTATIONS AND WARRANTIES**

### **7.1 Each of the Private Participants hereby warrant and represent to and for the benefit of Authority, the Concessionaire and the other Private Participants that:**

- (a) It is duly organised and validly existing under law and has all requisite legal power and authority to execute this Agreement and carry out the terms, conditions and provisions hereof;
- (b) the execution and delivery by the Private Participant of this Agreement has been duly authorised by all requisite corporate and other action and will not contravene any provisions of or constitute a default under, any other agreement or instrument to which it is a party or by which it may be bound;



- (c) this Agreement and all such other agreements and written obligations entered into and undertaken in connection with the transactions contemplated hereby to which it is a Party, constitute or will constitute following the execution and delivery thereof valid and legally binding obligations of such Private Participant, enforceable against it in accordance with its respective terms, subject as to enforcement of remedies to applicable bankruptcy, insolvency, reorganisation and other laws affecting generally the enforcement of the rights of creditors and subject to a court's discretionary authority with respect to the granting of a decree ordering specific performance or other equitable remedies;
- (d) it is not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against it;
- (e) 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 has or may have a material adverse effect on its ability to perform its obligations under this Agreement; and
- (f) there are no actions, suits, claims, proceedings or investigations pending or, to the best of the Private Participant's knowledge, threatened in writing against it at law, in equity, or otherwise, whether civil or criminal in nature, before or by, any court,

commission, arbitrator or governmental authority, and there are no outstanding judgments, decrees or orders of any such courts, commissions, arbitrators or governmental authorities, which materially and adversely affects its ability to perform its obligations under this Agreement.

**7.2** Each of the Private Participants and the Concessionaire hereby irrevocably undertake, warrant and represent to and for the benefit of Authority that:

- (a) the rights vested in the Authority under this Agreement and the Concession Agreement shall not be abridged, abrogated or in any manner affected by any act done or purported to be done by any of the Private Participants or the Concessionaire; and
- (b) any divestment of equity in the Concessionaire shall not in any manner affect the rights of the Authority herein and that the successors, assigns and substitutes of the Concessionaire shall be bound by such undertaking.

**7.3** The Authority hereby warrants and represents to and for the benefit of the Concessionaire and the Private Participants that it has all requisite legal power and authority to execute this Agreement and carry out the terms, conditions and provisions hereof.

## **8 TERMINATION**

### **8.1 Termination**

The Parties agree that in the event any of the Shareholders cease to hold, directly or indirectly, any Equity Shares of the Concessionaire, this Agreement shall stand terminated automatically vis-à-vis such Shareholder. Provided however, the obligations of such Shareholder under this Agreement relating to confidentiality (Clause 9) and dispute resolution (Clause 10)

and such other provisions of this Agreement that by their nature are intended to survive, shall survive any termination of this Agreement.

## **8.2 Right to Terminate for Cause**

- 8.2.1 In the event of occurrence of a material breach of any of the terms and conditions of this Agreement or any covenant, representation, warranty or agreement set forth herein ("**Material Breach**") on the part of a Shareholder (the "**Defaulting Party**"), any other Shareholders ("**Non-Defaulting Party**") may give written notice of the alleged breach ("**Breach Notice**") to the Defaulting Party.
- 8.2.2 A termination event ("**Termination Event**") shall be deemed to have occurred if such Material Breach, if reasonably capable of being cured, is not cured by the Defaulting Party within 30 (thirty) days of receipt of the Breach Notice ("**Cure Period**"), or if such Material Breach is not reasonably capable of being cured, forthwith upon issue of the Breach Notice.
- 8.2.3 On the occurrence of a Termination Event on the part of any of the Private Participants, the Authority may, in its discretion, require such Private Participant to transfer all, but not less than all, of the Equity Shares held by it to the Authority at the lower of the market value of Equity Shares or 25% (twenty five per cent) of the par value thereof; and the transfer of such shares shall take place at the registered office of the Concessionaire within 30 (thirty) days from the date of notice by the Authority in this behalf.

## **9 CONFIDENTIALITY**

- 9.1 The Parties hereby acknowledge and agree that each of them possess and will continue to possess information that has been created, discovered, developed, or otherwise known and owned by them, which information has commercial value in the business in which they are or may become engaged (the aforementioned information is hereinafter called "**Proprietary Information**"). The Parties, on behalf of themselves, agree that during the terms of this Agreement and after the termination or expiration hereof, each of them will keep in confidence and trust all Proprietary Information received from the other Party, and they will not use or disclose any such Proprietary Information or anything directly relating to it without the written consent of the other Party(s).
- 9.2 In the event of the expiration or termination of this Agreement for any reason, the Parties shall promptly, at the direction of the owner of such Proprietary Information, cease to use, destroy or return to the owner all documents and data of any nature pertaining to the Proprietary Information owned by such Party, and will not keep or deliver to anyone else any documents or data of any description or any reproduction of any description containing or pertaining to any Proprietary Information.
- 9.3 This Clause shall not, however, apply to information which:
- (a) is or becomes publicly available without the fault of any Party;
  - (b) was known to any Party on a non-confidential basis prior to disclosure;

- (c) is independently developed by any Party without use of the Proprietary Information;
- (d) is disclosed by the owner of such information to a Third Party without restrictions similar to those contained herein;
- (e) is disclosed in order to enable the sell-down/ draw-down of debt or to proposed Third Party transferees, provided that the recipient executes a confidentiality undertaking to use the information solely for that purpose;
- (f) is disclosed in order to comply with the requirements of Applicable Laws including any requirements for the stock exchange listing of the Concessionaire or any entity, which directly or indirectly, holds Equity Shares;
- (g) is disclosed to any of the consultants (legal, financial, technical or otherwise) of the Parties, provided that the recipient executes a confidentiality undertaking to use the information solely for the purpose disclosed.

**9.4** The Shareholders agree with each other and the Concessionaire to use their, and to cause the Concessionaire to use its, best efforts to assure that all information disclosed in connection with the business of the Concessionaire and not otherwise generally available shall be kept confidential and shall not be revealed.

## **10 GOVERNING LAW AND CONSENT TO JURISDICTION; ARBITRATION**

**10.1** This Agreement and all questions of its interpretation shall be construed in accordance with the laws of India. Subject to Clause 10.3, the courts at [New Delhi] shall have exclusive jurisdiction over this Agreement.

**10.2** The Parties agree that they shall attempt to resolve through good faith consultation, all and any issue, 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 ("**Disputes**"), and such consultation shall begin promptly after a Party has delivered to the other Party a written request for such consultation: Provided that if such good faith consultations have not resulted in a resolution of the dispute within 60 (sixty) days of such consultations having commenced, the provisions of Clause 10.3 shall apply.

### **10.3 Arbitration**

10.3.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to a sole arbitrator to be appointed by the Chief Justice of the [Delhi] High Court. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "**Rules**") or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

10.3.2 The arbitrator shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be [New Delhi] and the language of arbitration shall be English.

10.3.3 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.

## **11 MISCELLANEOUS**

### **11.1 Notices**

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

### **11.2 Force Majeure**

Notwithstanding anything to the contrary contained in this Agreement, it is hereby expressly agreed between the Parties that no relief shall be granted to any Party under this Agreement for, or on account of, Force Majeure.

### **11.3 Specific performance of obligations**

The Parties to this Agreement agree that, to the extent permitted under Applicable Laws, the rights and obligations of the Parties under this Agreement shall be subject to the right of specific performance and may be specifically enforced against a defaulting Party. The Parties acknowledge that any breach of the provisions of this Agreement will cause immediate irreparable harm to the adversely affected Party ("**Affected Party**") for which any compensation payable in damages shall not be an adequate remedy. Accordingly, the Parties agree that the Affected Party shall be entitled to immediate and permanent injunctive relief, specific performance or any other equitable relief from a court of competent jurisdiction in the event of any such breach or threatened breach by any other Party. The Parties agree and stipulate that the Affected Party shall be entitled to such injunctive relief, specific performance or other equitable relief without (i) the necessity of proving actual damages; or (ii) posting a bond or other security. Nothing contained herein shall limit the Affected Party's right to any remedies at law or in equity, including without limitation the recovery of damages from the defaulting Party.

### **11.4 Entire Agreement**

11.4.1 Subject to the provisions of the Clause 11.4.2, this Agreement, together with all Annexures, Schedules, Exhibits and attachments hereto, represents the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement and supersedes any prior agreement or understanding, written or oral, that the Parties may have had.

11.4.2 Nothing contained herein shall:

- (a) affect the provisions of the Concession Agreement;

- (b) prevent the Private Participants from having any other inter-se arrangements regarding their shareholding in the Concessionaire, provided that no such arrangements shall in any way affect the rights of the Authority under this Agreement or under the Concession Agreement.

For the avoidance of doubt, it is clarified that in the event of a conflict between the provisions of the Concession Agreement and this Agreement, the provisions of the Concession Agreement shall prevail.

#### **11.5 Amendments**

Any modification, amendment, or waiver of any provision of this Agreement shall be effective if, but only if, in writing and signed in person or by an authorised representative of each Party.

#### **11.6 Severability**

If any article, clause, section or paragraph, or part thereof, of this Agreement or any agreement or document appended hereto or made a part hereof is invalid, ruled illegal by any court of competent jurisdiction, or unenforceable under present or future Applicable Laws, then it is the intention of the Parties that the remainder of the Agreement, or any agreement or document appended hereto or made a part hereof, shall not be affected thereby unless the deletion of such provision shall cause this Agreement to become materially adverse to any Party in which case the Parties shall negotiate in good faith such changes to the Agreement as will best preserve for the Parties the benefits and obligations under such provision.

#### **11.7 Counterparts**

This Agreement may be executed in two or more counterparts, and by each Party on the same or different counterparts, but all of such counterparts shall together constitute one and the same instrument.

#### **11.8 Waivers**

No failure by a Party to take any action with respect to a breach of this Agreement or a default by any other Party shall constitute a waiver of the former Party's right to enforce any provision of this Agreement or to take action with respect to such breach or default or any subsequent breach or default. Waiver by any Party of any breach or failure to comply with any provision of this Agreement by a Party shall not be construed as, or constitute, a continuing waiver of such provision, or a waiver of any other breach of or failure to comply with any other provision of this Agreement.

#### **11.9 No agency**

This Agreement shall not constitute any Party as the legal representative or agent of another Party, nor shall any Party have the right or authority, to assume, create or incur any liability or obligation, express or implied, against, in the name of, or on behalf of another Party.

#### **11.10 No Third Party beneficiaries**

Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any **entity** other than the Parties hereto (and their respective successors and permitted assigns) any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision herein contained.

#### **11.11 Independence of the Parties with respect of each other and of the Concessionaire**

The Parties are and shall remain independent. None of the Parties shall be considered an agent of the other, nor shall they have authority to enter into any contract or any obligation for, or make any warranty or representation on behalf of the other, or the Concessionaire.

#### **11.12 Arms length**

All relationships between each Party of the one part, and the Concessionaire of the other part, shall be conducted at arms length and on competitive terms.

#### **11.13 Encumbrance**

The Parties agree that the Private Participants shall not be entitled to Encumber their shareholding in the Concessionaire other than in favour of or for the benefit of the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the XXX Ropeway.

#### **11.14 Consequential Loss**

Notwithstanding anything to the contrary contained in this Agreement, in no event shall any Party, its officers, employees or agents be liable to any other Party (on the basis of contract, indemnity, warranty or tort including negligence and strict or absolute liability or breach of statutory duty or otherwise) for any matter arising out of, or in connection with, this Agreement in respect of any Consequential Loss suffered by such other Party. For the purposes of this provision, “**Consequential Loss**” means any indirect or consequential loss (including loss of profit, loss of revenue, loss of contract, loss of goodwill, liability under other agreements, or liability to third parties) resulting from such breach and whether or not the Party committing the breach ought to have known, that such indirect or consequential loss would be likely to be suffered as a result of such breach and includes the payment or repayment of any amounts (or any acceleration thereof) to lenders or creditors of the aggrieved Party from time to time, but excludes death or personal injury resulting from the negligence of the Party liable, its officers, employees or agents.

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

THE COMMON SEAL OF SIGNED, SEALED AND DELIVERED CONCESSIONAIRE has been affixed pursuant For and on behalf of to the resolution passed by the Board of Directors [THE GOVERNMENT OF \*\*\*] by: of the Concessionaire at its meeting held on the

..... day of 20..... hereunto affixed in the presence of ....., director, who has signed (Signature) these presents in token thereof and ....., (Name)

Company Secretary / Authorised Officer who has (Designation) countersigned the same in token thereof \$: (Address)

(Fax No.)  
(e-mail address)

SIGNED, SEALED AND DELIVERED

For and on behalf of  
[Private Participant] by:

For and on behalf of  
[Private Participant] by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

(Fax)

(Fax)

(e-mail address)

(e-mail address) In the presence of:

1.

2.

---

<sup>s</sup> To be affixed in accordance with the articles of association of the Concessionaire.

Annex- I  
(Schedule-V)

**Private Participants**

{ Insert the Names of Private Participants }

Annex-II  
(Schedule-V)

**Reserved Matters**

- (a) to alter or add to the provisions of the memorandum;
- (b) to alter or add to the articles of association;
- (c) to change the name of the Concessionaire;
- (d) to purchase the Concessionaire's own shares or specified securities;
- (e) to issue sweat equity shares;
- (f) to issue further shares without pre-emptive rights to non-members or to convert loans or debentures into shares;
- (g) to reduce the share capital;
- (h) to remove the registered office of the Concessionaire outside the limits of the State where it is located;
- (i) to commence any new lines of business;
- (j) to keep registers and returns at any other place than within city, town or village in which the registered office is situated;
- (k) to consent to a Director or his relative or partner or firm or private company holding an office or place of profit, except that of Managing Director, manager, banker, or trustee for debenture-holders of the Concessionaire;
- (l) to make inter-corporate-loans and investments or guarantee/security to be given, etc., if the aggregate amount thereof, exceeds the limit of 10% (ten per cent) of the Concessionaire's paid-up share capital;
- (m) to apply to a Court to wind-up the Concessionaire;
- (n) to wind up the Concessionaire voluntarily;
- (n) for various other matters pertaining to the winding up of the Concessionaire; and
- (o) any other matter which is required by the Companies Act, 1956 to be passed by a special resolution of the shareholders of the company.



Annex- III  
(Schedule-V)

**DEED OF ADHERENCE**

This **DEED OF ADHERENCE ("Deed")** is executed this ..... day of .....20....., by a company/ body corporate incorporated under the laws of India, with its registered office at ..... (the "**Transferee**") **WHEREAS:**

- A. By a Shareholders' Agreement dated ....., 20..... (the "**Shareholders' Agreement**") among Government, ..... and the Concessionaire, the Shareholders agreed to a mutual distribution / regulation of their rights and liabilities as Shareholders of the Concessionaire.
- B. Clause 3.2.1 (ii) of the Shareholders' Agreement requires, *inter alia*, that, concurrently with the transfer of shares in the equity capital by any Shareholder ("**Parent**") to any third party, such third party shall, as a pre-condition of such transfer of shares to it, execute this Deed and be bound by the Shareholders' Agreement.

**NOW THIS DEED WITNESSETH AS FOLLOWS:**

**1. Definitions and interpretation**

Capitalised terms used but not defined in this Deed shall, unless the context otherwise requires, have the respective meanings ascribed thereto in the Shareholders' Agreement.

**2. Undertakings**

The Transferee hereby acknowledges that it has heretofore received a copy of, and has read and understands the Shareholders' Agreement, the Concession Agreement and other Project Agreements, and covenants, agrees and confirms that it shall be bound by all provisions of the Shareholders' Agreement as if it was an original party thereto, including with respect to the rights and obligations of the transferor Party contained therein, and the Shareholders' Agreement shall have full force and effect on it, and shall be read and construed to be binding on it.

**3. Governing law**

This Deed shall be governed by and construed in accordance with the laws of the India. The terms and conditions of the Shareholders' Agreement in relation to the provisions regarding arbitration and other terms and conditions shall be deemed to have been incorporated in this Deed.

By

Name and Title: [\_\_\_\_\_] In

the presence of:

Witness 1. [\_\_\_\_\_]

2. [\_\_\_\_\_]

