

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

REQUEST FOR PROPOSAL

for

**Development of Ropeway between Chandigarh Manali
National Highway (Near Pandoh Dam Reservoir) and Mata
Baglamukhi Temple (Bakhli) District Mandi in Himachal
Pradesh on PPP Mode**

November 2019

INSTRUCTIONS TO BIDDERS

Disclaimer

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

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

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

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

The RTDC may in its absolute discretion, but without being under any obligation to do so, update, amend

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

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

Contents of the RFP Document

- Volume-I: Instruction to Bidders
- Volume-II: Draft Concession Agreement
- Volume-III: Schedules of the Draft Concession Agreement

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1. INTRODUCTION

1.1 Preamble

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

| Name of the Work | Total Length approx. (m*) | Total Project Cost (in INR) (Approx.) [†] |
|---|---------------------------|--|
| Design, Engineering, Development, Construction, Testing, Commissioning, and Operation & Maintenance of a commercially viable Ropeway System between Chandigarh Manali National Highway (Near Pandoh Dam Reservoir) and Mata Baglamukhi Temple (Bakhli) District Mandi in Himachal Pradesh on PPP Mode (the “Project”) | 800 | 52 Crore |

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

The scope of work will broadly include Design, Engineering, Development, Construction, Testing, Commissioning, and Operation & Maintenance of Ropeway Project thereof. Details of the facilities to be developed are given in Schedules B & C of Volume III in this RFP.

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

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

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

the Concessioneing Authority in the form provided as part of the Bidding Documents pursuant hereto.

- 1.1.3 The Concession Agreement sets forth the detailed terms and conditions for grant of the concession to the Concessionaire, including the scope of the Concessionaire’s services and obligations (the “**Concession**”). The period of Concession is 40 years (the “**Concession Period**”) which is inclusive of a Construction Period of 18 months for construction/development/ setting up of the Ropeway System extendable by another 6 months at the sole discretion of the Authority; the period for achieving Conditions Precedent is 180 days to be reckoned from the date of execution of the Concession Agreement by the Authority. For detailed terms and conditions kindly refer the Draft Concession Agreement.
- 1.1.4 The assessment of actual cost of the Project will have to be made by the Bidders themselves.
- 1.1.5 The statements and explanations contained in this RFP are intended to provide a better understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Concessionaire set forth in the Concession Agreement or the Concessioneing Authority’s rights to amend, alter, change, supplement or clarify the scope of work, the Concession to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained either by the Concessioneing Authority
- 1.1.6 RTDC shall receive Bids pursuant to this RFP in accordance with the terms set forth in this RFP and other documents to be provided by RTDC pursuant to this RFP, as modified, altered, amended and clarified from time to time by RTDC (collectively the “**Bidding Documents**”), and all Bids shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 for submission of Bid (the “**Bid Due Date**”).

1.2 Brief description of Bidding Process

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

The RFP document comprises of three volumes:

- Volume I: Instruction to Bidders;
- Volume-II: Draft Concession Agreement; and
- Volume-III: Schedules of Draft Concession Agreement.

The RFP document can be either downloaded from RTDC's website i.e. www.himachal.nic.in/transport or may be collected from the office of RTDC. At the time of procuring the Bid documents from RTDC, the Bidder shall pay to RTDC a sum of Rs. 10,000/- (Rupees Ten Thousand Only) + applicable GST as non-refundable cost of the Bidding documents (the "**Processing Fee**"). At the time of submitting the bid, the Bidder will submit the receipt of the Processing Fee paid to RTDC. In case, the Bidding document is downloaded from the website, then the Bidder will pay a sum of Rs 10,000/- (Rupees Ten Thousand Only) + applicable GST as non-refundable cost of the Bidding documents during the submission of the Bid. The payment shall be made through demand draft in favour of 'Ropeways and Rapid Transport System Development Corporation H.P. Limited (RTDC)' payable at Shimla.

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

- 1.2.2 In the Qualification Phase, Bidders would be required to furnish all the information as specified in this RFP and other documents to be provided by RTDC. Only those Bidders that are pre-qualified and short-listed by RTDC shall be eligible for the Financial Proposal Phase.
- 1.2.3 In the Financial Proposal Phase, the financial offer (the "**Financial Offer**") submitted by the Bidders will be evaluated. The Financial Offer shall be submitted by the Bidder as hard copy (Appendix-V) as per Clause 1.2.5.
- 1.2.4 A Bidder is required to deposit, along with its Bid, a bid security of **Rs. 40.00 Lacs (Rupees forty lacs)** (the "**Bid Security**"), refundable not later than 60 (sixty) days from the Bid Due Date, except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the Concession Agreement. The Bidders will have an option to provide Bid Security in the form of a demand draft or a bank guarantee acceptable to the Authority and in such event, the validity period of the demand draft or bank guarantee, as the case may be, shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid Security. The format for the bank guarantee has been given in Appendix-VI.

1.2.5 Bids are invited for the Project on the basis of weighted average of User - Fee (the “**Ticket Price**”), to be charged from the Users/ passengers and Annual Concession Fee payable to the Concessioneing Authority for award of the Concession (the “**Concession Fee**”) as quoted by the bidder in the Financial Offer. The weighted average of these two components shall be in the ratio of 70:30. The Concession Fee shall be paid yearly throughout the Concession Period by way of bi-annual installments. The Annual Concession Fee shall be increased by 5% yearly over the previous year’s Annual Concession Fee and the Ticket Price shall be increased after due approval from RTDC. Further, the mode and manner of payment of Annual Concession Fee is specified in the draft Concession Agreement.

The Bidder whose Financial Offer has the Lowest **User - Fee**, the Price per Adult Ticket *per* Round Trip to be charged from the Users/ passengers (“**Part I**”) and the highest quoted Annual Concession Fee payable to the Concessioneing Authority (“**Part II**”) shall be given a Financial Score of 100 marks for each Part.

| Part | Particulars | Financial Score (A) | Weightage (B) | Weighted Financial Score [(C) = (A) x (B)] |
|--------------------------------|---|--|---------------|--|
| Part I | User - Fee , the Price per Adult Ticket <i>per</i> Round Trip to be charged from the Users/ passengers | Price per Adult Ticket <i>per</i> Round Trip quoted by the lowest Bidder / Price per Adult Ticket <i>per</i> Round Trip quoted by the Bidder X 100 = (X) | 70% | (0.7)(X) |
| Part II | Annual Concession Fee payable to the Concessioneing Authority | 100 X Annual Concession Fee quoted by the Bidder/ Annual Concession Fee quoted by highest Bidder = (Y) | 30% | (0.3)(Y) |
| Total Weighted Financial Score | | | | (0.7)(X) + (0.3)(Y) |

The scores secured based on evaluation of the Financial Offer as per clause 1.2.5 shall be the Total Weighted Financial Score of the bidder for the Project (“**Total Weighted Financial Score**”) The Total Weighted Financial Score shall be the sole criteria for evaluation of Financial Bids. In this RFP, the term “**Highest Bidder**” shall mean the Bidder who gets the highest Total Weighted Financial Score.

Illustration

| Bidders | Annual Concession Fee (INR) | The Price per Adult Ticket <i>per</i> Round Trip to be charged from the Users/ passengers (INR) |
|-----------|-----------------------------|---|
| Bidder I | 10000000 | 200 |
| Bidder II | 12500000 | 250 |

| Bidder I | | | | |
|--------------------------------|---|---|---------------|--|
| Part | Particulars | Financial Score (A) | Weightage (B) | Weighted Financial Score [(C) = (A) x (B)] |
| Part I | User - Fee , the Price per Adult Ticket <i>per</i> Round Trip to be charged from the Users/ passengers | $200 / 200 \times 100 = 100 = (X)$ | 70% | $0.7 \times 100 = \mathbf{70}$ |
| Part II | Annual Concession Fee payable to the Concessioneing Authority | $100 \times 10000000 / 12500000 = 80 = (Y)$ | 30% | $0.3 \times 80 = \mathbf{24}$ |
| Total Weighted Financial Score | | | | 94 |

| Bidder II | | | | |
|--------------------------------|---|--|---------------|--|
| Part | Particulars | Financial Score (A) | Weightage (B) | Weighted Financial Score [(C) = (A) x (B)] |
| Part I | User - Fee , the Price per Adult Ticket <i>per</i> Round Trip to be charged from the Users/ passengers | $200 / 250 \times 100 = 80 = (X)$ | 70% | $0.7 \times 80 = \mathbf{56}$ |
| Part II | Annual Concession Fee payable to the Concessioneing Authority | $100 \times 12500000 / 12500000 = 100 = (Y)$ | 30% | $0.3 \times 100 = \mathbf{30}$ |
| Total Weighted Financial Score | | | | 86 |

- 1.2.6 Generally, the Highest Bidder shall be the Selected Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in Clause 3 of this RFP, be invited to match the Bid submitted by the Highest Bidder in case such Highest Bidder withdraws or is not Selected for any reason. In the event that none of the other Bidders match the Bid of the

Highest Bidder, RTDC, in its discretion may annul the Bidding Process or invite fresh Bids through Re-bidding of the Project, as the case may be.

- 1.2.7 As part of the Bidding Documents, RTDC will provide a Draft Concession Agreement prepared by RTDC/ its advisors and any other information pertaining/ relevant to the Project available with it.
- 1.2.8 Any queries or request for additional information concerning this RFP shall be submitted in writing or by fax and e-mail to the officer designated in Clause 2.13.3 below. The envelopes/ communications shall clearly bear the following identification/ title:

Queries/ Request for Additional Information: RFP for **“Development of Ropeway between Chandigarh Manali National Highway (Near Pandoh Dam Reservoir) and Mata Baglamukhi Temple (Bakhli) District Mandi in Himachal Pradesh on PPP Mode”**.

1.3 Schedule of Bidding Process

RTDC shall endeavour to adhere to the following schedule:

| S. No. | Event Description | Date |
|--------|---|---|
| 1. | Last date for receiving Pre-Bid queries | 18.11.2019 |
| 2. | Pre-Bid conference (Please check the website for meeting venue) | 20.11.2019 |
| 3. | Concessions Authority's response to queries latest by | 27.11.2019 |
| 4. | Bid Due Date | 18.12.2019 (till 1600 hours IST) |
| 5. | Opening of Technical Bids | to be intimated later |
| 6. | Short listing of Pre-qualified Bidders | |
| 7. | Opening of Financial Offer | to be intimated later |
| 8. | Letter of Award (LOA) | to be intimated later |
| 9. | Signing of Concession Agreement | Within 45 days of award of LOA |

2. INSTRUCTIONS TO BIDDERS

2A. GENERAL

2.1 Scope of Bids

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

2.2 Eligibility of Bidders

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

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

intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “**Subject Person**”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% (twenty six per cent) of the subscribed and paid up equity shareholding of such intermediary; or

- (ii) a constituent of such Bidder is also a constituent of another Bidder; or
 - (iii) such Bidder, or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, or any Associate thereof or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Associate thereof; or
 - (iv) such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
 - (v) such Bidder, or any Associate thereof has a relationship with another Bidder, or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each others’ information about, or to influence the Bid of either or each other; or
 - (vi) such Bidder, or any Associate thereof has participated as a consultant to the Concessioneing Authority in the preparation of any documents, design or technical specifications of the Project.
- c) A Bidder shall be liable for disqualification if any legal, financial or technical adviser of RTDC in relation to the Project is engaged by the Bidder, its Member or any Associate thereof, as the case may be, in any manner for matters related to or incidental to the Project during the Bidding Process or subsequent to the (i) issue of the LOA or (ii) execution of the Concession Agreement. In the event any such adviser is engaged by the Selected Bidder or Concessionaire, as the case may be, after issue of the LOA or execution of the Concession Agreement for matters related or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LOA or the Concession Agreement and without prejudice to any other right or remedy of RTDC, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which the Concessioneing Authority may have there under or otherwise, the LOA or the Concession Agreement, as the case may be, shall be liable to be terminated without the Concessioneing Authority being liable in any manner whatsoever to the Selected Bidder or the Concessionaire for the same. For the

avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of this RFP. Nor will this disqualification apply where such adviser is engaged after a period of 1 (one) year from the date of signing of the Concession Agreement.

Explanation:

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

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

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

Category 1

Owned, operated & managed at least 1 (one) Passenger Ropeway System with minimum carrying capacity of 400 PPHPD having collected average annual revenue of **Rs. 2.00 Crores (Rupees Two Crore only)** from it.

AND/OR

Category 2

Owned, operated & managed at least one project in Core Sector having minimum project cost of Rs. 50 Crores (Rupees Fifty Crores) excluding land cost. The project should have been undertaken as a PPP project on BOT, BOLT, BOO, BOOT or on EPC/ Turnkey project basis or other similar basis for providing its output or services to a public sector entity or for providing non-discriminatory access to users in pursuance of its charter, concession or contract, as the case may be. For the avoidance of doubt, a project which constitutes a natural monopoly such as an airport or port should normally be included in this category even if it is not based on a long-term agreement with a public entity.

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

AND/OR

Category 3

- (i) Installed at least one 1 (one) Passenger Ropeway System with minimum carrying capacity of 400 PPHPD during the last 5 (five) financial years prior to the Bid Due Date.
- (ii) Further such entity should be able to demonstrate presence in installing and servicing Ropeway equipments during the last 5 (five) financial years prior to Bid Due Date.

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

(B) Financial Capacity:

In case of Category 1 & 2 Projects:

1. The Bidder shall have a minimum Turnover (the “**Financial Capacity**”) of Rs. 5.00 crore (Rupees Five Crore Only) in the preceding financial year.
2. The Bidder or its holding/ Associate company should be a net profit making entity for the last five financial years preceding the bid due date.

In case of Category 3 Projects :

1. The Bidder shall have a minimum Turnover (the “**Financial Capacity**”) of Rs. 10 crore (Rupees Ten Crore only) in the preceding financial year.
2. The Bidder or its holding/ Associate company should be a net profit making entity for the last five financial years preceding the bid due date.

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

(C) High Turnover Route

The prospective bidder(s) having a Turnover of Rs 25 Crores (Rupees Twenty Five Crores only) & above, in the preceding financial year will be exempted from the Technical Capacity & Financial Capacity as per Clause 2.2.2 (A) and Clause 2.2.2 (B) above (the “**Minimum Eligibility Criteria**”).

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

- Owned, operated & managed at least 1 (one) Passenger Ropeway System with minimum carrying capacity of 400 PPHPD and having collected average annual revenue of Rs. 2.00 Crores from it.

or

- Operated & managed at least 1 (one) Passenger Ropeway System with minimum carrying capacity of 400 PPHPD and having collected average annual revenue of Rs. 2.00 Crores from it.

or

- Installed & serviced at least one 1 (one) Passenger Ropeway System with minimum carrying capacity of 400 PPHPD during the last 5 (five) financial years prior to the Bid Due Date.

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

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

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

(i) Certificate(s) from its statutory auditors[‡] or the concerned client(s) and/ or other relevant documents in respect of the projects specified in paragraph 2.2.2 (A) above;

and

(ii) Certificate(s) from its statutory auditors specifying the Turnover and net profit of the Bidder, during the preceding 5 (five) financial years.

2.2.5 The Bidder should submit a Power of Attorney as per the format at Appendix-II, authorising the signatory of the Bid to commit the Bidder. In the case of a Consortium, the Members should submit a Power of Attorney in favour of the Lead Member as per format at Appendix-III.

2.2.6 Where the Bidder is a single entity, it will be required to form an appropriate Special Purpose Vehicle, incorporated under the Companies Act, 2013 (the “**SPV**”), to execute the Concession Agreement and implement the Project. In case the Bidder is a Consortium, it shall, in addition to forming an SPV, comply with the following additional requirements:

- (a) Number of members in a consortium shall not exceed 3 (three) and information sought in the Bid be provided for all members in the order of their equity contribution;
- (b) subject to the provisions of sub clause (a) above, the Bid should contain the information required for each member of the Consortium;
- (c) members of the Consortium shall nominate one member as the lead member (the “Lead Member”), who shall have an equity share holding of at least 26% (twenty six per cent) of the paid up and subscribed equity of the SPV. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix-III, signed by all the other members of the Consortium;
- (d) the Bid should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial and technical obligations;

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

- (e) an individual Bidder cannot at the same time be member of a Consortium applying for the Bid. Further, a member of a particular Bidder Consortium cannot be member of any other Bidder Consortium applying for the Bid;
- (f) the members of a Consortium shall form an appropriate SPV to execute the Project, if awarded to the Consortium;
- (g) members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Appendix-IV (the “**Jt. Bidding Agreement**”), for the purpose of making the Bid. The Jt. Bidding Agreement, to be submitted along with the Bid, shall, *inter alia*:
 - (i) convey the intent to form an SPV with shareholding/ ownership equity commitment(s) in accordance with this RFP, which would enter into the Concession Agreement and subsequently perform all the obligations of the Concessionaire in terms of the Concession Agreement, in case the concession to undertake the Project is awarded to the Consortium;
 - (ii) clearly outline the proposed roles and responsibilities, if any, of each member;
 - (iii) commit the minimum equity stake to be held by each member;
 - (iv) commit that each of the members, whose experience will be evaluated for the purposes of this RFP, shall subscribe to 26% (twenty six per cent) or more of the paid up and subscribed equity of the SPV and shall further commit that each such member shall, for a period of 2 (two) years from the date of full commercial operational of the Project, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement;
 - (v) members of the Consortium undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity of the SPV at all times until the second anniversary of the full commercial operation date of the Project; and
 - (vi) include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Concessionaire in relation to

the Project until the Financial Close of the Project is achieved in accordance with the Concession Agreement; and

- (h) except as provided under this RFP and the Bidding Documents, there shall not be any amendment to the Jt. Bidding Agreement without the prior written consent of RTDC.
- 2.2.7 Any entity which has been barred by the Central/ State Government, or any entity controlled by it, from participating in any project (Infrastructure or otherwise), and the bar subsists as on the date of Bid would not be eligible to submit a Bid, either individually or as member of a Consortium.
- 2.2.8 A Bidder including any Consortium Member or Associate should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder, Consortium Member or Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder, Consortium Member or Associate.
- 2.2.9 In computing the Technical Capacity and Turnover of the Bidder/ Consortium Members under Clauses 2.2.2, 2.2.4 and 3.2, the Technical Capacity and Turnover of their respective Associates would also be eligible hereunder.

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

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

- (a) Bidders should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Bidders may format the prescribed forms making due provision for incorporation of the requested information;

- (b) information supplied by a Bidder (or other constituent Member if the Bidder is a Consortium) must apply to the Bidder, Member or Associate named in the Bid and not, unless specifically requested, to other associated companies or firms. ;
- (c) in responding to the qualification phase, Bidders should demonstrate their capabilities in accordance with Clause 3.1 below; and
- (d) in case the Bidder is a Consortium, each Member should substantially satisfy the pre-qualification requirements to the extent specified herein.

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

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

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

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

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

hereunder, mean the accounting year followed by the Bidder in the course of its normal business.

2.3 Change in composition of the Consortium

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

2.4 Number of Bids and costs thereof

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

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

2.5 Site visit and verification of information

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

2.6 Acknowledgement by Bidder

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

- (a) made a complete and careful examination of the RFP;
- (b) received all relevant information requested from RTDC;
- (c) accepted the risk of inadequacy, error or mistake in the information provided in the RFP or furnished by or on behalf of RTDC relating to any of the matters referred to in Clause 2.5 above;
- (d) agreed to be bound by the undertakings provided by it under and in terms hereof;

- (e) satisfied itself about all matters, things and information including matters referred to in Clause 2.5 hereinabove necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations there under; and
- (f) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.5 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from RTDC, or a ground for termination of the Concession Agreement by the Concessionaire.

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

2.7 Right to accept or reject any or all Bids

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

2.7.2 RTDC reserves the right to reject any Bid if:

- (a) at any time, a material misrepresentation is made or uncovered, or
- (b) the Bidder does not provide, within the time specified by RTDC, the supplemental information sought by RTDC for evaluation of the Bid.

If the Bidder is a Consortium, then the entire Consortium may be disqualified/ rejected. If such disqualification/ rejection occurs after the Bids have been opened and the Highest Bidder gets disqualified/ rejected, then RTDC reserves the right to:

- (i) invite the remaining Bidders to match the Highest Bidder; or
- (ii) take any such measure as may be deemed fit in the sole discretion of RTDC, including annulment of the Bidding Process.

- 2.7.3 In case it is found during the evaluation or at any time before signing of the Concession Agreement or after its execution and during the period of subsistence thereof, including the concession thereby granted by the Concessing Authority, that one or more of the qualification conditions have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Concessionaire either by issue of the LOA or entering into of the Concession Agreement, and if the Bidder/SPV has already been issued the LOA or has entered into the Concession Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by RTDC to the Bidder, without RTDC being liable in any manner whatsoever to the Bidder. In such an event, RTDC shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy which RTDC may have under this RFP, the Bidding Documents, the Concession Agreement or under applicable law.
- 2.7.4 RTDC reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP. Any such verification or lack of such verification by RTDC shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of RTDC thereunder.
- 2.7.5 Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.
- 2.7.6 The documents including this RFP and all attached documents, provided by RTDC are and shall remain or become the properties of RTDC and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause 2.7.6 shall also apply mutatis mutandis to Bids and all other documents submitted by the Bidders, and RTDC will not return to the Bidders any Bid, document or any information provided along therewith.

2B. DOCUMENTS

2.8 Contents of the RFP

- 2.8.1 This RFP comprises the disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.10.
- | | |
|-------------|---|
| Volume I: | Instruction to Bidders |
| Volume-II: | Draft Concession Agreement |
| Volume-III: | Schedules of Draft Concession Agreement |

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

2.9 Clarifications

2.9.1 Bidders requiring any clarification on the RFP may notify RTDC in writing or by fax and e-mail in accordance with Clause 1.2.8. They should send in their queries before the date specified in the schedule of Bidding Process contained in Clause 1.3. RTDC shall endeavor to respond to the queries within the period specified therein, but no later than 10 (ten) days prior to the Bid Due Date. RTDC will forward all the queries and its responses thereto, to all purchasers of the RFP via e-mail and /or upload the same on RTDC's website (www.himachal.nic.in/transport) without identifying the source of queries.

2.9.2 RTDC shall endeavor to respond to the questions raised or clarifications sought by the Bidders. However, RTDC reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring RTDC to respond to any question or to provide any clarification.

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

2.10 Amendment of RFP

2.10.1 At any time prior to the deadline for submission of Bid, RTDC may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of Addenda.

2.10.2 Any Addendum thus issued will be sent in writing to all those who have purchased the RFP and/or uploaded on RTDC's website (www.himachal.nic.in/transport).

2.10.3 In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, RTDC may, in its sole discretion, extend the Bid Due Date.

2C. PREPARATION AND SUBMISSION OF BID

2.11 Language

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

2.12 Format and signing of Bid

2.12.1 The Bidder shall provide all the information sought under this RFP. RTDC will evaluate only those Bids that are received in the required formats and complete in all respects. Incomplete and /or conditional Bids shall be liable for rejection.

2.12.2 The Bidder shall prepare 1 (one) original set of the Bid (together with originals/ copies of documents required to be submitted along therewith pursuant to this RFP) and clearly marked "ORIGINAL". In addition, the Bidder shall submit 2 (two) copies of the Bid, along with documents required to be submitted along therewith pursuant to this RFP, marked "COPY". The Bidder shall also provide 2 (two) soft copies on Compact Disc (CD). In the event of any discrepancy between the original and the copy, the original shall prevail.

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

2.13 Sealing and Marking of Bids

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

2.13.2 (A) Each Technical Bid envelope shall contain:

- (i) Bid in the prescribed format (Appendix-I) along with Annexes and supporting documents;
- (ii) Power of Attorney for signing the Bid as per the format at Appendix-II;
- (iii) if applicable, the Power of Attorney for Lead Member of Consortium as per the format at Appendix-III;
- (iv) copy of the Jt. Bidding Agreement, in case of a Consortium, substantially in the format at Appendix-IV;
- (v) copy of Memorandum and Articles of Association, if the Bidder is a body corporate, and if a partnership then a copy of its partnership deed;
- (vi) copies of Bidder's duly audited balance sheets and profit and loss account for the preceding five years;
- (vii) Demand Draft or Payment Receipt towards the cost of the Bidding Documents as specified in Clause 1.2.1;
- (viii) Bid Security as specified in Clause 1.2.4;
- (ix) *{copies of the requisite documents/ evidences in support of the claim of the Technical Tie Up Partner of possessing the mandatory experience in respect of the projects specified in Clause 2.2.3}[§]*; and
- (x) a copy of the Instruction to Bidders, Draft Concession Agreement and Schedules of the Draft Concession Agreement, Addendum (if any) with each page stamped and initialed by the person signing the Bid in pursuance of the Power of Attorney referred to in sub-clause (ii) hereinabove.

(B) Each Financial Bid envelope shall contain:

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

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

Bid for: **“Development of Ropeway between Chandigarh Manali National Highway (Near Pandoh Dam Reservoir) and Mata Baglamukhi Temple (Bakhli) District Mandi in Himachal Pradesh on PPP Mode”** and shall clearly indicate the name, address, fax number of the Bidder, along with contact person's name, mobile number & email address. In addition, the Bid Due Date should be indicated on the right hand corner of each of the envelopes.

2.13.3 Each of the envelopes shall be addressed to:

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

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

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

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

2.13.6 **Submission of the Bid**

- Hardcopy of the Bid should be submitted before 1600 hours on or before the Bid Due Date.
- The Bidder shall submit the Hardcopy of the Bid in the format specified at Appendix-I, together with the documents specified in Clause 2.13.2A and seal it in an envelope and mark the envelope as “**Technical Bid**”.
- The Demand Draft or Bank Guarantee in original towards the payment of the Bid Security shall be put in a separate envelope inside the Technical Bid envelope and mark the envelope as “**Bid Security**”.
- The Bidder shall submit the Financial Offer in the format specified at Appendix-V and seal it in another envelope and mark the envelope as “**Financial Bid**”.
- Both the envelopes of the Technical Bid and the Financial Bid shall then be sealed in an outer envelope and mark the envelope as “**Bid**”.
- The Bidder shall seal the original and the copies of the Bid, together with their respective enclosures, in separate envelopes duly marking the envelopes as “ORIGINAL” and “COPY”.
- The envelopes shall then be sealed in an outer envelope which shall also be marked in accordance with Clauses 2.13.2 and 2.13.3.

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

2.14 Bid Due Date

2.14.1 Bids should be submitted before 1600 hours IST on or before Bid Due Date at the address provided in Clause 2.13.3 in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the office of the person specified in Clause 2.13.3.

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

2.15 Late Bids

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

2.16 Modifications/ substitution/ withdrawal of Bids

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

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

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

2D. EVALUATION PROCESS

2.17 Opening and Evaluation of Bids

2.17.1 RTDC shall open the Technical Bids at 1630 hours IST on the Bid Due Date, at the place specified in Clause 2.13.3 and in the presence of the Bidders who choose to attend.

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

- 2.17.3 RTDC will subsequently examine and evaluate Bids in accordance with the provisions set out in Section 3.
- 2.17.4 Bidders are advised that qualification of Bidders will be entirely at the discretion of RTDC. Bidders will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given.
- 2.17.5 Any information contained in the Bid shall not in any way be construed as binding on RTDC, its agents, successors or assigns, but shall be binding against the Bidder if the Project is subsequently awarded to it on the basis of such information.
- 2.17.6 RTDC reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Bid(s) without assigning any reasons.
- 2.17.7 If any information furnished by the Bidder is found to be incomplete, or contained in formats other than those specified herein, RTDC may, in its sole discretion, exclude the relevant project from computation of the Eligible Project(s) of the Bidder.
- 2.17.8 In the event that a Bidder claims credit for an Eligible Project, and such claim is determined by RTDC as incorrect or erroneous, RTDC shall reject such claim and exclude the same from computation of the Eligible Project(s). Where any information is found to be patently false or amounting to a material misrepresentation, RTDC reserves the right to reject the Bid in accordance with the provisions of Clauses 2.7.2 and 2.7.3.
- 2.17.9 Even if only a single Bid/ Proposal is received and the same is found to be eligible and is accordingly shortlisted as pre - qualified) or a single Bid/ Proposal amongst several is shortlisted as pre - qualified, RTDC retains the right to open its Financial Proposal and award the Project.

2.18 Confidentiality

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

2.19 Tests of Responsiveness

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

- (a) it is received as per format at Appendix-I.
- (b) it is received by the Bid Due Date including any extension thereof pursuant to Clause 2.14.2;
- (c) it is signed, sealed, bound together in hard cover, and marked as stipulated in Clauses 2.12 and 2.13;
- (d) it is accompanied by the Power of Attorney as specified in Clause 2.2.5, and in the case of a Consortium, the Power of Attorney as specified in Clause 2.2.6 (c);
- (e) it contains all the information and documents (complete in all respects) as requested in this RFP;
- (f) it contains information in formats same as those specified in this RFP;
- (g) it contains certificates from its statutory auditors⁵ or the concerned client/s in the formats specified at Appendix-I of the RFP for each Eligible Project;
- (h) it is accompanied by the Demand Draft or Payment Receipt towards the cost of the Bidding Documents as specified in Clause 1.2.1;
- (i) it is accompanied by the Bid Security as specified in Clause 1.2.4;
- (j) it is accompanied by the Jt. Bidding Agreement (for Consortium), specific to the Project, as stipulated in Clause 2.2.6(g);
- (k) *{it contains the requisite documents/ evidences in support of the claim of the Technical Tie Up Partner of possessing the mandatory experience in respect of the projects specified in Clause 2.2.3}*⁵;
- (l) it does not contain any condition or qualification;
- (m) it contains a copy of the Instruction to Bidders, Draft Concession Agreement and Schedules of the Draft Concession Agreement, Addendum (if any) with each page stamped and initialed by the person signing the Bid; and
- (n) it is not non-responsive in terms hereof.

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

⁵ In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 2.19.1 (g). In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Bidder may provide the certificates required under this RFP.

⁵ Applicable only in case a Bidder is applying through the High Turnover Route or under Category 2 under Clause 2.2.2.

2.20 Clarifications

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

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

2E. QUALIFICATION AND BIDDING

2.21 Short-Listing and Notification

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

2.22 Submission of Bids

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

2.23 Proprietary Data

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

2.24 Correspondence with the Bidder

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

2.25 Validity of Bids

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

2F. BID SECURITY

2.26 Bid Security

- 2.26.1 The Bidder shall furnish as part of its Bid, a Bid Security of **Rs. 40.00 Lacs (Rupees Forty Lacs only)** as specified in Clause 1.2.4. The Bid Security could either be in the form of a Demand Draft issued by a Scheduled Bank in India, drawn in favour of 'Ropeways and Rapid Transport System Development Corporation H.P. Limited' payable at Shimla or in form of a Bank Guarantee in accordance to Appendix-VI as specified in Clause 1.2.4. RTDC shall not be liable to pay any interest on the Bid Security deposit so made and the same shall be interest free.
- 2.26.2 In the event, the Bidder furnishes the Bid Security referred to in Clauses 1.2.4 in the form of a bank guarantee, the same shall be issued by a nationalised bank, or a Scheduled Bank in India having a net worth of at least Rs. 1,000 crore (Rupees One Thousand Crore only), in favour of RTDC in the format at Appendix – II (the "**Bank Guarantee**") and having a validity period of not less than 180 (one hundred eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between RTDC and the Bidder from time to time. For the avoidance of doubt, Scheduled Bank shall mean a bank as defined under Section 2(e) of the Reserve Bank of India Act, 1934.
- 2.26.3 Any Bid not accompanied by the Bid Security shall be summarily rejected by RTDC as non-responsive.
- 2.26.4 Save and except as provided in Clauses 1.2.6 above, the Bid Security of unsuccessful Bidders will be returned by RTDC, without any interest, as promptly as possible on acceptance of the Bid of the Selected Bidder or when the Bidding process is cancelled by RTDC, and in any case within 60 (sixty) days from the Bid Due Date.
- 2.26.5 The Selected Bidder's Bid Security will be returned, without any interest, upon the Concessionaire signing the Concession Agreement and furnishing the Performance Security in accordance with the provisions thereof. RTDC may, at the Selected Bidder's option, adjust the amount of Bid Security in the amount of Performance Security to be provided by him in accordance with the provisions of the Concession Agreement.

2.26.6 RTDC shall be entitled to forfeit and appropriate the Bid Security as Damages inter alia in any of the events specified in Clause 2.26.7 herein below. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that RTDC will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid validity as specified in this RFP. No relaxation of any kind on Bid Security shall be given to any Bidder.

2.26.7 The Bid Security shall be forfeited as Damages without prejudice to any other right or remedy that may be available to RTDC under the Bidding Documents and/ or under the Concession Agreement, or otherwise, under the following conditions:

- a) If a Bidder submits a non-responsive Bid;
- b) If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Section 4 of this RFP;
- c) If a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by mutual consent of the respective Bidder(s) and RTDC;
- d) In the case of Selected Bidder, if it fails within the specified time limit:
 - (i) to sign and return the duplicate copy of LOA;
 - (ii) to pay the Project Development Fee to RTDC as specified in Clause 2.27;
 - (iii) to sign the Concession Agreement within stipulated time limit or extended time limit which may be granted by RTDC at its sole discretion; or
 - (iv) to furnish the Performance Security within the period prescribed therefor in the Concession Agreement; or
- e) In case the Selected Bidder, having signed the Concession Agreement, commits any breach thereof prior to furnishing the Performance Security.

2G. PROJECT DEVELOPMENT FEE (Non - Refundable)

2.27 Project Development Fee (Non – Refundable)

The Selected Bidder, within 21 (twenty one) days of issuance of the Letter of Award (LOA), shall make a payment of **50% of Project Development Fee of Rs. 40 Lacs (Rupees Forty Lacs) i.e. Rs. 20.00 Lacs (Rupees Twenty Lacs)**, net of any taxes, in the form of Demand Draft, in favour of "Ropeways and Rapid Transport System Development Corporation H.P. Limited", payable at Shimla, against expenses incurred ("**Project Development Fee**") in respect of the Project towards the following:

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

The Concessionaire shall pay balance 50% of Project Development Fee **of Rs. 40 Lacs (Rupees Forty Lacs) i.e. Rs. 20.00 Lacs (Rupees Twenty Lacs) at the time of completion of Conditions Precedent.**

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

3. CRITERIA FOR EVALUATION

3A. QUALIFICATION PHASE

3.1 Evaluation Parameters

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

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

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

3.2 Technical Capacity for purposes of Evaluation

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

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

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

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

3.3 Details of Experience

- 3.3.1 The Bidder should furnish the details of Eligible Experience for the last 5 (five) financial years immediately preceding the Bid Due Date. In the event, the Bidder fails to provide the information in the requisite formats and certificates as mentioned in this RFP Document, the information so provided would be considered as inadequate and could lead to exclusion of such a project in computation of Eligible Experience of the Bidder.
- 3.3.2 The Bidders must provide the necessary information relating to Technical Capacity as per format at Annex-II of Appendix-I.
- 3.3.3 The Bidder should furnish the required Project-specific information and evidence in support of its claim of Technical Capacity, as per format at Annex-IV of Appendix-I.
- 3.3.4 In the event, a Bidder is applying through the High Turnover Route or Category 2, such Bidder should also attach as a part of its Bid, the requisite documents/ evidences in support of the claim of its Technical Tie Up Partner of possessing the mandatory experience in respect of the projects specified in Clause 2.2.3 and the same shall be counter-signed by the authorized signatory of the Bidder at the time of submitting the Bid.

3.4 Financial Information for purposes of Evaluation

- 3.4.1 The Bid must be accompanied by the Audited Annual Reports of the Bidder (of each Member in case of a Consortium) for the last 5 (five) financial years, preceding the year in which the Bid is made.
- 3.4.2 In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make it available, the Bidder shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Bidder shall provide the Audited Annual Reports for 5 (five) years preceding the year for which the Audited Annual Report is not being provided.
- 3.4.3 The Bidder must establish the minimum Turnover specified in Clause 2.2.2 (B), and provide details as per format at Annex-III of Appendix-I.
- 3.4.4 The Bidder applying through the High Turnover Route must establish that it has the Turnover of Rs. 25 crores in the preceding financial year in terms of Clause 2.2.2(C), and accordingly provide details as per format at Annex-III of Appendix-I duly certified by its statutory auditor.

3.5 Qualification and Short-listing of Bidders

- 3.5.1 Only those Bids which are found to be substantively responsive to the requirements of this RFP document after verifying the Bid Security submitted, will be evaluated. In the Qualification Phase, the information, documents and credentials submitted by the Bidder as a part of its Bid shall be evaluated and measured in terms of its project experience *{and that of the Technical Tie Up Partner in case of Bidder applying through the High Turnover Route or under Category2}* to determine the technical and financial competency/ capability of the Bidder/s vis-à-vis the requirements of Clauses 2.2.2 & 2.2.3 of this RFP. It is clarified here that in the event, after evaluation of the information, documents and credentials submitted by the Bidder in respect of its Technical Tie Up Partner are not found to be sufficient or the Technical Tie Up Partner does not possess the mandatory experience of Ropeway project/s as specified in Clause 2.2.3 of this RFP Document, the Bid of such a Bidder shall be disqualified.
- 3.5.2. The Bidders who meet the eligibility criteria set forth in Clauses 2.2.2 & 2.2.3* and possess the requisite Eligible Experience in respect of Eligible Projects in terms of this RFP, will be shortlisted and eligible for the Financial Proposal Phase.

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

3B. FINANCIAL PROPOSAL PHASE

3.6 Opening and Evaluation of Financial Proposal

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

3.7 Selection of Bidder

- 3.7.1 Subject to the provisions of Clause 3.5, the Bidder whose Bid is adjudged as responsive in terms of Clause 2.19.1 and who gets the Highest Total Weighted Financial Score shall be declared as the Selected Bidder (the **“Selected Bidder”**). In the event that RTDC rejects or annuls all the Bids, it may, in its discretion, initiate re-bidding process by inviting fresh Bids.
- 3.7.2 In the event that two or more Bidders gets the same Total Weighted Financial Score, (the **“Tie Bidders”**), RTDC shall identify the Selected Bidder by draw of lots, which shall be conducted, with prior notice, in the presence of the Tie Bidders who choose to attend.

- 3.7.3 In the event that the Highest Bidder withdraws or is not selected for any reason in the first instance (the “**first round of bidding**”), RTDC may invite all the remaining Bidders to revalidate or extend their respective Bid Security, as necessary, and match the Bid of the aforesaid Highest Bidder (the “**second round of bidding**”). If in the second round of bidding, only one Bidder matches the Highest Bidder, it shall be the Selected Bidder. If two or more Bidders match the said Highest Bidder in the second round of bidding, then the Bidder whose Bid was higher as compared to other Bidder(s) in the first round of bidding shall be the Selected Bidder. For example, if the third and fifth highest Bidders in the first round of bidding offer to match the said Highest Bidder in the second round of bidding, the said third highest Bidder shall be the Selected Bidder.
- 3.7.4 In the event that no Bidder offers to match the Highest Bidder in the second round of bidding as specified in Clause 3.7.3, RTDC may, in its discretion, invite fresh Bids (the “**third round of bidding**”) from all Bidders except the Highest Bidder of the first round of bidding, or annul the Bidding Process, as the case may be. In case the Bidders are invited in the third round of bidding to revalidate or extend their Bid Security, as necessary, and offer fresh Bids, they shall be eligible for submission of fresh Bids provided, however, that in such third round of bidding only such Bids shall be eligible for consideration which are higher than the Bid of the second highest Bidder in the first round of bidding.
- 3.7.5 After selection, a Letter of Award (the “**LOA**”) shall be issued, in duplicate, by RTDC to the Selected Bidder and the Selected Bidder shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, RTDC may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOA, and the next eligible Bidder may be considered.
- 3.7.6 After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall cause the Concessionaire to execute the Concession Agreement within the period prescribed in Clause 1.3. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the Concession Agreement.

3.8 Contacts during Bid Evaluation

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

related to the Bids under consideration.

4. Fraud and corrupt practices

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

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

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

5. Pre-Bid Conference

- 5.1 A Pre-Bid conference of the interested parties shall be convened at the designated date, time and place, information in respect of which shall be uploaded on the web-site of RTDC. A maximum of 2 (two) representatives of each Bidder shall be allowed to participate on production of authority letter from the Bidder.
- 5.2 During the course of Pre-Bid conference, the Bidders will be free to seek clarifications and make suggestions for consideration of RTDC. RTDC shall endeavor to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

6. Miscellaneous

- 6.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Shimla shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 6.2 RTDC, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- (a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
 - (b) consult with any Bidder in order to receive clarification or further information;
 - (c) pre-qualify or not to pre-qualify any Bidder and/ or to consult with any Bidder in order to receive clarification or further information;
 - (d) retain any information and/ or evidence submitted to RTDC by, on behalf of, and/ or in relation to any Bidder; and/ or
 - (e) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.
- 6.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases RTDC, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder and the Bidding Documents, pursuant hereto, and/ or in connection with the Bidding Process, to the fullest extent permitted by applicable law, and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

Appendices

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

Dated:

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

Sub: Bid for “Development of Ropeway between Chandigarh Manali National Highway (Near Pandoh Dam Reservoir) and Mata Baglamukhi Temple (Bakhli) District Mandi in Himachal Pradesh on PPP Mode under PPP Mode”.

Dear Sir,

With reference to your RFP document dated[§], I/we, having examined the RFP document and understood its contents, hereby submit my/our Bid for the aforesaid project. The Bid is unconditional and unqualified.

2. I/ We acknowledge that RTDC will be relying on the information provided in the Bid and the documents accompanying such Bid for selection of the Concessionaire for the aforesaid project, and we certify that all information provided in the Bid and in Annexes I to IV is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals.
3. This statement is made for the express purpose of our selection as Selected Bidder for the development, construction, operation and maintenance of the aforesaid Project.
4. I/ We shall make available to RTDC any additional information it may find necessary or require to supplement or authenticate the Bid.
5. I/ We acknowledge the right of RTDC to reject our Bid without assigning any reason or otherwise and hereby waive to the fullest extent permitted by applicable law our right to challenge the same on any account whatsoever.

[§] All blank spaces shall be suitably filled up by the Bidder to reflect the particulars relating to such Bidder.

6. I/ We certify that in the last three years, we/ any of the Consortium Members or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.

7. I/ We declare that:
 - (a) I/ We have examined and have no reservations to the Biding Documents, including any Addendum issued by RTDC;

 - (b) I/ We do not have any conflict of interest in accordance with Clauses 2.2.1(b) and 2.2.1(c) of the RFP document;

 - (c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with the Concessioneing Authority or any other public sector enterprise or any government, Central or State; and

 - (d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.

8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.17.6 of the RFP document.

9. I/ We believe that we/ our Consortium/ proposed Consortium satisfy(s) the Turnover criteria and meet(s) all the requirements as specified in the RFP document and are/ is qualified to submit a Bid.

Appendix I

Page 3

10. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member or associate of any other Bidder/ any other Consortium submitting a Bid for the project.
11. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
13. I/ We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Consortium or against our/ their Associates or against our CEO or any of our Directors/ Managers/ employees.
14. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this RFP, we shall intimate RTDC of the same immediately.
15. The Statement of Legal Capacity as per format provided at Annex-V in Appendix-I of the RFP document, and duly signed, is enclosed. The power of attorney for signing of Bid and the power of attorney for Lead Member of consortium, as per format provided at Appendix II and III respectively of the RFP, are also enclosed.
16. I/ We understand that the Selected Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956/2013, or shall incorporate as such prior to execution of the Concession Agreement.
17. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by RTDC in connection with the selection of the Bidder, or in connection with the selection/ Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.

18. I/ We agree and undertake to abide by all the terms and conditions of the RFP document.
19. I/ We certify that in terms of the RFP, my/our Turnover is Rs. (Rs. in words).
20. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into a Concession Agreement in accordance with the Draft Concession Agreement that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
21. I/ We have studied all the Bidding Documents carefully and also surveyed the Project sites. We understand that except to the extent as expressly set forth in the Concession Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by RTDC or in respect of any matter arising out of or relating to the Bidding Process including the award of Concession.
22. I/ We offer a Bid Security of _____ to RTDC in accordance with Clause 1.2.4 of the RFP Document.
23. The Bid Security in accordance with Clause 1.2.4 of the RFP Document in the form of a Demand Draft or Bank Guarantee is attached.
24. The Demand Draft or Payment Receipt towards the cost of Biding Documents as specified in Clause 1.2.1 is attached.
25. I/ We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/we shall have any claim or right of whatsoever nature if the Project / Concession is not awarded to me/us or our Bid is not opened or rejected.
26. The Annual Concession Fee which will be paid as per the provisions of the Draft Concession Agreement, has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, Draft Concession Agreement, our own estimates of costs and after a careful assessment of the site and all the conditions that may affect the project cost and implementation of the project.

27. I/We agree to pay the all applicable taxes to the Central Government for undertaking the aforesaid Project in accordance with the Bidding Documents and the Concession Agreement. Further I/We undertake that any taxes, levies etc. that may be payable to any State Government or Local Authorities of the State Himachal Pradesh for undertaking this Project, shall be paid by us.
28. I/ We shall keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the RFP.
29. I/ We hereby agree to pay the **Project Development Fee (Non – refundable) of Rs 40 Lacs (Rupees Forty Lacs only)** and the applicable GST to RTDC in accordance to Clause 2.27, within 21 (twenty one) days of issuance of the Letter of Award (LOA) or at the time of completion of Conditions Precedent, as the case may be.
- {30. We agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement in accordance with the Concession Agreement.}§

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

Yours faithfully,

Date:

(Signature, name and designation of the Authorised Signatory)

Place:

Name and seal of the Bidder/ Lead Member

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

§ Omit if the Bidder is not a Consortium.

ANNEX-I
Details of Bidder

1.
 - (a) Name:
 - (b) Country of incorporation:
 - (c) Address of the corporate headquarters and its branch office(s), if any, in India:
 - (d) Date of incorporation and/ or commencement of business:

2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project:

3. Details of individual(s) who will serve as the point of contact/ communication for RTDC:
 - (a) Name:
 - (b) Designation:
 - (c) Company:
 - (d) Address:
 - (e) Telephone Number:
 - (f) E-Mail Address:
 - (g) Fax Number:

4. Particulars of the Authorised Signatory of the Bidder:
 - (a) Name:
 - (b) Designation:
 - (c) Address:
 - (d) Phone Number:
 - (e) Fax Number:

5. In case of a Consortium:
 - (a) The information above (1-4) should be provided for all the Members of the Consortium.
 - (b) A copy of the Jt. Bidding Agreement, as envisaged in Clause 2.2.6(g) should be attached to the Bid.
 - (c) Information regarding the role of each Member should be provided as per table below:

| Sl. No. | Name of Member | Role* {Refer Clause 2.2.6(d)} [§] | Percentage of equity in the Consortium{Refer Clauses 2.2.6(a), (c) & (g)} |
|---------|----------------|---|---|
| 1. | | | |
| 2. | | | |
| 3. | | | |
| 4. | | | |

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

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

Name of Bidder/ member of Consortium:

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

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

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

ANNEX-II
Technical Capacity of the Bidder @
(Refer to Clauses 2.2.2(A), 3.2 and 3.3 of the RFP)

| Bidder type [§] | Number of Projects | Experience* | | | | | | |
|--------------------------|--------------------|-----------------|--------------|----------------|----------------|----------------|----------------|----------------|
| | | Name of Project | Project Cost | Revenue Year 1 | Revenue Year 2 | Revenue Year 3 | Revenue Year 4 | Revenue Year 5 |
| Single entity Bidder | | | | | | | | |
| | | | | | | | | |
| Consortium Member 1 | | | | | | | | |
| | | | | | | | | |
| Consortium Member 2 | | | | | | | | |
| | | | | | | | | |
| Consortium Member 3 | | | | | | | | |
| | | | | | | | | |

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

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

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

Certificate from the Statutory Auditor

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

Name of the Authorised Signatory:

Designation:

Name of the Audit firm:

(Signature for the Authorised Signatory of the Statutory Auditor)

Seal of the Firm

ANNEX-III
Financial Capacity of the Bidder
(Refer to Clauses 2.2.2(B), 2.2.4 (ii) and 3.4 of the RFP)

(In Rs. crore^{\$\$})

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

Name & address of Bidder's Bankers:

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

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

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

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

Certificate from the Statutory Auditor

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

Name of the Authorised Signatory:

Designation:

Name of the Audit firm:

(Signature for the Authorised Signatory of the Statutory Auditor)

Seal of the Firm

Instructions:

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

ANNEX-IV
Details of Eligible Projects
(Refer to Clauses 2.2.2(A), 3.2 and 3.3 of the RFP)

Name of Bidder / Consortium Member

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

Certificate from the Statutory Auditor

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

Name of the Authorised Signatory:

Designation:

Name of the Audit firm:

(Signature for the Authorised Signatory of the Statutory Auditor)

Seal of the Firm

Appendix I

Annex-IV

Instructions:

1. Bidders are expected to provide information in respect of each Eligible Projects in this Annex. The projects cited must comply with the eligibility criteria specified in the RFP. Information provided in this section is intended to serve as a backup for information provided in the Bid. Bidders should also refer to the Instructions below.
2. A separate sheet should be filled for each Eligible Project.
3. In case the Eligible Project relates to an Associate of the Bidder or its Member, write “Associate” along with Member.
4. Name, address and contact details of owner/ Authority/ Agency (i.e. concession grantor, counter party to PPA, etc.) may be provided.
5. The date of commissioning of the project, upon completion, should be indicated. In case of construction, completion of construction should be indicated.
6. The equity shareholding of the Bidder, in the company owning the Eligible Project, held continuously during the period for which Eligible Experience is claimed, needs to be given. (Refer Clause 3.2.3).
7. Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a consortium in respect of the same experience shall be permitted in any manner whatsoever.
8. Certificate from the Bidder’s statutory auditor⁵ or its respective clients must be furnished as per formats below for each Eligible Project. In jurisdictions that do not have statutory auditors, the auditors who audit the annual accounts of the Bidder/ Member/Associate may provide the requisite certification.

⁵ In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary.

Appendix I

Annex-IV

9. In the event that credit is being taken for the Eligible Experience of an Associate, as defined in Clause 2.2.9, the Bidder should also provide a certificate in the format below:

Certificate from Statutory Auditor/ Company Secretary regarding Associate[§]

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

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

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

Name of the audit firm:

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

Date:

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

[§] In the event that the Bidder/ Consortium Member exercises control over an Associate by operation of law, this certificate may be suitably modified and copies of the relevant law may be enclosed and referred to.

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

[©] Refer Clause 3.3.1 of the RFP.

ANNEX - V
Statement of Legal Capacity

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

Ref.

Date:

The Chief General Manager

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

Bid for “Development of Ropeway between Chandigarh Manali National Highway (Near Pandoh Dam Reservoir) and Mata Baglamukhi Temple (Bakhli) District Mandi in Himachal Pradesh on PPP Mode under PPP Mode”.

Dear Sir,

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

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

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

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of.....

**Please strike out whichever is not applicable*

Appendix II
Power of Attorney for signing of Bid
(Refer Clause 2.2.5)

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

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

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

For

(Signature, name, designation and address)

Witnesses:

- 1.
- 2.

(Notarised)

Accepted

.....

(Signature)

(Name, Title and Address of the Attorney)

Notes:

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

Appendix III

Power of Attorney for Lead Member of Consortium

(Refer Clause 2.2.5)

Whereas the Ropeways and Rapid Transport System Development Corporation H.P. Limited (“RTDC”) has invited Bids from interested parties for the **“Development of Ropeway between Chandigarh Manali National Highway (Near Pandoh Dam Reservoir) and Mata Baglamukhi Temple (Bakhli) District Mandi in Himachal Pradesh on PPP Mode under PPP Mode”** (the “Project”) and

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

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

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

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

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

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

For

(Signature)

.....

(Name & Title)

For

(Signature)

.....

(Name & Title)

For

(Signature)

.....

(Name & Title)

Witnesses:

1.

2.

.....

(Executants)

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

Notes:

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

Appendix IV Joint Bidding Agreement

(Refer Clause 2.13.2A)

(To be executed on Stamp paper of appropriate value)

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

AMONGST

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

AND

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

AND

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

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

WHEREAS,

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

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

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

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

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

2. Consortium

2.1 The Parties do hereby irrevocably constitute a consortium (the “**Consortium**”) for the purposes of jointly participating in the Bidding Process for the Project.

2.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

3. Covenants

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

4. Role of the Parties

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

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

Appendix IV

Page 3

5. Joint and Several Liability

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

6. Shareholding in the SPV

6.1 The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows:

First Party:

Second Party:

{Third Party:}

6.2 The Parties undertake that a minimum of 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV shall, at all times till the second anniversary of the date of full commercial operation of the Project, be held by the Parties of the First, {Second and Third} Part whose experience and turnover have been reckoned for the purposes of qualification and short-listing of Bidders for the Project in terms of the RFP.

6.3 The Parties undertake that each of the Parties specified in Clause 6.2 above shall, at all times between the full commercial operation date of the Project and the second anniversary thereof, hold subscribed and paid up equity share capital of SPV equivalent to (i) 26% (twenty six per cent) of the subscribed and paid up equity of the SPV; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement.

6.4 The Parties undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity share capital of the SPV at all times until the second anniversary of the full commercial operation date of the Project.

6.5 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the Concession Agreement.

7. Representation of the Parties

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

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

8. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the Financial Close of the Project is achieved under and in accordance with the Concession Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium

is either not qualified for the Project or does not get Selected for award of the Project, the Agreement will stand terminated in case the Bidder is not qualified or upon return of the Bid Security by RTDC to the Bidder, as the case may be.

9. Miscellaneous

- 9.1 This Joint Bidding Agreement shall be governed by laws of India.
- 9.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of RTDC.

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

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of

LEAD MEMBER by:

SECOND PART

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

THIRD PART

(Signature)

(Name)

(Designation)

(Address)

In the presence of:

- 1.
- 2.

Notes:

1. *The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
2. *Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member.*
3. *For a Joint Bidding Agreement executed and issued overseas, the document shall be legalised by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.*

Appendix V
Letter Comprising the Financial Offer
(Refer Clause 2.13.2B)

Dated:

To,

The Chief General Manager

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

US Club, Shimla-171001 India

Phone: +91-9418481177

Sub: Bid for “Development of Ropeway between Chandigarh Manali National Highway (Near Pandoh Dam Reservoir) and Mata Baglamukhi Temple (Bakhli) District Mandi in Himachal Pradesh on PPP Mode under PPP Mode”

Dear Sir,

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

1. I/ We hereby submit our Bid and offer to pay **Annual Concession Fee of Rs. _____ (Rupees in words)** which shall be paid every year commencing from the 548th day from the Commencement Date till the end of the Concession Period as per the terms and conditions contained in the Concession Agreement. The Annual Concession Fee will be increased @ 5% every year over the previous year's Annual Concession Fee.

I/ We undertake that in the event, construction completion of the Project is achieved by me/ us prior to the 548th day from the Commencement Date, then in respect of the period intervening between such date of early completion of construction works and the 548th day from the Commencement Date I/ we shall be liable to pay only 50% of the proportionate Annual Concession Fee as quoted above by me/ us. However, the annual increase in the Annual Concession Fee shall be applicable from the 30th month only (i.e. after 12 months from the aforesaid 18th month date).

Further, I/ We hereby agrees to charge the price of ticket (user charges) from the Users/ passengers as mentioned in the table below, subject to negotiation and approval of RTDC.

| TICKETPRICE | | INR |
|--|-------------------------|------------|
| Round Trip Rates | | |
| Price per Adult Ticket / Round Trip ----- | <i>(a)</i> | |
| Price per Child Ticket / Round Trip ----- | <i>70% of (a) = (b)</i> | |
| Single Trip Rates | | |
| Price per Adult Ticket / single Trip ----- | <i>55% of (a) = (c)</i> | |
| Price per Child Ticket / single Trip ----- | <i>40% of (a) = (d)</i> | |
| Instructions: <ol style="list-style-type: none"> i. Bidder has to quote the Price per Adult Ticket / Round Trip only i.e. (a), Ticket Price for other categories {(b), (c) & (d)} shall be governed by the above mentioned percentages of (a). ii. The quoted Ticket prices are binding on the bidder and are subject to negotiation and approval of RTDC. iii. The quoted Ticket prices to be charged from the Users/ passengers shall be inclusive off all applicable taxes. | | |

2. I/We agree to pay the GST and all other applicable taxes to the Central Government, any State Government and/or Local Authorities or the State of Himachal Pradesh for undertaking the aforesaid Project in accordance with the Bidding Documents and the Concession Agreement.
3. I/ We hereby declare to undertake the aforesaid Project in accordance with the terms & conditions of the Concession Agreement and the Bidding documents.

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

Yours faithfully,

Date: _____ (Signature, name and designation of the Authorised signatory)

Place: _____

Name and seal of Bidder/Lead Member

Appendix VI

Bank Guarantee for Bid Security

(refer clauses 1.2.4 and 2.26)

B.G. No.

Dated:

1. In consideration of you, Ropeways and Rapid Transport System Development Corporation H.P. Limited, having its office at US Club, Shimla – 171001 (hereinafter referred to as the “RTDC”, which expression shall unless it be repugnant to the subject or context thereof include its successors and assigns) having agreed to receive the Bid of (a _____ registered under the relevant laws of India) and having its registered office at {and acting on behalf of its Joint Venture/Consortium**} (hereinafter referred to as the “Bidder” which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for the RFP for **“Development of Ropeway between Chandigarh Manali National Highway (Near Pandoh Dam Reservoir) and Mata Baglamukhi Temple (Bakhli) District Mandi in Himachal Pradesh on PPP Mode under PPP Mode”** on Design, Build, Finance, Operate And Transfer (DBFOT) Project (hereinafter referred to as “the Project”) pursuant to the RFP Document dated issued in respect of the Project and other related documents including without limitation the draft concession agreement (hereinafter collectively referred to as “Bidding Documents”), we (Name of the Bank) having our registered office at and one of its branches at (hereinafter referred to as the “Bank”), at the request of the Bidder, do hereby in terms of of the RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfillment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to RTDC an amount of _____ (hereinafter referred to as the “Guarantee”) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfill or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by RTDC stating that the Bidder is in default of the due and faithful fulfillment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of RTDC is disputed by the Bidder or not, merely on the first demand from RTDC stating that the

** Applicable only in the case of Bidder applying as Joint Venture/ Consortium

amount claimed is due to RTDC by reason of failure of the Bidder to fulfill and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set-forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding _____.

4. This Guarantee shall be irrevocable and remain in full force for a period of 180 (one hundred and eighty) days from the Bid Due Date inclusive of a claim period of 60 (sixty) days or for such extended period as may be mutually agreed between RTDC and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.
5. We, the Bank, further agree that RTDC shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfillment and compliance with the terms and conditions contained in the Bidding Documents including, inter alia, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Bidding Documents, and the decision of RTDC that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between RTDC and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other Authority.
6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
7. In order to give full effect to this Guarantee, RTDC shall be entitled to treat the Bank as the principal debtor. RTDC shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfillment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to RTDC, and the Bank shall not be released from its liability under these presents by any exercise by RTDC of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of RTDC or any indulgence by RTDC to the said Bidder or by any change in the constitution of RTDC or its absorption, merger or amalgamation

with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.

8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch which shall be deemed to have been duly authorised to receive the said notice of claim.
10. It shall not be necessary for RTDC to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which RTDC may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealised.
11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of RTDC in writing.
12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.
13. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to **Rs. _____**. The Bank shall be liable to pay the said amount or any part thereof only if RTDC serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before [*** (indicate date falling 180 days after the Bid Due Date)].

Signed and Delivered by Bank

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

(Signature of the Authorised Signatory)

(Official Seal)

DRAFT CONCESSION AGREEMENT

FOR

**Development of Ropeway between Chandigarh Manali
National Highway (Near Pandoh Dam Reservoir) and
Mata Baglamukhi Temple (Bakhli) District Mandi in
Himachal Pradesh on PPP Mode**

BETWEEN

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

AND

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CONCESSION AGREEMENT

This Agreement is executed on this ____ day of ____ 20__ at _____

BY AND BETWEEN

The Ropeways and Rapid Transport System Development Corporation H.P. Limited acting through its having its office at (hereinafter referred to as “**Concessioneing Authority**” or the “**Authority**” which expression shall unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of the One Part:

AND

_____, (hereinafter referred to as the “**Concessionaire**” which expression shall unless repugnant to the context or meaning thereof, include its successors and permitted assigns including any Special Purpose Company that may be permitted by Concessioneing Authority to be established as detailed in this Agreement) of the Other part.

WHEREAS:

- A. The Concessioneing Authority’s principal objective is promotion of infrastructure in the State of Himachal Pradesh.
- B. The Himachal Pradesh Aerial Ropeways Act, 1968 (as amended till date) has been enacted by the Government of Himachal Pradesh to provide for the construction of aerial ropeways in the State of Himachal Pradesh and for matters connected therewith and incidental thereto;

- C. That, amongst other initiatives, the Concessions Authority has been authorized by the State Government of Himachal Pradesh to develop an aerial ropeway connecting Chandigarh Manali National Highway (Near Pandoh Dam Reservoir) to Mata Baglamukhi Temple (Bakhli) in the state of Himachal Pradesh on Public Private Partnership (PPP) mode.
- D. In pursuance of above, the Concessions Authority decided to undertake, the development of the aerial ropeway from Chandigarh Manali National Highway (Near Pandoh Dam Reservoir) to Mata Baglamukhi Temple (Bakhli) to position the same as an alternative route, which is safe, quicker and usable even under varied climatic conditions and is more fully described and delineated in the plan attached hereto as **Schedule A** (the “**Specified Location**”). Project details in **Schedule B** provide a clear description of the Project comprising the Project Requirements, Performance Standards, Project Facilities and Specifications and Standards.
- E. That the Concessions Authority proposed to grant to the selected party, a Concession to design, finance, construct, operate and maintain the Passenger Ropeway and facilities in the Specified Location, referred in Schedule B, (hereinafter called the ‘Project’ or ‘Ropeway Project’) on Design, Build, Finance Operate and Transfer (DBFOT) basis.
- F. That the Concessions Authority had accordingly invited proposals for selection of the Concessionaire for the Project on a competitive bidding basis through the Request for Proposal document (RFP) dated _____. Based on the Bids/ Proposals received and after evaluation of the same, the Concessions Authority has accepted the Bid of the M/s _____ (Selected Bidder/Consortium) herein and has issued its Letter of Acceptance (‘LOA’) bearing No. _____ dated _____ requiring the execution of present Concession Agreement within ____ days of the date of issue thereof.
- G. 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 Concessions 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.
- H. By its letter dated ***, the Concessionaire has also joined in the said request of the Consortium to the Concessions Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder/ Consortium including the obligation to enter into this Concession Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the selected bidder/ Consortium for the purposes hereof.

- I. The Concessioneing Authority has agreed to the said request of the Consortium and the Concessionaire, and has accordingly agreed to enter into this Concession Agreement with the Concessionaire for execution of the Project on PPP basis, subject to and on the terms and conditions set forth hereinafter.
- J. That the Concessionaire has paid **the 50% of Project Development Fee of Rs. 40 Lacs (Rupees Forty Lacs only) i.e. Rs. 20 Lacs (Rupees Twenty Lacs only)** as a pre-condition for the signing of this Concession Agreement.
- K. That the Concessionaire represents and warrants that they have duly fulfilled all other terms and conditions necessary for the execution of this Agreement as per the terms contained in the Bidding documents and are in a position to execute this Agreement and implement the Project as envisaged in the Bid and this Agreement

NOW THEREFORE, in lieu of the mutual promise and consideration set out herein, the sufficiency and adequacy of which is hereby acknowledge, and intending to be legally bound hereby, Concessioneing Authority and the Concessionaire (each individually a “Party” hereto, and collectively the “Parties”) hereby agree as under:

ARTICLE 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 ascribed to them hereunder:

"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;

"Affected Party" shall have the meaning set forth in Article 22.1;

"Agreement" means this Agreement, its Recitals including the Schedules hereto, the "Letter of Acceptance" issued by the Concessing Authority, the written clarification(s), addendums, amendments, etc. to the RFP Document issued subsequently to the Bidders and all other documents/papers attached as annexures made in accordance with the provisions hereof.

"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;

"Applicable Law" means all Acts, Rules, Regulations, bye-laws, notifications, guidelines, directives in force and in effect as of the date hereof and which may be promulgated or brought into force and in effect hereinafter by the Government of India or the State Government including judgments, decrees, injunctions, writs of or orders of any court of record, as may be in force and effect during the subsistence of this Agreement applicable to the Project and the Parties hereto.

"Applicable Permits" means all clearances, Permits, authorizations, consents and approvals required to be obtained or maintained under Applicable Law, in connection with the "Project" during the subsistence of this Agreement.

"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 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;

"Bid" means the documents in their entirety comprised in the Bid, including all clarifications, addenda and revisions issued by the Concessioneing Authority to the Bidders, the Proposal submitted by the Selected Bidder (Concessionaire) in response to the RFP Document in accordance with the provisions thereof. The words "Bid" and "Proposal" are used synonymously.

"Book Value" means the amount of historical cost of asset less accumulated depreciation applicable to the assets as certified by the statutory auditor.

"Change in Law" means the occurrence or coming into force of any of the following after the date of submission of its offer by the Concessionaire:

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

"Change in Ownership" means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the selected bidder/ Consortium Members, together with its/ their Associates in the total Equity to decline below (i) 51% (fifty one per cent) thereof during Construction Period, (ii) 33% (thirty three per cent) thereof during a period of 2 (two) years following COD, and (iii) 26% (twenty six per cent) thereof, or such lower proportion as may be permitted by the Concessioneing 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.

"Commencement Date" means the date on which access to the Site to undertake the Project is allowed by Concessioneing Authority to the Concessionaire, in accordance with the terms of this Agreement. This date will be later of the date on which the Concessionaire's and Concessioneing Authority's Conditions Precedent are fulfilled. Obligations of the parties under this Agreement commence from this date.

“Commercial Operation Date” or “COD” shall have the meaning set forth in Article 10.15.

“Completion” in relation to the Project shall mean completion of erection and installation of all the subcomponents of the ropeway system, completion of other system and facilities, and successful inspection, testing and commissioning of the ropeway system and issuance of Completion Certificate by the designated authority.

“Completion Certificate” means the certificate issued by designated authority to the Concessionaire to operate/ run the ropeway system.

“Concession Fee” means the amount payable by the Concessionaire to the Concessions Authority as per Clause (B) of Article 7.1 of this Agreement;

“Concession Period” means the period beginning from the Commencement Date and ending on the Termination Date either by efflux of time (40 years including the Construction Period) or sooner as determined in accordance with this Agreement.

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

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

“Consideration” shall mean and include the payments to be made by the Concessionaire to the Concessions Authority as provided in Article 7 hereafter.

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

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

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

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

“Damages” shall have the meaning set forth in Clause (w) of Article 1.1.1;

“Debt Due” means the aggregate of the following sums expressed in Indian Rupees outstanding and payable by the Concessionaire to the Lenders under the Financing Agreements 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 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 Concessioning Authority’s Default; and
- (c) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost;

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

“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;

“Dispute Resolution Period” means the procedure for resolution of Disputes set forth in Article 29.

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

“Encumbrances” means, in relation to the Ropeway Project, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project;

“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;

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

“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 the Ropeway Project and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements, Subordinated Debt and Equity Support, if any;

“Financing Agreements” means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Article 5.6.3 ;

“Force Majeure” or **“Force Majeure Event”** means an act, event, condition or occurrence as specified in Article 22.1

“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 Government of the State of Himachal Pradesh 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 of Himachal Pradesh, as the case may be, and having jurisdiction over all or any part of the Project or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

“Independent Auditor” means the auditor jointly appointed by the Concessions Authority and the Concessionaire to independently audit and verify all matters, expenses, costs and realizations of the Concessionaire, which have been carried out by the Statutory Auditors of the Concessionaire during construction and operation phase of the Project.

“Independent Engineer” means the engineer jointly appointed by the Concessions Authority and the Concessionaire to independently monitor and verify all tests, specifications, designs and performance of the Concessionaire, which have been carried out by the Concessionaire during construction phase of the Project. The Independent Engineer shall specifically assess performance of those critical parts of ropeway system, failure of which is likely to cause serious injury to passengers.

“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;

“LOA” or “Letter of Acceptance” means the letter of acceptance referred to in Recital (F);

“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;

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

“O&M Expenses” means expenses incurred by or on behalf of the Concessionaire or by the Concessions 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 any service, maintenance or fare collection contract or any other contract in connection with or incidental to O&M (but not the actual operations which is the sole responsibility of the Concessionaire), and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

“Operation Period” means the period commencing from COD and ending on the Transfer Date. The terms Operation Period and O&M Period are used synonymously in this Agreement;

“Parties” means the Parties to this Agreement and **“Party”** means either of them, as the context may admit or require.

“Performance Security” means advance paid in the form of an unconditional and irrevocable Bank Guarantee by the Concessionaire to the Concessioneing Authority as a security against the guarantee for its performance both during Construction and the Operation Period as detailed in Article 7.2 of this Agreement.

“PPHPD” or “Passenger Per Hour Per Direction” means the maximum number of passengers/ Users commuting through the entire length of the Ropeway in one direction per hour;

“Project” or “Project Facilities” shall have the meaning as set out in Recital E hereinabove.

“Project Agreements” means this Agreement, the Financing Agreements, EPC Contract, Fare collection Contract, all agreements relating to commercial developments (if any) and any other agreements or material contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Substitution Agreement;

“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 including foundations, towers, gondolas, drainage works, electrical systems, communication systems, fare collection systems, maintenance depots, administrative offices, Terminals etc.;
- (c) Project Facilities situated on the Site;
- (d) buildings and immovable fixtures or structures forming part of commercial developments (if any);
- (e) all rights of the Concessionaire under the Project Agreements;
- (f) financial assets, such as receivables, security deposits etc;
- (g) insurance proceeds; and
- (h) Applicable Permits and authorisations relating to or in respect of the Project.

“Project Completion Date” means the date on which the Completion Certificate is issued under the provisions of Article 10.14;

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

“Project Development Fee” is the cost incurred by the Concessioneing Authority for developing the project upto a bankable stage and preparation of relevant documents;

“Realisable Fee” means all the Fee due and realisable under this Agreement, but does not include Fare that the Concessionaire has not been able to realise after due diligence and best efforts. For the avoidance of doubt, Realisable Fee shall, 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;

“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 Ropeway Project in accordance with this Agreement;

“Ropeways Act” means The Himachal Pradesh Aerial Ropeways Act, 1968 (as amended in 1995 and from time to time);

“Ropeway Monitoring Committee” or **“RMC”** shall have the meaning set forth in Article 12.7;

“Ropeway System” means passenger Ropeway between Chandigarh Manali National Highway (Near Pandoh Dam Reservoir) to Mata Baglamukhi Temple (Bakhli) along with all the terminal stations;

“Safety Consultant” shall have the meaning set forth in Article 13.1.2;

“Safety Requirements” shall have the meaning set forth in Article 13.1.1;

“Scheduled Completion Date” shall have the meaning set forth in Article 10.8;

“Scope of the Project” shall have the meaning set forth in Article 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” or **“Project Site”** means the property at Lower Terminal Point (LTP) in Chandigarh Manali National Highway (near Pandoh Dam) and Upper Terminal Point (UTP) in Baglamukhi Mata Temple along the right of way for ropeway development as detailed in the Schedule A and Schedule E being given on Concession by Concessioneing Authority to the Concessionaire under and in accordance with this Agreement, on which the Project is to be developed.

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

“Specified Location” shall have the meaning as set out in Recital D.

“Sub Contractor” means all persons who are allowed by the Concessionaire to execute the different parts of the Project during Construction and Operation Period.

“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 Clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and six-month LIBOR (London Inter Bank Offer Rate) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due one year prior to the Transfer Date; provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the lenders and/or the Concessionaire's shareholders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

"Substantial Completion" shall mean completion of construction of all the components of the Ropeway System enabling it to be ready for trial run;

"Tax" means and includes all direct and indirect taxes, fees, cesses, levies etc. of any kind, that may be payable by the Concessionaire under the Applicable Law to the Government or any of its agencies.

"Termination" means Termination of this Agreement by efflux of time or sooner determination in accordance with the provisions of this Agreement.

"Termination Date" means the end of the Concession Period of 40 (Forty) years from the Commencement Date or date of sooner determination of the Concession Period in accordance with the terms of this Agreement whichever is earlier.

"Total Project Cost" means the lowest of:

- (a) the capital cost of the Project, as set forth in the Financial Package;
- (b) the actual capital cost of the Project upon completion of construction of Ropeway and other facilities; and

provided that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in Whole Sale Price Index (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 uses or intends to use the Ropeway Project or any part thereof on payment of tariff/ fee or in accordance with the provisions of this Agreement and Applicable Laws;

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

1.1.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “**include**” and “**including**” are to be construed without limitation and shall be deemed to be followed by “**without limitation**” or “**but not limited to**” whether or not they are followed by such phrases;
- (f) references to “**construction**” or “**building**” include, unless the context otherwise requires, investigation, design, developing, 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 Chandigarh 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 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 or RMC 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 or RMC, 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 or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, 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.

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

1.1.3 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.

1.1.4 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.

1.2 Measurements and Arithmetic Conventions

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

1.3. Priority of Contract Documents and Errors/Discrepancies

1.3.1 The several documents forming this Agreement are to be taken as mutually explanatory to one another and, unless otherwise expressly provided elsewhere in this Agreement, the priority of the following documents shall, in the event of any conflict, discrepancy or ambiguity between them, be in the order they are set out:

- (i) This Agreement and Schedules to this Agreement
- (ii) The Letter of Acceptance issued to the Concessionaire
- (iii) The Technical and Commercial Offer submitted by the Concessionaire and as accepted by the Concessions Authority
- (iv) The written clarifications and addenda issued to the Bidders
- (v) The Request For Proposal (RFP) document, including the term sheet of the Concession Agreement given with RFP; and
- (vi) Other Bid documents.

1.3.2 Subject to the provisions of Article 1.3.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- (a) between two or more Articles of this Agreement, the provisions of a specific Article relevant to the issue under consideration shall prevail over those in other Articles;
- (b) between the Articles of this Agreement and the Clauses of Schedules, the Articles 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.

ARTICLE 2: SCOPE OF THE PROJECT

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

- (i) designing, financing, construction, commissioning, management, operation and maintenance of a passenger Ropeway between Chandigarh Manali National Highway (Near Pandoh Dam Reservoir) to Mata Baglamukhi Temple (Bakhli) with approx. length of 800 Mtrs during the Concession Period under this Agreement on Design, Build, Finance, Operate and Transfer (DBFOT) basis as per the Project details set out in this Agreement and its Schedules.
- (ii) development, construction, installation & operation of aerial ropeway (and other commercial facilities, if any) and arrangements for connectivity between Lower Terminal Point (LTP) at Chandigarh Manali National Highway (Near Pandoh Dam Reservoir) and Upper Terminal Point (UTP) at Mata Baglamukhi Temple (Bakhli) as per the requirements and standards mentioned in this Agreement.
- (iii) 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 Subject to and in accordance with the terms and conditions set forth in this Agreement, and in particular subject to the due fulfillment of all the obligations assumed towards Concessions Authority by the Concessionaire, Concessions Authority hereby grants and authorizes the Concessionaire:
- (a) Right of Way and access to the Site to design, finance, construct, commission, operate, manage and maintain the Ropeway Project at the Specified Location during the Concession Period at the cost and risk of the Concessionaire;
 - (b) subject to para (c) below, to collect fee/ tariff/ charge from the Users of any Project facilities other than the Ropeway system, at the rates to be determined by the Concessionaire on and from the COD till the Transfer Date;
 - (c) on and from the COD till the Transfer Date, to collect the user charges from the passengers using the Ropeway.
 - (d) to sub-license/ let out during the Concession Period only those components of the Project which are expressly permitted under this Agreement, after taking prior written approval from the Concessions Authority. The approvals requested by the Concessionaire shall not be withheld unreasonably. However, the Concessionaire shall continue to remain solely liable towards the Concessions Authority for all its obligations during the entire Concession Period.
 - (e) to sub-contract only those components of the Project Facility to third parties which are expressly permitted under this Agreement, after taking prior written approval from the Concessions Authority. However, the Concessionaire shall continue to remain solely liable towards the Concessions Authority for all its obligations during the entire Concession Period.
 - (f) perform and fulfil all of the Concessionaire's obligations under and in accordance with this Agreement.
 - (g) 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
 - (h) not assign, transfer or sublet or create any lien or Encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project and Project Facilities nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement.

- 3.1.1 The Concessionaire shall not be entitled to allow the use of the Project Facilities by any other person or for any purpose other than prescribed under this Agreement.
- 3.1.2 Nothing contained herein, including the act of granting permission to develop the Project Facility at the Site and to use of the Project Facility or any part thereof, shall not vest or create any proprietary interest in the Project Facility or any part thereof including any permanent fixture, fitting, etc. installed in the structure of the Project Facility in favour of the Concessionaire or any part thereof or any other person claiming through or under the Concessionaire. The Concessionaire shall not in any manner sell, transfer, assign, mortgage, charge, create any lien or otherwise encumber the Project Site and Project Assets.
- 3.2 **Concession Period**
- 3.2.1 The Concession hereby granted in favour of the Concessionaire is for a total period of **40 (forty) years** to be reckoned from the Commencement Date inclusive of Construction Period, subject to non-occurrence of early Termination as provided in this Agreement.
- 3.2.2 At the end of the Concession Period or sooner Termination of this Agreement for any reason whatsoever, all rights given under this Concession Agreement shall cease to have effect and the Site and Project Facility with all the equipments, and fixtures and other assets permanently attached to the Project Facility shall revert to the Concessions Authority without any obligation of the Concessions Authority to pay or adjust any Consideration or other payment to the Concessionaire.
- 3.2.3 At the end of the Concession Period either by efflux of time or otherwise, the Concessions Authority would either operate the Project itself or may re-bid the same by suitably re-defining or re-structuring the Project parameters at its sole discretion. In the event of re-bidding, if the present Concessionaire chooses to participate in the re-bidding process and does not emerge as the successful bidder (by being the highest bidder (i.e. H1) or the lowest bidder (i.e. L1) as required), then the present Concessionaire shall be provided with the right of first refusal to match the bid of the highest bidder and to enter into fresh Concession Agreement upon the terms and conditions frozen as a part of the bid documents to be then issued by the Concessions Authority, provided its financial bid is within the range of 10% of the financial bid quoted by the H1 or the L1 bidder, as the case may be. However, the terms and conditions including the financial parameters, if any with regard to the mode, manner etc. of the right of first refusal and the provisions related thereto in the bidding documents shall be determined by the Concessions Authority at its sole discretion.

ARTICLE 4: CONDITIONS PRECEDENT

4.1 Conditions Precedent

4.1.1 Save and except as expressly provided in Article 4, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the following Conditions Precedent as defined in Articles 4.1 and 4.2 (referred to as “**Conditions Precedent**” hereinafter).

4.1.2 Conditions Precedent for Concessioneing Authority

The Conditions Precedent, required to be satisfied by the Concessioneing Authority, shall be deemed to have been fulfilled when the Concessioneing Authority has as per the requirements of the Agreement:

- (i) facilitated requisite government orders/ gazette notifications necessary for Project implementation, in the manner most feasible, based on submission of the list of permissions/clearances required for the Project by the Concessioneaire to the Concessioneing Authority.
- (ii) ensured the availability of Project Site, free of any encumbrances to the Concessioneaire for development of the Project.
- (iii) procured all Applicable Permits relating to land clearance, forest clearance, EIA, environmental protection and conservation of the Site. However, the Concessioneaire shall make all the necessary applications at its cost for such clearances, fulfilling of any other requisite conditions as may be required and also bear the cost of taking the Environmental/Forest clearances/ROW i.e. NPV of trees or any payments etc.
- (iv) approved the Detailed Project Report submitted by the Concessioneaire.

4.2 Conditions Precedent for Concessioneaire

- (i) The Concessioneaire shall have furnished Detailed Project Report (DPR) outlining its detailed engineering designs/ drawings, Project Plans, construction methodology, quality assurance procedures, and the procurement, engineering & construction time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in Schedule-F. The Concessioneaire shall also address any comments/ observations of the Authority on the DPR and also incorporate any suggestions/ modifications as may be suggested by the Authority.

- (ii) Concessionaire shall have furnished constitutional documents, Board Resolution, certified copies of Project Agreement, financing plan and any other document related to the execution of the Project to the Concessing Authority for approval. The Concessionaire shall commence the installation/ construction only after approval of the DPR.
- (iii) Concessionaire shall also have submitted three (3) certified true copies of all Project Agreements, in particular, the Financing Documents, the EPC Contract, etc. as well as the shareholders funding Agreement to the Concessing Authority.
- (iv) Concessionaire shall have obtained all such Applicable Permits unconditionally or if subject to conditions then all such conditions must have been satisfied in full and such Applicable Permits are and shall be kept in full force and effect for the relevant period during the subsistence of the Concession Agreement.
- (v) Concessionaire shall make all the necessary applications at its cost that are required for obtaining the land, forest and environment clearances and fulfill any necessary conditions as may be required. The Concessionaire shall also bear the cost of taking the Environmental/ Forest clearances/ ROW i.e. NPV of trees etc.
- (vi) Concessing Authority should have received from the Indian legal counsel of the Concessionaire a legal opinion with respect to the authority of the Concessionaire to enter into this Agreement and the Project Agreements and the Financing Documents and the enforceability of the provisions thereof;
- (vii) Concessionaire should have provided the Construction Period Performance Security in the form of an unconditional and irrevocable Bank Guarantee of Rs. 1.00 Crore (Rupees One Crore only) to the Concessing Authority; and
- (viii) Concessionaire should have executed the Substitution Agreement.

Provided that upon request in writing by the Concessionaire, the Concessing Authority may, in its discretion, waive any of the Conditions Precedent set forth in this Article 4.2. For avoidance of doubt, the Concessing Authority may, in its sole discretion, grant any waiver hereunder with such conditions as it may deem fit.

4.3 Period for Conditions Precedent Compliance

- (i) The period for compliance of Conditions Precedent including providing of Construction Period Performance Security to the Authority, shall be 180 days from the date of signing of this Agreement.
- (ii) Each Party shall bear its respective cost and expense of satisfying such Condition Precedent.

4.3.1 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.

4.3.2 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.

4.4 Damages for delay by the Concessing Authority

In the event that (i) the Concessing Authority does not procure fulfilment of any or all of the Conditions Precedent set forth in Article 4.1 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 Concessing Authority shall pay to the Concessionaire Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty percent) of the Performance Security.

4.5 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 Article 4.2 within a period of 180 days from the date of this Agreement, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Article 4.1.2 or (ii) other breach of this Agreement by the Concessing Authority, or due to Force Majeure, the Concessionaire shall pay to the Concessing Authority Damages in an amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty percent) of the Performance Security.

4.6 Non-fulfilment of Conditions precedent by either party

In the event, the maximum damages as envisaged above have been reached and still either party has not been able to fulfill any or all of the Conditions Precedent and no waiver has been granted, the same shall be treated as a case of default and lead to Termination of the Agreement unless such a default has occurred due to Force Majeure.

- (i) In case of failure by the Concessioneing Authority to fulfill the Conditions Precedent, the Concessionaire may terminate the Agreement with 30 days prior written notice. In case such an event occurs, the RTDC/ Concessioneing Authority shall return the Bid Security to the Concessionaire.
- (ii) If Concessionaire fails to fulfill the Conditions Precedent, the Concessioneing Authority may terminate the Agreement and forfeit the Bid Security or the Performance Security, as the case may be, and the deposit for Project Development Fee. However, before any such termination of Agreement, the Concessionaire shall be given adequate time and opportunity to represent its case. If the Concessionaire fails to represent the case within the time limit given or if the Concessioneing Authority is not satisfied with the representation of the Concessionaire, the Concessioneing Authority may terminate the agreement in the manner stated above.
- (iii) However Concessioneing Authority may, without any obligation, waive fully or partially any of the Conditions Precedent as specified in this Article 4, at anytime in its sole discretion.

Provided however, that instead of terminating the Agreement, the Concessioneing Authority and Concessionaire, by mutual consent, may extend the time period for fulfillment of Conditions Precedent.

ARTICLE 5: OBLIGATIONS OF THE CONCESSIONAIRE

5.1 Obligations of the Concessionaire

- 5.1.1 Subject to the terms and conditions of this Agreement, the Concessionaire shall at its cost and expense procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Project and observe, fulfill, 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 in the performance of its obligations under this Agreement.
- 5.1.3 Without Prejudice to the generality of Article 5.1.1, the Concessionaire shall at its own cost and expense observe, undertake, comply with and perform, in addition to and not in derogation of its obligations elsewhere set out in this Agreement, the following:
- (a) To complete the design and detailed engineering of the Project. The Concessionaire shall assess the land requirement for the Project including for right of way, terminal points, intermediate terminal points, support infrastructure, etc. keeping in view the project requirements/ design considerations, technical parameters stated in the RFP and as specified in the Specifications and Standards set forth in Schedule B of this Agreement.
 - (b) The Concessionaire shall procure the required clearance for commencing and implementing the Project except the environmental & Forest clearances which is the obligation of the Concessions Authority. However, the Concessionaire shall bear the cost of taking the Environmental/Forest clearances i.e. NPV of trees etc.
 - (c) The Concessionaire shall procure all machinery, plant and equipment and complete installation, testing and commissioning of all machinery, plant and equipment comprising the Project.
 - (d) The Concessionaire shall follow the guidelines for different Project components, as set out in Schedule B of this Agreement.
 - (e) The Concessionaire will make its own arrangement and raise finances, both in equity and debt, for funding the construction, operation, maintenance and management of the entire Project and shall perform and fulfill its obligations under the Financing Arrangements.
 - (f) The Concessionaire will commence construction within 30 days of Commencement Date and achieve agreed milestones within the time period specified for it.

- (g) The Concessionaire shall complete the construction within the time frame stipulated in this Agreement.
- (h) Achieve Substantial Completion and/or Project completion in accordance with the provisions of this Agreement including Schedules, Prudent Utility Industry Practices and with full safety practices in line with the provisions of the Ropeway Act.
- (i) The Concessionaire will commence commercial operations of the facilities only after inspection, testing, full commissioning and issuance of the necessary Completion Certificate by the Independent Engineer/ designated authority. The Substantial Completion shall be accorded after the Ropeway System is complete to enable trial runs.
- (j) The Concessionaire cannot and shall not sub-contract the whole of the Concession. He may enter into Engineering Procurement Construction Contract (EPC), Supply and Erection Contract by inducting the EPC contractors(s) and maintenance operators for different Project activities and service contracts. However, the Concessionaire shall continue to remain solely liable towards the Concessions Authority for all such obligations sub-contracted during the entire Concession Period.
- (k) The Concessionaire shall implement the Area Management Plan (AMP) required for the construction and operation phase of the Ropeway Project.
- (l) The Concessionaire shall implement the Environmental Management Plan (EMP) required for the construction and operation phase of the Ropeway Project.
- (m) The Concessionaire shall maintain and operate the Project Assets/ facilities in accordance with the Good Industry Practices/ Prudent Utility Industry Practices & technical safety practices, and performance standards.
- (n) The Concessionaire shall maintain the requisite insurance in respect of the Project and the facilities comprised therein, both during construction and operations phase including but not limited to Passenger Liability Insurance for accidents etc., in accordance with Prudent Utility Industry Practices.
- (o) The Concessionaire shall allow at all times, representatives of the Concessions Authority, members of the Ropeway Monitoring Committee (RMC), Ropeway Inspector, Independent Engineer and other persons authorized by the Concessions Authority, access as required to the Project Site for monitoring and supervision.
- (p) The Concessionaire shall make timely payment of Annual Concession Fee to the Concessions Authority as quoted in the Financial Bid of the Concessionaire which will be increased @ 5% every year over the previous year's Annual Concession Fee.

- (q) The Concessionaire shall make timely payment of its share of professional fees, costs and expenses of the Independent Engineer and the Independent Auditor which are to be shared equally by both the Parties i.e. Concessioneing Authority & Concessionaire.
 - (r) The Concessionaire shall bear the cost of all inspections of the Ropeway systems both during construction and operations.
- 5.1.4 In the event upon inspection and in consultation with the Independent Engineer or the RMC as the case may be, the Ropeway Inspector determines that the Aerial Ropeway or part thereof cannot be used without danger to the public or that it is no longer fit for the carriage of passengers, Concessioneing Authority may order closing of the Aerial Ropeway or part thereof to the public and the same may be reopened to public only after inspection and Concessioneing Authority's sanction to reopen after removal of defects.
- 5.1.5 The Concessionaire shall transfer the Project Assets to the Concessioneing Authority or its designated agency/ authority/ nominee after the expiry/ Termination of Concession Period in accordance with the provisions of this Agreement. At the time of transfer of Project/ Project Facility, the Concessioneing Authority in addition to other requirements as stated in this Agreement, shall ensure the fulfillment of the following requirements:
- i) All Project Assets including ropeway, parking structure, equipment etc shall have been renewed and cured of all defects and deficiencies as necessary so that the Project is compliant with the Specifications and Standards as per the Concession Agreement.
 - ii) The Concessionaire shall deliver all the records and reports pertaining to the Project and its engineering, construction, operation and maintenance.
 - iii) The Concessionaire shall execute such deeds of conveyance, documents and other writings as the Concessioneing Authority may reasonably require to convey, divest and assign all the rights, title and interest of the Concessionaire in the Project free from all encumbrances absolutely and free from any charge or Tax to Concessioneing Authority or its Nominee.
- 5.1.6 The Concessionaire shall be solely and primarily responsible towards the Concessioneing Authority for observance of all the provisions of this Concession Agreement on behalf of the Concessionaire, its employees and representatives and any person acting under or for and on behalf of the Concessionaire or the Sub Contractor. The Sub Contractor shall be fully responsible as if they were the acts or defaults of the Concessionaire, its agents or employees.

- 5.1.7 The Concessionaire shall be liable for and shall indemnify, protect, defend and hold harmless the Concessions Authority, Concessions Authority's officers, employees and agents from and against any/ all demands, claims, suits and any causes of action and all liability, costs, expenses, settlements and judgments arising out of the failure of the Concessionaire to discharge its obligations under this Article and to comply with the provisions of Applicable Laws and Applicable Permits.
- 5.1.8 The Concessionaire acknowledges and recognizes that time is of the essence of this Agreement and that performance of all its obligations shall be construed accordingly.

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 or contract, and no default under any Project Agreement or any other agreement or contract shall excuse the Concessionaire from its obligations or liability hereunder.
- 5.2.2 The Concessionaire shall submit to the Concessions Authority the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and the Concessions 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 Concessions 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 any failure or omission of the Concessions Authority to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Concessions Authority. No review and/ or observation of the Concessions 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 Concessions 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 Concessions Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Concessions 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 Concessions Authority. For the avoidance of doubt, the Concessions 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 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Concessing 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 Concessing 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 Concessing 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 Concessing Authority an acknowledgment and undertaking, in a form acceptable to the Concessing Authority, from the counter party(ies) of each of the Project Agreements, where under 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 Concessing Authority in the event of Termination or Suspension.
- 5.2.5 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that selection or replacement of any EPC contractor and execution of any EPC contract shall be subject to the prior approval of the Concessing Authority from the perspective of national security and public interest, the decision of the Concessing Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such selection or contract without prior approval of the Concessing Authority. The Concessing Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Concessing Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire or its Contractors from any liability or obligation under this Agreement.

5.3 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.

5.4 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.

5.5 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, Government of India or Government of Himachal Pradesh, or a substitute thereof, procure a barrier free environment for the physically or visually challenged and for elderly persons using the Ropeway Project.

5.6 Obligations relating to 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 the aesthetic quality of the Ropeway System

The Concessionaire shall maintain a high standard in the appearance and aesthetic quality of the Ropeway System and achieve integration of the Ropeway System with the character of the surrounding landscape through both appropriate design and sensitive management of all visible elements.

5.8 Obligations relating to noise control

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

5.9 Electricity required for the project

Electricity upto the site of ropeway shall be arranged by Concessionaire at its own cost. The necessary connection shall also be obtained by the Concessionaire from the concerned Electricity Department. The role of the Concessions Authority in arrangement of electricity shall be limited to that of a facilitator only and writing of letter to the concerned authority on behalf of the Concessionaire recommending early action.

5.10 Arrangement of Water Supply

Water supply connection upto the site of ropeway shall be arranged by Concessionaire at its own cost. The Concessionaire shall also make arrangement of water for construction purpose. The role of the Concessioneing Authority in arrangement of water supply shall be limited to that of a facilitator only and writing of letter to the concerned authority on behalf of the Concessionaire.

5.11 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 Concessioneing Authority, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

5.12 Branding of Ropeway Project

The Ropeway Project or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Concessionaire or its shareholders. The Concessionaire undertakes that it shall not, in any manner, use the name or entity of the Ropeway Project to advertise or display its own identity, brand equity or business interests, including those of its shareholders, save and except as may be necessary in the normal course of business. For the avoidance of doubt, it is agreed that the Concessionaire may display its own name at every Terminal, at a spot where other public notices are displayed for the Users. It is further agreed that the Ropeway Project shall be known, promoted, displayed and advertised by the name of **“Chandigarh Manali National Highway (Near Pandoh Dam Reservoir) and Mata Baglamukhi Temple (Bakhli)”**.

5.13 Obligations relating to Change in Ownership

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

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 15% (fifteen 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 Concessioneing Authority from national security and public interest perspective, the decision of the Concessioneing 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 Concessioneing Authority. For the avoidance of doubt, it is expressly agreed that approval of the Concessioneing Authority hereunder shall be limited to national security and public interest perspective, and the Concessioneing Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Concessioneing 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.

5.14 Medical Aid Posts

For providing emergency medical aid to Users, the Concessionaire shall set up and operate a medical aid post (the “Medical Aid Post”) equipped to render first aid and to assist in accessing emergency medical aid at UTP, LTP.

ARTICLE 6: OBLIGATIONS OF THE CONCESSIONING AUTHORITY

6.1 Obligations of the Concessing Authority

- 6.1.1 The Concessing Authority shall, at its own cost and expenses undertake, comply with and perform all its obligations set out in this Agreement.
- 6.1.2 The Concessing Authority shall return the Bid Security submitted by the Concessionaire after the submission of the Construction Period Performance Security.
- 6.1.3 The Concessing 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:
- facilitate the requisite government orders/ gazette notifications necessary for the Project implementation based on submission of the list of permissions/ clearances for the Project by the Concessionaire to the Concessing Authority.
 - assist the Concessionaire in procuring such of the Applicable Permits as the State Government can grant, in accordance with and subject to the Concessionaire complying with the Applicable Laws.
 - upon written requests from the Concessionaire, facilitate without any binding obligation (and at the cost of Concessionaire) the availability of utilities such as water, electricity, sewerage, etc.. It is however clarified that making arrangements for such utilities shall be the sole responsibility of the Concessionaire.
 - make best efforts to procure that no barriers are erected or placed on the Project location or at any of the Terminals of the Ropeway by any government agency or persons claiming through or under it except for reasons of Emergency, national security, law and order.
 - ensure the availability of Project Site, free of encumbrances to the Concessionaire.
 - assist the Concessionaire in procuring police assistance for regulation of traffic, removal of trespassers and security on or at the Ropeway Project;
 - 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;

- support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
- upon written request from the Concessionaire and subject to the provisions of Article 5.3, 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.

6.2 Obligations relating to supply of electricity

The Concessions Authority shall procure that the Ropeway System gets priority in the supply of electricity from the grid and the tariff thereof shall be determined on commercial principles such that the Ropeway System is not required to subsidise any or all other segments of electricity consumers. The Concessions Authority shall further procure that in the event the Concessionaire receives a supply of electricity from any source other than the area distribution company, it shall be deemed to be a supply from a captive power station under and in accordance with the provisions of Section 9 and 42 of the Electricity Act, 2003.

ARTICLE 7: CONSIDERATION TO THE CONCESSIONING AUTHORITY

7.1 Consideration to the Concessing Authority

In consideration of the rights, privileges and interests granted by the Concessing Authority to the Concessionaire in terms of this Agreement, the Concessionaire shall pay the following considerations to the Concessing Authority in addition to the due performance of all other obligations, responsibilities and liabilities assumed by the Concessionaire under this Agreement:

A. Project Development Fee

The Concessionaire shall pay 50% of Project Development Fee of Rs. 40 Lacs (Rupees Forty Lacs only) i.e. Rs. 20 Lacs (Rupees Twenty Lacs only), prior to or at the time of signing of this Agreement. The Concessionaire has paid this amount vide Pay Order/Cheque/Draft No..... dated..... drawn on.....

The Concessionaire shall pay balance 50% of Project Development Fee **of Rs. 40 Lacs (Rupees Forty Lacs) i.e. Rs. 20 Lacs (Rupees Twenty Lacs only) at the time of completion of Conditions Precedent.**

B. Annual Concession Fee

- (i) **The Concessionaire shall pay to the Concessing Authority every year, the Annual Concession Fee of an amount of Rs._____ (Rupees in words) [figure quoted by the Selected Bidder in its Financial Bid and accepted by the Authority & RTDC, shall be filled in here]** which shall be increased @ 5% every year over the previous year's Annual Concession Fee.
- (ii) The payment of Annual Concession Fee will start after the 548th (five hundred and forty eighth day) from the Commencement Date notwithstanding the fact that whether or not the Concessionaire has been able to complete the construction of the Project. The Concessionaire shall make this payment on a yearly basis by way of bi-annual installments of equal amounts.

- (iii) It is pertinent to mention here that the Annual Concession Fee to be quoted by the Bidder in their Financial Bids shall for the design, built, finance, operation and maintenance of the Ropeway System and the initially permissible allowed Commercial area (if any). In the event, the Selected Bidder/ Concessionaire at any time during the Concession Period, opts to increase the area of Commercial area beyond the initially permissible commercial area, with due permission of Concessioneing Authority ,then the Annual Concession Fee due and payable from the particular Financial year in which the construction of the increased commercial area is completed, shall be increased on pro-rata basis. The said increased amount i.e. the current year Annual Concession Fee plus the amount to be paid for increase in the commercial area shall be considered as the Annual Concession For the balance Concession period, unless the Concessionaire again seeks permission for any increase in the Commercial area and in such an event the aforesaid provision regarding computing of enhanced Annual Concession Fee shall apply mutatis mutandis. However, the Base rate per square feet for calculation of addition commercial area has been taken up to 913th day from the Commencement Date is Rs 75/- per square feet per month, thereafter the rate per square feet of additional commercial area shall be increased @ 5% every year over the previous year's rate per square feet.

Note: It is to be noted that if the construction completion date of the increased commercial area comes out to be in the middle of any of the months of the financial year and the Annual Concession Fees for the financial year has already been paid to the Concessioneing authority, then the Concessionaire shall be required to submit the balance amount to the Concessioneing Authority within a period of 7 days from the date of achievement of additional construction completion date

- (iv) The first such installment of the bi-annual payment of the Annual Concession Fee in respect of first block of six months to be reckoned from the Scheduled Completion Date, shall be paid by the Concessionaire to the Authority within 7 (seven) days of the 549th (five hundred and forty ninth) day from the Commencement Date. Each of the subsequent bi-annual installments of the Annual Concession Fee shall be paid by the Concessionaire within a period of 7 (seven) days from the date of commencement of each relevant block of six months in respect of which the Annual Concession Fee has become due and payable. In the event, the Concessionaire completes the construction of the Project prior to the Scheduled Completion Date, then in respect of the period intervening between such date of early completion of construction works and the Scheduled Completion Date as specified herein, the Concessionaire shall be liable to pay only 50% of the proportionate Annual Concession Fee. However, the annual increase in the amount of the Annual Concession Fee shall be applicable from the 30th month only (i.e. after 12 months from the Scheduled Completion Date).

- 7.1.1 At the time of signing of the Agreement, the Concessionaire shall have paid to the Concessioneing Authority, the Right of Way license fees as assessed by the Concessioneing Authority.
- 7.1.2 The recurring payments of Annual Concession Fee under this Article 7.1 B shall become payable from the Scheduled Completion Date notwithstanding the fact that the Concessionaire has not been able to put to use whole or any part of the Project Facility for any reason whatsoever except for Force Majeure reasons as specified in Article 22 or for reasons solely attributable to the Concessioneing Authority without any contributory factor on the part of the Concessionaire.
- 7.1.3 The Concessionaire shall submit the audited financial statement of the Project to the Concessioneing Authority within 30 days after the end of each respective financial year. In the event when the Concessioneing Authority requires any clarification/ supporting for the financial statement submitted by the Concessionaire, the Concessionaire shall provide the same promptly and not in any case later than 3 days from the date of request.
- 7.1.4 Any delay in payments of the amounts becoming due shall constitute a default on the part of the Concessionaire and the Concessioneing Authority shall be entitled to encash the Performance Security and claim Damages from the Concessionaire and be entitled to even terminate the Agreement as mentioned in Article 7.2 dealing with Performance Security. This shall be without prejudice to other rights of Concessioneing Authority against the Concessionaire including the rights specified in Article 7.3 herein dealing with Payment Security. However, the Concessioneing Authority, at its sole discretion, may allow the Concessionaire to make a delayed payment with interest charged at the rate of 1% (one percent) per month for the duration of delay in the payment of the amounts due to the Concessioneing Authority. However, in such a case of delayed payment with interest, the Bank Guarantee shall not be encashed. In the event of failure of the Concessionaire to make the delayed payment permitted by the Concessioneing Authority along with interest, the Concessioneing Authority may encash the Performance Security and claim the damages in accordance with the procedure mentioned in Article 7.2.

7.2 Performance Security

- 7.2.1 **Construction Period Performance Security:** The Concessionaire shall for the due and faithful performance of its obligations, provide to the Concessions Authority no later than 180 days from the date of this Agreement, Construction Period Performance Security in the form of an unconditional and irrevocable Bank Guarantee from a scheduled commercial bank acceptable to the Concessions Authority and payable at Shimla, for **Rs. 1.00 Crores (Rupees One Crore only)** in the form set forth in Schedule - C as a Conditions Precedent to this Agreement. 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 Concessions Authority shall release the Bid Security to the Concessionaire.
- 7.2.2 Notwithstanding anything to the contrary contained in this Agreement, in the event, Construction Period Performance Security is not provided by the Concessionaire within a period of 180 days from the date of this Agreement, the Concessions 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.
- 7.2.3 **Operation Period Performance Security:** The Concessionaire shall for the due and faithful performance of its obligations, provide to the Concessions Authority on achievement of successful project construction completion, an Operation Period Performance Security in the form of an unconditional and irrevocable Bank Guarantee from a scheduled commercial bank acceptable to the Concessions Authority, and payable at Shimla, **for the amount equivalent to Annual Concession Fee which shall become payable in the respective year.** The Concessions Authority shall release the Construction Period Performance Security after receiving the Operation Period Performance Security and till such time the Concessionaire provides the Operation Period Performance Security, the validity of the Construction Period Performance Security shall be kept alive by the Concessionaire.
- 7.2.4 The Operation Period Performance Security shall be returned by the Concessions Authority after the expiry of the Concession Period subject to fulfillment of all requirements by the Concessionaire, to the satisfaction of the Concessions Authority and subject to adjustment for all Damages suffered by the Concessions Authority and further subject to the condition of the Concessionaire having deposited the sum/s specified in or having provided a Performance Security in terms of Article 24.8.

- 7.2.5 Upon occurrence of a Concessionaire's Default or if the Concessionaire defaults in any recurring payment as per the provisions of this Agreement or fails to meet any Condition Precedent, the Concessioneing 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 7 (seven) 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 Concessioneing Authority shall be entitled to terminate this Agreement in accordance with Article 24. 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 30 (thirty) 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 Concessioneing Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 24.
- 7.2.6 In case after submission of the fresh Performance Security, the Concessionaire has defaulted a second time in recurring payment, Concessioneing Authority shall be entitled to terminate this Agreement in accordance with the provisions of Article 24, without being liable in any manner whatsoever to the Concessionaire and to appropriate the Performance Security as 'Damages'.
- 7.2.7 The Concessionaire shall keep and maintain the Performance Security Bank Guarantee/s valid and in full force and effect at all times during the term of this Agreement (through periodic renewals, if any required, at least one month prior to the expiry of the subsisting Performance Security Bank Guarantee/s). In the event the Concessionaire fails to provide the renewed/ extended Performance Security at least one month prior to the expiry of the subsisting bank guarantee/s, so as to maintain the Performance Security valid throughout the term of the Agreement, the Authority shall have the right to forfeit and appropriate the subsisting Performance Security Bank Guarantee. Failure of the Concessionaire to maintain the Performance Security in full force and effect throughout the term, in accordance with the provisions hereof, shall constitute a Concessionaire Event of Default in terms hereof.

7.3 Payment Security

- 7.3.1 Concessioneing Authority shall at all times have the first and paramount charge, to the extent payable by the Concessionaire to the Concessioneing Authority as per the Agreement, over all receivables of any nature whatsoever that the Concessionaire is entitled to claim or receive form the operation of ropeway system and other connected infrastructures of the Project. The Concessionaire shall not create any encumbrance, charge, lien or otherwise execute any instrument which in any manner affects or prejudices the first charge over the receivables in favour of the Concessioneing Authority. The Concessionaire shall not create any charge over the receivables of this Agreement and also the actionable claims in regard to the Project in favour of any person including in favour of the banks or lending institutions over-riding or otherwise adversely affecting the interest of the Concessioneing Authority, to the extent payable by the Concessionaire to the Concessioneing Authority as per this Agreement. Subject to the above, the Concessioneing Authority may allow the Concessionaire to create second charge over the receivables in favour of Lender(s)/ financial institutions.

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 Tender Notice/ RFP Notice, Scope of the Project, Specification and Standards, Site, Passenger volume for the ropeway system and all other information (Technical and commercial) furnished in the RFP document and subsequently amended whether verbally or in documentary form by the Concessioneing Authority, Government of Himachal Pradesh or any of their employees or advisors to Concessionaire on the terms and conditions set out in this Agreement.
- 8.1.2** The information furnished by the Concessioneing Authority was to assist the Concessionaire to formulate their bid. The information may not be completed in all respect. The Concessionaire is expected to conduct its own investigation and analysis and has checked the accuracy; reliability and completeness of the information provided by the Concessioneing Authority and obtained independent advice from appropriate sources. Concessioneing Authority, their employees, and advisors make no representation or warranty and shall incur no liability under any law, statutes, rules and regulation as to the accuracy, reliability or completeness of the information provided by the Concessioneing Authority.

ARTICLE 9: RIGHT OF WAY

9.1 Land requirement and Right of Way

- (i) The Concessionaire has assessed the land requirement for the implementation of the Project. The Concessions Authority and the Concessionaire have mutually agreed upon the land requirement (the "Site") for this Project before the signing of this Agreement and the details of the same are at Schedule E of the Agreement.
- (ii) The Concessionaire shall obtain a license for the Right of Way for the ropeway and all other Project components from the Concessions Authority. Prior to the execution of this Agreement, the Concessions Authority would have acquired the land for the Right of Way for the ropeway and all other Project components at cost to be incurred by the Concessions Authority. However, during the detailed alignment fixing, if any private land needs to be acquired, the Concessions Authority will facilitate the Concessionaire for the acquisition of such private land and the cost for the same shall be borne by the Concessionaire.
- (iii) 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 Concessions Authority to terminate the Licence, upon the Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Site by the Concessionaire or its sub licensees, the license in respect of the Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.
- (iv) The Concessionaire hereby irrevocably appoints the Concessions Authority (or its nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the License 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 Concessions Authority, and the Concessionaire consents to it being registered for this purpose.
- (v) It is expressly agreed that trees on the Site are property of the Concessions Authority except that the Concessionaire shall be entitled to exercise usufructory rights thereon during the Concession Period.

9.2 Site to be free from Encumbrances

The Site shall be made available by the Concessing Authority to the Concessionaire pursuant hereto free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to the Concessing 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.

9.3 Use of the Project Site and Peaceful Possession

- 9.3.1 The Concessionaire, subject to complying with the terms and conditions of this Agreement, shall have the use of the Site during the Concession Period in accordance with the terms of this Agreement and limited for the purposes mentioned in Article 2 above. The Concessionaire shall not use the Site or the Project Facility for any other purpose.
- 9.3.2 The Concessionaire shall confine its operations to the Project Site. The Concessionaire shall take all necessary precautions to keep its persons, contractors/ sub-contractors and equipment within such areas, and to keep and prohibit them from encroaching, damaging or degrading or affecting adversely in the neighboring areas.
- 9.3.3 The Concessionaire is required to introduce and observe at all times, appropriate measures for safety, security and orderliness on the premises granted to the Concessionaire.
- 9.3.4 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 Concessing Authority, Ropeway Monitoring Committee and the Independent Engineer and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

9.4 Geological and archaeological finds

It is expressly agreed that mining, geological or archaeological rights do not form part of the licence granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Site shall vest in and belong to the Concessions 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 Concessions 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 Concessions Authority. It is also agreed that the Concessions Authority shall procure the instructions hereunder, issued by the concerned Government Instrumentality, within a reasonable period.

9.5 Shifting of Utilities

The Concessionaire shall, subject to Applicable Laws and with assistance of the Concessions 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 Ropeway Project. The cost of such shifting shall be borne by the Concessionaire, 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.

9.6 New Utilities

The Concessionaire shall allow, subject to such conditions as the Concessions 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 Article shall not in any manner relieve the Concessionaire of its obligation to maintain the Ropeway Project in accordance with this Agreement and any damage caused by such use shall be restored forthwith.

9.7 Felling of Trees

The Concessioneing Authority shall assist the Concessionaire in obtaining the Applicable Permits for felling of trees to be identified by the Concessioneing Authority for this purpose if and only if such trees cause a material adverse effect on the construction, operation or maintenance of the Ropeway Project. The cost of such felling shall be borne by the Concessionaire, 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 Concessioneing Authority and shall be disposed in such manner and subject to such conditions as the Concessioneing Authority may in its sole discretion deem appropriate.

ARTICLE 10: PROJECT DEVELOPMENT AND OPERATIONS

10.1 Detailed Scope of Work for Development and Construction

The Concessionaire, shall, at his sole expense and risk, carry out the design, engineering, financing, procurement, management, operations and maintenance of the Project Facility at the Site in accordance with the provisions of this Agreement. The Project is envisaged as being developed into the Ropeway at the Specified Location as per the recital D of this Agreement.

10.2 Drawings

In respect of the Concessionaire's obligations relating to the Drawings of the Ropeway, the following shall apply:

- (a) The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, three copies each of all Drawings to the Independent Engineer for review;
- (b) By submitting the Drawings for review to the Independent Engineer, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering, including field construction criteria related thereto, are in conformity with the Scope of the Project and the Specifications and Standards;
- (c) Within 15 (fifteen) days of the receipt of the Drawings, the Independent Engineer shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. The Concessionaire shall not be obliged to await the observations of the Independent Engineer on the Drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin or continue Construction Works at its own discretion and risk;
- (d) If the aforesaid observations of the Independent Engineer indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the Concessionaire and resubmitted to the Independent Engineer for review. The Independent Engineer shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings;
- (e) No review and/or observation of the Independent Engineer and/or its failure to review and/or convey its observations on any Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Engineer or the Concessioneing Authority be liable for the same in any manner;

- (f) Without prejudice to the foregoing provisions of this Article 10.2, the Concessionaire shall also submit Drawings to the Concessions Authority for review and comments. The Concessions 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 Article shall apply *mutatis mutandis* to the review and comments hereunder; and
- (g) Within 90 (ninety) days of the Project Completion Date, the Concessionaire shall furnish to the Concessions Authority and the Independent Engineer or the RMC, as the case may be, 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 Concessions Authority, reflecting the Ropeway Project as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Ropeway Project and setback lines, if any, of the buildings and structures forming part of Project Facilities.

10.3 Development, construction, installation & operation of ropeway (and other commercial facilities, if any).

The Concessionaire shall be under an obligation to implement and execute the following:

- (i) **Development of Ropeway:** Development of Ropeway as per CEN Standards and to the satisfaction of Concessions Authority, at the Specified Location which involves installation of a safe, comfortable and direct ropeway as per the Specifications and the Standards prescribed herein and in the Schedules. Carrying capacity of the Ropeway system at the time of commencement of Operations shall not be less than minimum **400 PPHPD**. The ropeway shall be used for passenger movement from **Chandigarh Manali National Highway (near Pandoh Dam reservoir) (LTP) to Baglamukhi Mata Temple (UTP)** round the year.
- (ii) **Developments at Lower Terminal Point (LTP):** Ropeway Terminal, public conveniences and any other associated facilities considered appropriate by the Concessionaire in an area of 2500 Sqm (approx.). Concessionaire may choose a suitable Government land for LTP, though the selected land should be free from any other government commitment.

Also, if an alternate privately owned site is found suitable and available, same could be considered but the cost shall be borne by the concessionaire.

- (iii) **Developments at Upper Terminal Point (UTP):** Ropeway Terminal, public conveniences and any other associated facilities considered appropriate by the Concessionaire in an area of 1200 Sqm (approx.).

In case some area remains unutilized/ available out of the space made available, concessionaire may use the same for tourism/ hospitality activities but it should be as per the approved FAR and in compliance with Town and Country Planning (TCP)/ Himachal Government norms.

10.4 Construction Requirements for the Ropeway

- (i) The Concessionaire would be at liberty to design the Ropeway as submitted in its Detailed Project Report (DPR) and the information exchanged thereafter, subject to approval by the Concessioneing Authority/ other authorised agencies and as per Applicable Laws, regulations, bye-laws, Applicable Permits, Specifications & Standards, Safety Requirements, provisions of this Agreement and the RFP Document etc.
- (ii) The Concessionaire should make aware and request the Concessioneing Authority of its requirement of facilitation for approvals, which the Concessionaire would need from the Concessioneing Authority in respect of the Project, in advance. The Concessioneing Authority without obligations shall facilitate the Concessionaire at Concessionaire's cost in getting the approvals as requested for by the Concessionaire on the best efforts basis.
- (iii) The Concessionaire should strictly adhere to the performance standards as specified in this Agreement, both during construction and operation phases.

10.5 Codes and Standards

The Concessionaire shall carry out the design and construction of the Project Facility in strict compliance with all applicable Laws, codes and standards including but not limited to the CEN and BIS codes, Ropeways Acts, Indian Electricity Act, National Building Code, Applicable Municipal Building Bylaws of Himachal Pradesh, etc., Good Industry Practice and to the satisfaction of Concessioneing Authority. In case of non availability of Indian Standards, suitable international standards will be followed after taking due approval of the Concessioneing Authority.

10.6 Before commencement of Construction

Prior to commencement of construction of any of the Project Facilities, the Concessionaire:

- i) Shall obtain all Applicable Permits and approvals from the Concessioneing Authority & concerned local authorities, necessary to commence construction of such Project Facilities;
- ii) Shall carry out the design and construction of the Project Facility in strict compliance with all Applicable Laws in particular, applicable Building Codes and Standards and Good Industry Practices.
- iii) Appoint its representative duly authorised to deal with the Concessioneing Authority in respect of all matters under or arising out of or relating to this Agreement.

- iv) Shall be solely responsible and liable for development and implementation of the Project Facility. The Concessioneing Authority shall not be responsible in any manner whatsoever to either the Concessionaire or its contractors for any default or failure by the Concessionaire to comply with statutory requirements of design and construction as per the Applicable Laws in particular Building Codes and Good Industry Practice, observance of safety and security measures at Site, etc. Concessioneing Authority shall not bear any costs associated with it.
- v) Shall be solely responsible for obtaining all necessary clearances and sanctions from competent authorities for approval of the various components, such as fire fighting system, required to be installed at the Project Facility. The Concessioneing Authority shall only provide assistance wherever possible, on best effort basis (without any legal and binding obligation) to facilitate the process.

10.7 During Construction

- (a) The Concessionaire shall:
 - (i) Strictly follow the guidelines on quality as set out in applicable codes.
 - (ii) Ensure that the construction of the Project Facilities is undertaken with minimal inconvenience to people in the neighbourhood areas such as shopkeepers, affected directly or indirectly by the Project during construction.
 - (iii) Take the necessary precautions to minimize accidents and respond to the Emergency as quickly as possible.
 - (iv) Take precautions to avoid inconvenience to, damage to, destructions of or disturbance to any third party rights and properties.
 - (v) Provide signals, protective structures, fences and alarm systems in dangerous areas, to prevent injury of the workers and other people employed at the Site.
 - (vi) Be in compliance with the Applicable Laws and Applicable Permits obtained for the Project including the clearances obtained from the Government Agency.
 - (vii) Deploy adequate number of qualified and competent personnel having relevant experience and skills for implementation of the Project and interaction with the Concessioneing Authority.
- (b) The Concessionaire shall be responsible for

- (i) The accurate setting-out of the Project Site, Project's structures such as location of towers etc.
 - (ii) The correctness of the positions, levels, dimensions and alignment of all part of the works.
 - (iii) The Concessionaire shall be responsible at its cost, for procurement, transport, receiving, unloading and safe keeping of all plant and machinery, equipment, materials and other things required for the construction and operation & maintenance of the facilities.
 - (iv) During the Concession Period, the Concessionaire shall be responsible for protecting 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.
 - (v) Unless otherwise stated in this Concessioneing Agreement:
 - The Concessionaire shall be responsible for keeping unauthorized persons off the Project Site, during the Construction Period.
 - Authorized persons during the Construction Period shall be limited to the employees of the Concessionaire, employees of Sub Contractors of the Concessionaire, and employees and persons authorized by the Concessioneing Authority.
- c. The Concessionaire shall deploy the safety equipments and safety plan as envisaged in this Agreement and the Ropeway Act.
 - d. The Concessionaire shall arrange for all the material requirements for the Project and disposal of all material wastes. The Applicable Permits in this regard would have to be obtained by the Concessionaire. All excess and unsuitable excavated materials shall be piled at appropriate dumping places or otherwise disposed of by the Concessionaire in consultation with the Concessioneing Authority and/ or the Independent Engineer.

- e. During the Construction period, the Concessionaire no later than 7 (seven) days after the close of each month, furnish to the Concessioneing 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. The report shall review the progress made, identify slippages, if any, and Project the future activities to be undertaken (including rectifications), operations and maintenance activities.

10.8 Construction Period

On or after the Commencement Date, the Concessionaire shall undertake construction of the Project as specified in Schedule-A and Schedule-B. The Concessionaire agrees and undertakes that the Project shall have achieved either full Completion or at least Substantial Completion on or before the 548th (five hundred and forty eighth) day from the Commencement Date (the "**Scheduled Completion Date**"). However, in the event the Scheduled Completion Date is not achieved by the five hundred and forty eighth day from the Commencement Date for any reason other than Force Majeure or reasons attributable to the Concessioneing Authority, the Concessioneing Authority may upon written request from the Concessionaire and subject to the condition that the Concessionaire would have achieved at least Substantial Completion of the Project by the aforesaid date, extend the time for achieving construction completion but in no case it shall exceed 24 months from the Commencement Date and by the said date the Concessionaire shall have achieved full Completion of the Project in all respects. The Concession Period of 40 years is inclusive of the aforesaid Construction Period.

10.9 Project Monitoring

- (i) The Concessioneing Authority shall appoint an Independent Engineer (IE) to monitor the Project Performance during Construction Phase of the Project. In addition, the Concessioneing Authority may appoint an experienced and qualified firm or organization as Safety Consultant for carrying out safety audit of the Ropeway Project in accordance with the Safety Requirements.
- (ii) Independent Engineer and/ or the RMC, shall also assess Performance of those critical parts of the ropeway system, failure of which is likely to cause serious injury to the passengers.

10.9.1 Monitoring during Construction

- (i) **Inspection** : During the Construction Period, the Independent Engineer shall inspect the Project at least once a month and make a report of such inspection (the “**Inspection Report**”) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Scope of the Project and Specifications and Standards. It shall send a copy of the Inspection Report to the Concessioneing 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.
- (ii) **Tests**: 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 as specified in Schedule G, at such time and frequency and in such manner as may be specified by the Independent Engineer from time to time, in accordance with Good Industry Practice for quality assurance. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the Independent Engineer and furnish the results thereof to the Independent Engineer. One half of the costs incurred on such tests, and to the extent certified by the Independent Engineer as reasonable, shall be reimbursed by the Concessioneing 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. In the event that results of any tests conducted under this Article 10.9.1 (ii) 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.
- (iii) **Delays during construction** : 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 Substantial Completion is not likely to be achieved by the Scheduled Completion Date, it shall notify the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Independent Engineer in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Project Completion Date.

10.10 Substantial Completion of the Project

It shall be noted by the Concessionaire that substantial completion to enable trial runs of ropeway system has been kept as 548th (five hundred and forty eighth) day from the Commencement Date. The entire Project shall be completed in not more than 24 months from the Commencement Date, failing which the event would be classified as Concessionaire Event of Default as per Article 21.1 of this Agreement. The Project shall be considered substantially completed subject to the Completion of following Project activities:

- (a) Completion of erection and installation of all the subcomponents of Ropeway system subject to the Installation tests.
- (b) Completion of Area Management Plan (including solid and liquid waste management components) for the Construction Period related to the Project.
- (c) Completion of Environment Management Plan for the Construction period related to Ropeway.

The Project shall be accorded Substantial Completion by the Independent Engineer upon completion of the aforesaid activities and trial runs.

10.11 Performance Standards

The following shall be the performance standards, which should be strictly adhered to and judged, by the Independent Engineer and Safety Consultant during Construction Period and by the RMC and the Safety Consultant during the Operation Period of the Project:

- (a) Carrying capacity of the Ropeway system at the time of commencement of Operations shall not be less than minimum **400 PPHPD**.
- (b) Ropeway should be in daily operation throughout the year, unless otherwise instructed by Ropeway Inspector (during heavy snowfall or similar unfavorable conditions).
- (c) The speed of ropeway system at boarding and de boarding areas should enable safe passenger movement including elderly persons and children.
- (d) Performance of standby equipment: The rating of standard DG set should be equal to the main electrical power system to run at full load. **Care should be taken for altitude affect on the equipment.**
- (e) Performance of Rescue systems and carrier evacuation system: The efficiency and number of rescue and evacuation system shall be measured in terms of following:
 - (i) Response time to mishap detected by automatic detection system should be minimum.
 - (ii) Evacuation/ mitigation time period up to terminal stations should be kept at minimum as per code.

- (f) Provision of all necessary spares required for normal operation of system shall be proved by Concessionaire. Provision of spare cabins with grips and hangers shall also be ensured by the Concessionaire to meet any eventuality in order to maintain the required capacity of ropeway.
- (g) All safety provisions related to the safe operation of the ropeway system shall be strictly adhered to as stipulated in the relevant specifications, safety requirements & guidelines and as per the Ropeway Act of Himachal Pradesh.
- (h) Performance of Rescue systems and carrier evacuation system. The efficiency of rescue and evacuation system shall be measured in terms of following:-
 - Response time to mishap detected by automatic detection system should be minimum;
 - Evacuation/ mitigation time period upto terminal stations should be kept at minimum.
 - For rescuing arrangements, Diesel engine of appropriate capacity to operate the drive at slow speed shall be provided.

10.12 Inspection, Testing and Commissioning for Ropeway System

The Concessionaire and the Concessions Authority agrees to the following regarding the testing of Ropeway system:

- (a) Before the ropeway is commissioned, it shall be subjected to installation tests to check that it meets the requirements of the approved plans and specifications. Accordingly, at least 30 (thirty) days prior to the likely completion of the Ropeway Project, the Concessionaire shall notify the Independent Engineer of its intent to subject the 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 Concessions Authority who may designate its representative to witness the Tests.
- (b) Operation tests shall be made under full load and partial loads which provide for most unfavorable conditions.
- (c) The installation, routine and periodic tests shall be carried out in line with the CEN standards and specifications. In case of absence of CEN standards, suitable/ applicable international Standards for Ropeway and other relevant standards for other Project components shall be followed.
- (d) The Concessionaire at its own expenses facilitates and assists the Independent Engineer in conducting the inspection and tests of the installed Ropeway System.

- (e) The Independent Engineer shall observe, monitor and review the results of the Tests to determine compliance of the Project with Specifications and Standards and if it is reasonably anticipated or determined by the Independent Engineer during the course of any Test that the performance of the Project or any part thereof does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies.
- (f) Upon completion of each Test, the Independent Engineer shall provide to the Concessionaire and the Concessioneing Authority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent Engineer may require the Concessionaire to carry out or cause to be carried out additional tests, in accordance with Good Industry Practice, for determining the compliance of the Project with Specifications and Standards.
- (g) The Concessionaire shall be allowed to operate/ run ropeway system only after obtaining Completion Certificate from Independent Engineer/ designated authority.

10.13 After Completion of Construction

- (i) Upon Completion of construction but prior to issue of the Completion Certificate, the Project Site shall be cleared of all construction equipment, surplus materials, debris and temporary installations and shall be left in tidy and an aesthetically pleasing appearance to the satisfaction of the Independent Engineer and the Concessioneing Authority.
- (ii) Prior to making the request for the issue of Completion Certificate , the Concessionaire also shall submit to the Concessioneing Authority, RMC and the Independent Engineer, the Operation and Maintenance Manual for the Project (O&M Manual) setting out in details the standards, schedules, procedures, type, periodicity and other details of the operation and maintenance activities to be carried out for the Project during the Operations Period so as to meet the O&M Requirements as well as details of the management information system to be incorporated, reports to be submitted and procedure for reviews. The ropeway maintenance shall be provided in line with the CEN codes and specifications.

10.14 Completion Certificate

- (i) Upon completion of Construction Works and the Independent Engineer determining after proper inspection, testing of all the parts of the ropeway system and integrated testing and after insuring that, performance and safety standards have been met as per this Agreement and the Site has been cleaned and made free of any debris etc as stipulated in this Agreement, shall forthwith issue to the Concessionaire a “Completion Certificate”.
- (ii) The Completion Certificate shall not be withheld for minor shortcomings provided that these shortcomings do not affect the aspects of safety, comfort, convenience and security of the ropeway system and the passengers, provided that the Concessionaire has agreed to rectify such minor shortcomings within the prescribed time frame. The decision of the Independent Engineer in this regard shall be final and binding. The date of issuance of the Completion Certificate by the Independent Engineer shall be referred to as the Project Completion Date.

10.15 Commercial Operation Date (COD)

The Ropeway Project or part thereof shall be deemed to be complete when the Completion Certificate, as the case may be, is issued under the provisions of Article 10.14, and accordingly the commercial operation date of the Project shall be the date on which such Completion Certificate is issued (the “**COD**”). The Ropeway Project shall enter into commercial service on COD whereupon the Concessionaire shall be entitled to demand and collect tariff/ fare in accordance with the provisions of this Agreement.

ARTICLE 11: INTENTIONALLY LEFT BLANK

ARTICLE 12: OPERATIONS AND MAINTENANCE

12.1 Concessionaire's Obligations

- 12.1.1 The Concessionaire shall be solely responsible and liable, at this own cost, for all maintenance, upkeep and repairs of the Project Facilities and all its components, including ropeway system, access ways, buildings, green areas, utilities and services and allied works as per best industry practices and Applicable Laws and Applicable Permits. The Concessionaire shall also carry out rectification of defects in the design or construction of any component of the works at its own cost.
- 12.1.2 Upon Completion of construction but prior to issue of the Completion Certificate, the Project Site shall be cleared of all construction equipment, surplus materials, debris and temporary installations and shall be left in tidy and an aesthetically pleasing appearance to the satisfaction of the Concessions Authority.
- 12.1.3 Prior to making the request for the issue of Completion Certificate, the Concessionaire shall submit to the Concessions Authority, RMC and Independent Engineer, the Operation and Maintenance Manual for the Project (O&M Manual) setting out in details the standards, schedules, procedures, type, periodicity and other details of the operation and maintenance activities to be carried out for the Project during the Operations Period so as to meet the O&M Requirements as well as details of the management information system to be incorporated, reports to be submitted and procedure for reviews. The ropeway maintenance shall be provided in line with the CEN codes and specifications.
- 12.1.4 Without prejudice to the provision of Article 12.1.3, 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 its overall condition conforms to Good Industry Practice.

12.2 Maintenance Programme

- 12.2.1 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 Concessions Authority and the RMC, its proposed annual programme of preventive, urgent and other scheduled maintenance (the "**Maintenance Programme**") to comply with the Maintenance Requirements, Maintenance Manual and Safety Requirements. Such Maintenance Programme shall include:
- (i) Approach and methodology adopted by the Concessionaire in the operations and maintenance period.

- (ii) Detailed list of activities for each project component to be taken up during Operation Period including details of the staff.
- (iii) O&M details separately for ropeway system and all other project facilities mentioned in this Agreement including the Schedules.
- (iv) Separate details for technical (maintenance, operation, supervision etc.) and non technical (ticketing, accounting, stores, security etc.) staff.
- (v) Details related to inspection tests, routine tests and periodic tests.

12.2.2 Within 15 (fifteen) days of receipt of the Maintenance Programme, the RMC 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.

12.2.3 The Concessionaire may modify the Maintenance Programme as may be reasonable in the circumstances, and the procedure specified in Articles 12.2.1 and 12.2.2 shall apply *mutatis mutandis* to such modifications.

12.3 The Ropeway and its components

The Concessionaire at its own cost and expenses shall maintain and upkeep the all components of the ropeway system and ancillary services as per the specifications in Schedule B of this Agreement including but not limited to the following :

- Wire ropes
- Terminal structures
- Safeties
- Rescue arrangements
- Fire Precautions
- Waiting rooms/ places at LTP.
- Well maintained Public Toilets
- Communication facilities

If at any point of time during the Concession Period, the Concessioneing Authority and/ or the RMC, discovers or feels that the above mentioned components are not as per standards as specified herein, the event shall classify as Concessionaire Event of Default and may lead to Termination of the Agreement, if the Concessionaire doesn't rectify the mistake within 120 days of servicing of the notice in this regard to it.

12.4 Other Facilities

The Concessionaire shall be under an obligation for the **development, construction, installation & operation of ropeway** as per the requirements and standards mentioned in this Agreement including Schedules.

12.5 Area Management Plan

The Concessionaire shall also be responsible for general upkeep of the Project Area in accordance with the plan submitted by the Concessionaire in its DPR. The broad activities to be taken as part of area management shall include solid waste management, liquid waste management, provision of public conveniences and utilities such as washrooms, toilets, etc. The Area Management Plan, termed as Project Area Management Plan includes but is not limited to:

- (i) Provision of utilities and public convenience facilities within the Project Site.
- (ii) Provision of drainage system in the Project influence area. In undertaking this activity, Concessionaire will need to ensure that the natural drainage pattern within the Project Area remains unaltered.
- (iii) Landscaping: Soft Landscaping with garden architecture shall be developed at the appropriate time at both the station areas.
- (iv) Maintain the Project influence area.

12.6 Environment Management Plan

12.6.1 The Concessionaire should implement an environment management plan as a part of the Project in accordance with the existing environmental laws.

12.6.2 During Operation Period, the Concessionaire shall strictly adhere to the performance standards as set out in Article 10.11 or as per the approved detailed design.

12.6.3 The RMC shall monitor the performance of the Concessionaire during the Operations Period and Independent Auditor shall vet the financial documents of the Concessionaire.

12.7 Ropeway Monitoring Committee

The Parties agree that a Ropeway Monitoring Committee (RMC) will be formed to monitor and oversee the implementation and operation & maintenance of the Project as per the relevant terms & conditions contained in the Concession Agreement and Schedules. The constitution of the RMC is described in Article 18 of this Concession Agreement. The Independent Engineer appointed by both the Parties shall be a Special Invitee to the meetings of the RMC when ever required.

12.8 De-commissioning due to Emergency

12.8.1 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 Project, the Concessionaire shall be entitled to de-commission and close the whole or any part of the Project to Users 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 Concessions Authority without any delay, and the Concessionaire shall diligently carry out and abide by any reasonable directions that the Concessions Authority or the RMC or the Independent Engineer may give for dealing with such Emergency.

12.8.2 The Concessionaire shall re-commission the Ropeway Project 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 Ropeway Project and shall notify the Concessions Authority of the same without any delay.

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

12.9 Damages for breach of maintenance obligations

12.9.1 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 Concessions 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 Performance Security, and (b) 0.1% (zero point one per cent) of the cost of such repair or rectification as estimated by the RMC. Recovery of such Damages shall be without prejudice to the rights of the Concessions Authority under this Agreement, including the right of Termination thereof.

12.9.2 The Damages set forth in Article 12.9.1 may be assessed and specified forthwith by the RMC; provided that the Concessions 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.

12.10 Concessions Authority's right to take remedial measures

12.10.1 In the event the Concessionaire does not maintain and/or repair the Ropeway Project or any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual or the Maintenance Programme, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from the Concessions Authority or the RMC, as the case may be, the Concessions 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 Concessions Authority as Damages. For the avoidance of doubt, the right of the Concessions Authority under this Article 12.10.1 shall be without prejudice to its rights and remedies provided under Article 12.9.

12.10.2 The Concessions Authority shall have the right, and the Concessionaire hereby expressly grants to the Concessions Authority the right, to recover the costs and Damages specified in Article 12.10.1 directly from the Operation Period Performance Security.

12.11 Overriding powers of the Concessions Authority

12.11.1 If in the reasonable opinion of the Concessions 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 Concessions 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.

12.11.2 In the event that the Concessionaire, upon notice under Article 12.11.1, fails to rectify or remove any hardship or danger within a reasonable period, the Concessions Authority may exercise overriding powers under this Article 12.11.2 and take over the performance of any or all the obligations of the Concessions Authority to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided further that any costs and expenses incurred by the Concessions Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Concessions Authority shall be entitled to recover them from the Concessionaire.

12.12 Excuse from performance of obligations

The Concessionaire shall not be considered in breach of its obligations under this Agreement if any part of the Ropeway Project 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 Ropeway Project except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or
- (c) compliance with a request from the Concessions Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Ropeway Project .

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

12.13 Advertising on the Ropeway Project

The Concessionaire shall not undertake or permit any form of commercial advertising, display or hoarding at any place on the Site if such advertising, display or hoarding shall diminish the aesthetic quality of the Ropeway Project or violates Applicable Laws. All advertising on the Ropeway Project shall also conform to Good Industry Practice. For the avoidance of doubt, it is agreed that the rights of the Concessionaire hereunder shall be subject to Applicable Laws, as in force and effect from time to time and no compensation shall be claimed on account thereof.

ARTICLE 13: SAFETY REQUIREMENTS

13.1 Safety Requirements

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

13.1.2 The Concessioneing Authority may appoint an experienced and qualified firm or organisation (the “**Safety Consultant**”) for carrying out safety audit of the Ropeway Project in accordance with the Safety Requirements, and shall take all other actions necessary for securing compliance with the Safety Requirements.

13.2 Expenditure on Safety Requirements

All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire.

ARTICLE 14: INDEPENDENT ENGINEER

14.1 Appointment of Independent Engineer

The Concessions Authority shall appoint a consulting engineering firm from a panel of 10 (ten) firms or bodies corporate, constituted by the Concessions Authority substantially in accordance with the selection criteria set forth in Schedule-J 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 extending upto the commencement of COD.

14.2 Duties and functions

14.2.1 The Independent Engineer shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule-K.

14.2.2 The Independent Engineer shall submit regular periodic reports (at least once every month) to the Concessions Authority in respect of its duties and functions set forth in Schedule-K.

14.3 Remuneration

The remuneration, cost and expenses of the Independent Engineer shall be paid by the Concessions Authority and subject to the limits set forth in Schedule-J one-half of such remuneration, cost and expenses shall be reimbursed by the Concessionaire to the Concessions Authority within 15 (fifteen) days of receiving a statement of expenditure from the Concessions Authority.

14.4 Termination of appointment

14.4.1 The Concessions Authority may, in its discretion, terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer as replacement in accordance with Article 14.1.

14.4.2 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 Concessing Authority and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the Concessing 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 Concessing 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 Concessing Authority shall appoint forthwith another Independent Engineer in accordance with Article 14.1.

14.5 Authorised signatories

The Concessing Authority shall require the Independent Engineer to designate and notify to the Concessing 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.

14.6 Dispute resolution

If either Party disputes any advice, instruction, decision, direction or award of the Independent Engineer during the Construction Period, 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.

ARTICLE 15: USER FARE

15.1 Collection and appropriation of Fare

15.1.1 On and from the COD till the Transfer Date, the Concessionaire shall have the sole and exclusive right to demand, collect and appropriate Fare from the Users in accordance with this Agreement, provided further that the Concessionaire may determine and collect Fare at such lower rates as it may inform by public notice to the Users. Further, Concessionaire has to fix such user fee as agreed in the Financial Offer, subject to negotiation and approval of RTDC. The tentative list of different categories of tickets which could be charged by the Concessionaire from the Users of the Ropeway System, based on the division of passengers into Adult and Child and also based on Round Trip and Single Trip basis at two locations, is provided in Schedule-L.

15.1.2 The Concessionaire acknowledges and agrees that upon payment of Fare, any User shall be entitled to use the Ropeway System 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.

15.2 Fare Contractor

The Concessionaire may appoint a Fare Contractor or any other person to collect the Fare 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 Fare in accordance with this Agreement.

15.3 Fare collection points

The Concessionaire shall be entitled to set up at its own risk and cost, Fare collection counters at the UTP and the LTP points. For the avoidance of doubt, the Concessionaire hereby acknowledges and agrees that it shall establish and operate a system of Fare collection in conformity with Good Industry Practice.

15.4 Additional charge for evasion of Fee

In the event that any person uses the Ropeway System without payment of Fare due, the Concessionaire shall, subject to Applicable Law and Applicable Permits, be entitled to determine and collect from such person the Fare due and thrice the amount thereof towards predetermined liquidated damages for unauthorized use of the Ropeway System; provided that the determination and collection of such liquidated damages shall be at the risk and cost of the Concessionaire and the Concessioneing Authority shall not in any manner be liable on account thereof.

15.5 Display of Fee rates

The Concessionaire shall, at all entry points of the Terminals and near the Fare counters at Terminals, prominently display the applicable rates of Fare for information of the Users.

ARTICLE 16:

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ARTICLE 17: FINANCIAL CLOSE

17.1 Financial Close

17.1.1 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 Concessioneing Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day of delay, or for a further period not exceeding 200 (two hundred) days, subject to payment of Damages specified in Article 4.5; 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 Concessioneing Authority in procuring satisfaction of the Conditions Precedent specified in Article 4.1 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 Article 4.5.

17.1.2 The Concessionaire shall, upon occurrence of Financial Close, notify the Concessioneing 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.

17.2 Termination due to failure to achieve Financial Close

17.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to Article 22.6.1, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Article 17.1.1 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 Commencement Date to precede the Financial Close, the provisions of this Article 17.2.1 shall not apply.

17.2.2 Upon Termination under Article 17.2.1, the Concessioneing 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 Concessioneing

Authority being in default of any of its Conditions Precedents under Article 4.1, it shall, upon Termination, return the Bid Security forthwith along with the Damages due and payable under Article 4.4. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by Performance Security, the Concessioneing Authority shall be entitled to encash there from an amount equal to Bid Security.

ARTICLE 18: ROPEWAY MONITORING COMMITTEE

18.1 Appointment

On the Commencement Date, the Concessing Authority shall appoint a Ropeway Monitoring Committee (RMC). The RMC shall consist of representatives of the following and any other member duly nominated by the Concessing Authority:

- i) Two representatives of Concessing Authority
- ii) Two representative of the Concessionaire
- iii) One representative of safety consultant, if any
- iv) Any nominee of the State Government.

The representative of the Concessing Authority shall act as the Chairman of the RMC and one of the representatives of the Concessing Authority shall be the Convenor. Wherever possible, the RMC shall act by consensus. If consensus is not reached, it shall take vote, and if there is a tie in such vote, the representative of the Concessing Authority shall have the casting vote. The Independent Engineer shall be a special invitee to the meetings of the RMC, whenever required.

18.2 Powers and Duties

- a. The RMC shall have the powers and duties set out in this Concession Agreement or any other powers required for the proper development, operation and maintenance of the Project, including, (without limitation):
 - i) Compliance by the Concessionaire with the O&M Requirements including the O & M Manual
 - ii) Review the Concessionaire's periodic reports;
 - iii) Review and verify the implementation of Variations;
 - iv) Approve any improvements or modifications (that are not Variations) proposed by any of the members of the RMC;
 - v) Review Performance Security requirements;
 - vi) Any other matter which it deem necessary for the development, operation or maintenance of the Project Facility;
 - vii) Review and take actions on matters arising out of the Complaints Register.
 - viii) Impose penalties on the Concessionaire.
- b. The RMC shall have the power to appoint Expert or Specialist Person in any area required, for the review of the operation, maintenance and planning of the Project. Such persons shall act as an "Expert", whose expert professional opinion, once confirmed by the RMC, shall be binding on the Parties and the RMC.
- c. Concessionaire and the Concessing Authority shall extend full cooperation to the RMC and to any Expert appointed by the RMC. All the expenses of the RMC shall be borne by the Concessing Authority.

- d. The RMC shall meet at least once every quarter of the calendar year at such time & venue as may be indicated by the Convenor and notified to all the members of RMC atleast 14 (fourteen) days before the meeting.

ARTICLE 19: INSURANCE

- 19.1 The Concessionaire shall, at its cost and expense, purchase and maintain during the Concession Period as per good industry practices, insurance to cover against:
- (a) All the capital expenses incurred on the Ropeway Project
 - (b) Ropeway passengers liability for accidents
 - (c) Liability to third Parties including Concessioneing Authority;
- 19.2 For the sake of brevity, the aggregate of the maximum sums insured under the insurance taken out by the Concessionaire pursuant to this Article 19 are herein referred to as the “Insurance Cover”.
- 19.3 Evidence of Insurance Cover: The Concessionaire shall, from time to time, provide to the Concessioneing Authority on demand copies of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance including copies of all premia payment receipts, renewals) obtained by it in accordance with this Agreement.
- 19.4 Such insurance shall not be cancelled, changed or terminated until the expiration of at least 45 (forty five) days after written notice of such cancellation, change or Termination has been given to the Concessioneing Authority in writing.
- 19.5 The Concessioneing Authority shall not be held responsible for any risks or claims to loss or damage to any property or life due to any accident that may take place in the ropeway system.
- 19.6 If at any point of time the Concessionaire fails to maintain in force and effect any/all of the insurances required under this Agreement, the Concessioneing Authority may, at its option, purchase and maintain such insurance and all sums incurred by the Concessioneing Authority, thereof, shall be reimbursed by the Concessionaire forthwith on demand, failing which the same shall be recovered by the Concessioneing Authority by exercising right of set off or otherwise.

ARTICLE 20: ACCOUNTS AND AUDIT

- 20.1 The Concessionaire shall appoint and have during subsistence of this Agreement as its 'Statutory Auditors' a firm of Chartered Accountant duly licensed to practice in India. The fees and expenses of the Statutory Auditors shall be borne by the Concessionaire. The Concessioneing Authority shall be duly informed of such appointment within 15 days of the appointment.
- 20.2 The Concessionaire shall maintain full accounts of all inflows collected by it from the Project and of O&M Expenses and other costs. It shall provide copies of the said accounts duly audited and certified by the Concessionaire's Statutory Auditors by 30th June of every year, during the subsistence of this Agreement to the Concessioneing Authority.
- 20.3 The Concessionaire shall submit the audit financial statement of the Project to the Independent Auditor within 30 days after the end of the respective year. In the event that Independent Auditor/Concessioneing Authority requires any clarification/supporting for the financial statement submitted by the Concessionaire, the Concessionaire shall provide the same promptly and not in any case later than 3 days from the date of the request. Independent Auditor will be appointed jointly by the Concessionaire and the Concessioneing Authority and it will vet the audited financial documents of the Concessionaire and vet the quarterly payments to be made by the Concessionaire to the Concessioneing Authority. It is clarified that the existence of Independent Auditor does not absolve the Concessionaire from the responsibility of having statutory auditor.
- 20.4 In the event of their being any difference between the findings of the Independent Auditor, as the case may be, and the certification provided by the Statutory Auditors of the Concessionaire, the decision of the Independent Auditor will be final.

ARTICLE 21: EVENTS OF DEFAULT

21.1 Concessionaire Event of Default

The following shall be treated as Concessionaire Event of Default.

- (i) Material Breach of its obligations under the Agreement, including without limitation the operation and maintenance of the facilities in terms hereof which materially and/ or adversely affects the Concessions Authority or the Project and such breach is not remedied within 120 days of receipt for written notice from the Concessions Authority, specifying such breach and requiring the Concessionaire to remedy the same.
- (ii) A breach of any express representation or warranty by the Concessionaire which has a Material Adverse Effect and such breach is not remedied within 120 days of receipt for written notice from the Concessions Authority, specifying such breach and requiring the Concessionaire to remedy the same.
- (iii) Any actions or omissions attributable to Concessionaire, including delay on the part of the Concessionaire to discharge any of its obligations that has a Material Adverse Effect on the implementation of the Project.
- (iv) Failure of the Concessionaire to achieve completion of construction within 24 months from the Commencement Date.
- (v) Dissolution of the company pursuant to Law, except for the purpose of a merger, consolidation or reorganization that does not affect the ability of the resulting entity to perform all the obligations of the Concessionaire under this Agreement and provided further that such resulting entity expressly assumes all such obligations.
- (v) the Performance Security has been encashed and appropriated in accordance with Article 7.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period specified therein;
- (vi) Repudiation of this Agreement or abandonment of the Project by the Concessionaire.

- (vii) The Independent Engineer/ RMC/ the Ropeway Inspector in relation to the Project/ Aerial Ropeway system, notifies the Parties of a material failure by the Concessionaire or its employees or agents or the Construction Contractor(s) or sub-contractor(s) to develop implement, finance, design, construct and operate and maintain the Project/ Aerial Ropeway system, as the case may be, in accordance with the Project Development Plan and the terms and conditions of Clearances and of this Agreement and further issues a notification to the Parties of the failure to remedy such non-compliance within the time frame as may reasonably have been specified by the Independent Engineer/RMC/ Ropeway Inspector, as the case may be, for rectifying the same.
- (viii) Transfer pursuant to Law of either the rights and/or obligations of Concessionaire or all or substantial portion of the Project Assets or undertakings of the Concessionaire, except where such transfer, in the opinion of the Concessioneing Authority, does not affect the ability of the transferee to perform all the obligations of the Concessionaire under this Agreement and provided further that such transferee expressly assumes all such obligations.
- (iv) Failure of the Concessionaire to make timely payments including payment of the installments of Annual Concession Fee to the Concessioneing Authority shall entitle the Concessioneing Authority for encashment of Performance Guarantee by the Concessioneing Authority. Concessionaire shall submit fresh Performance Security in case such an event happens. However whenever such a delay in making timely payments occurs, the Concessioneing Authority may allow the Concessionaire to make delayed payments along with interest on the unpaid amount charged at the rate of 1% per month for the duration of delay. However, in such a case of delayed payment with interest, the Bank Guarantee shall not be encashed. In the event of failure of the Concessionaire to make the delayed payment permitted by the Concessioneing Authority, the Concessioneing Authority may encash the Performance Security and claim the damages in accordance with the procedure mention in Article 7.2.
- (x) The Concessionaire creates any Encumbrance in breach of this Agreement.
- (xi) The Concessionaire has committed a Change in Ownership in breach of the provisions of this Agreement;
- (xii) The Concessionaire has made breach of any of the Project Agreements which has caused a Material Adverse Effect;
- (xiii) The Concessionaire has committed a financial default and has failed to cure the default within the Cure Period as specified herein.

21.2 Concessing Authority's Event of Default

The following shall constitute the Concessing Authority's Event of Default:

- (i) Material Breach by the Concessing Authority of its obligations under this Agreement which is not remedied within 120 days of receipt of written notice from the Concessionaire specifying such breach and requiring the Concessing Authority to remedy the same.
- (ii) Any defect in the title, ownership and possession of the Concessing Authority with respect to the Project Site (excluding private land) that has a Material Adverse Effect on the Project as certified by the Independent Auditor.
- (iii) Any change in the policies of the Concessing Authority which has a Material Adverse Effect on the Concessionaire's ability to implement the Project.
- (iv) A breach of any express representation or warranty by the Concessing Authority which has a Material Adverse Effect and such breach is not remedied within 120 days of receipt of written notice from the Concessionaire specifying such breach and requiring the Concessing Authority to remedy the same.
- (v) Repudiation of this Agreement by the Concessing Authority.

ARTICLE 22: FORCE MAJEURE

22.1 Force Majeure Event

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 Articles 22.2, 22.3 and 22.4 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.

22.2 Non-Political Event

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

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Article 22.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (d) any judgement or order of any court of competent jurisdiction or statutory Government 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 Concessioneing Authority;
- (e) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

22.3 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 7 (seven) days and exceeding an aggregate period of 30 (thirty) 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.

22.4 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 26 and its effect, in financial terms, exceeds the sum specified in Article 26.1;
- (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.

22.5 Duty to report Force Majeure Event

- 22.5.1 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 22 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.
- 22.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event not later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.
- 22.5.3 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 Article 22.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

22.6 Effect of Force Majeure Event on the Concession

- 22.6.1 Upon the occurrence of any Force Majeure Event prior to the Commencement Date, the period set forth in Article 17.1.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.
- 22.6.2 At any time after the Commencement 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 Concessions 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.

22.7 Allocation of costs arising out of Force Majeure

- 22.7.1 Upon occurrence of any Force Majeure Event prior to the Commencement Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.
- 22.7.2 Upon occurrence of a Force Majeure Event after the Commencement 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 Concessioneing 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 Concessioneing 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.

- 22.7.3 Save and except as expressly provided in this Article 22, 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.

22.8 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 22, 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.

22.9 Termination Payment for Force Majeure Event

22.9.1 If Termination is on account of a Non-Political Event, the Concessions Authority shall make a Termination Payment to the Concessionaire in an amount lowest of following a) or b):

- a) 90% of book value of Project Assets based on historic investment (net of depreciation) created by the concessionaire less intangible assets. It is specially clarified here that the cost of Project Assets would not include the cost of original project facility which was provided to the Concessionaire.

or

- b) 75% of debt due less pending insurance claims

22.9.2 If Termination is on account of an Indirect Political Event, the Concessions Authority shall make a Termination Payment to the Concessionaire in an amount equal to lowest of following a) or b):

- a) 100% of book value of Project Assets based on historic investment (net of depreciation) created by the concessionaire less intangible assets. It is specially clarified here that the cost of Project Assets would not include the cost of original project facility which was provided to the Concessionaire.

or

- b) 75% of debt due less pending insurance claims

22.9.3 If Termination is on account of a Political Event, the Concessions Authority shall make a Termination Payment to the Concessionaire in an amount equal to lowest of following a) or b):

- a) 100% of book value of Project Assets based on historic investment (net of depreciation) created by the concessionaire less intangible assets. It is specially clarified here that the cost of Project Assets would not include the cost of original project facility which was provided to the Concessionaire.

or

- b) 75% of debt due less pending insurance claims

22.10 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.

22.11 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 23: COMPENSATION FOR BREACH OF AGREEMENT

23.1 Compensation for default by the Concessionaire

Subject to the provisions of Article 23.4, in the event of the Concessionaire being in material default or breach of this Agreement, it shall pay to the Concessions Authority by way of compensation, all direct costs suffered or incurred by the Concessions Authority as a consequence of such material default or breach, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Article 23.1 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 Concessions Authority.

23.2 Compensation for default by the Concessions Authority

Subject to the provisions of Article 23.4, in the event of the Concessions Authority being in material default or breach of this Agreement at any time after the Commencement 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 default or breach within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable 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.

23.3 Extension of Concession Period

Subject to the provisions of Article 23.4, in the event that a material default or breach of this Agreement set forth in Article 23.2 causes delay in achieving COD or leads to suspension of collection of Fee, as the case may be, the Concessions Authority shall, in addition to payment of compensation under Article 23.2, 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.

23.4 Compensation to be in addition

Compensation payable under this Article 23 shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any.

23.5 Mitigation of costs and damage

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 24: TERM AND TERMINATION

24.1 Term

It is intended that the Parties to this Agreement shall continue to operate and the Agreement be binding on the Parties for the Concession Period of 40 years from the Commencement Date, unless terminated earlier in accordance with the provisions of this Article 24.

24.2 Termination by Concessionaire for the Concessing Authority's Event of Default

Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon occurrence of an Concessing Authority's 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 Concessing Authority; provided that before issuing the Termination Notice, the Concessionaire shall by a notice inform the Concessing Authority of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Concessing 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.

24.3 Termination by the Concessing Authority for a Concessionaire's Event of Default

24.3.1 Without prejudice to any other rights or remedies which the Concessing Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Concessing Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Concessing 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 Article 24.3.2

24.3.2 The Concessing Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Article 24.3.1 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 Concessing 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 Concessions 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 Concessions Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as the Concessions Authority may deem appropriate.

24.4 Termination Payment

24.4.1 Upon Termination on account of a Concessionaire Default during the Operations Period or occurring prior to COD, the Concessions Authority shall not pay any Termination Payment. For the avoidance of doubt, the Concessionaire hereby acknowledges that no Termination Payment shall be due or payable on account of a Concessionaire Default. In addition to the above stated, the Concessions Authority shall also forfeit the Performance Security.

24.4.2 Upon Termination on account of Concessions Authority's Default, the Concessions Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to the lowest of following (a) or (b):

(a) 100% of book value of Project Assets based on historic investment (net of depreciation) created by the concessionaire less intangible assets. It is specially clarified here that the cost of Project Assets would not include the cost of original project facility which was provided to the Concessionaire.

Or

(b) 75% of debt due less pending insurance claims

In addition to the Termination Payment, the Performance Security shall be released by the Concessions Authority.

24.4.3 Termination Payment shall become due and payable to the Concessionaire within 15 (fifteen) days of a demand being made by the Concessionaire to the Concessions Authority with the necessary particulars, and in the event of any delay, the Concessions 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 Concessions Authority of its payment obligations in respect thereof hereunder.

24.4.4 The Concessionaire expressly agrees that Termination Payment under this Article 24 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.

24.5 Other rights and obligations of the Concessions Authority

Upon Termination for any reason whatsoever, the Concessions Authority shall:

- (a) be deemed to have taken possession and control of the Ropeway System 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 Article 31.1; and
- (e) succeed upon election by the Concessions 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 Concessions 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 Concessions 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 Concessions Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Concessions Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Concessions Authority for this purpose shall be deducted from the Termination Payment.

24.6 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Article 24.4.4, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

24.7 Liability for defects after Termination

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

24.8 Deposit of additional Security

24.8.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Article 24.8.1, Concessions Authority, at its discretion, may ask the Concessionaire to deposit a sum equal to 10% (ten per cent) of the Operation Period Performance Security year immediately preceding the Transfer Date, in a separate account as additional security 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 Article 24.7.

24.8.2 Without prejudice to the provisions of Article 24.8.1, the RMC shall carry out an inspection of the Ropeway Project at any time between 210 (two hundred and ten) and 180 (one hundred and eighty) days prior to the Termination and if it recommends that the status of the Ropeway Project is such that a sum larger than the amount stipulated in Article 24.8.1 should be deposited as additional security and for a period longer than the aforesaid 120 (one hundred and twenty) days, the amount recommended by the RMC shall be deposited as security for the period specified by it.

24.8.3 The Concessionaire may, for the performance of its obligations under this Article 24, provide to the Concessions Authority a guarantee from a Bank for a sum equivalent to

the amount determined under Article 24.8.1 or 24.8.2, as the case may be, and for the period specified therein, (the “Performance Guarantee”), to be modified, mutatis mutandis, for this purpose, and the Concessioneing 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 24. Upon furnishing of a Performance Guarantee under this Article 24.8.3, the deposit of funds as additional security in terms of Article 24.8.1 or 24.8.2, as the case may be, shall be dispensed with.

ARTICLE 25: ASSIGNMENT AND CHARGES

25.1 Restrictions on assignment and charges

25.1.1 Subject to Articles 25.2 and 25.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Concessioneing Authority, which consent the Concessioneing Authority shall be entitled to decline without assigning any reason.

25.1.2 Subject to the provisions of Article 25.2, 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 Concessioneing Authority, which consent the Concessioneing Authority shall be entitled to decline without assigning any reason.

25.2 Permitted assignment and charges

The restraints set forth in Article 25.1 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 Ropeway Project;
- (b) subject to Article 25.1.2, mortgages/ pledges/ hypothecation of goods/ assets other than Project Assets and their related documents of title, a charge on the project revenues, arising or created in the ordinary course of business of the Ropeway Project, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Ropeway Project;
- (c) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and
- (d) liens or encumbrances required by any Applicable Law.

25.3 Substitution Agreement

25.3.1 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 Concessioneing Authority and the Lenders' Representative, on behalf of Senior Lenders substantially in the form set forth in Schedule-M.

25.3.2 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 Concessioneing Authority shall by notice grant a Cure Period of 120 (one hundred and twenty) days to the Concessionaire for curing such breach.

25.4 Assignment by the Concessioneing Authority

Notwithstanding anything to the contrary contained in this Agreement, the Concessioneing Authority may, after giving 60 (sixty) days' notice to the Concessioneaire, 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 Concessioneing Authority, capable of fulfilling all of the Concessioneing Authority's then outstanding obligations under this Agreement.

ARTICLE 26: CHANGE IN LAW

26.1 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) and 0.5% (zero point five percent) of the Realisable Fee in any Accounting Year, the Concessionaire may so notify the Concessions 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, not 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 Concessions 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 Concessions Authority shall pay the amount specified therein; provided that if the Concessions 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 Article 26.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

26.2 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 Concessions 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 Concessions Authority, the Parties shall meet, as soon as reasonably practicable, but, not 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 Concessions 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 Concessions Authority; provided that if the Concessionaire shall dispute such claim of the Concessions Authority, the same shall be settled in

accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Article 26.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

26.3 Protection of NPV

Pursuant to the provisions of Articles 26.1 and 26.2 and for the purposes of placing the Concessionaire in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall rely on the Financial Model to establish a net present value (the "NPV") of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred.

26.4 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 26 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.

26.5 No claim in the event of recovery from Users

Notwithstanding anything to the contrary contained in this Agreement, the Concessions 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 27: LIABILITY AND INDEMNITY

27.1 General indemnity

27.1.1 The Concessionaire will indemnify, defend, save and hold harmless the Concessions Authority and its officers, servants, agents, Concessions 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 Concessions Authority Indemnified Persons.

27.1.2 The Concessions 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 Concessions Authority in the land comprised in the Site, and/ or (ii) breach by the Concessions 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.

27.2 Indemnity by the Concessionaire

27.2.1 Without limiting the generality of Article 27.1, the Concessionaire shall fully indemnify, hold harmless and defend the Concessions Authority and the Concessions 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.

27.2.2 Without limiting the generality of the provisions of this Article 27, the Concessionaire shall fully indemnify, hold harmless and defend the Concessions Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Concessions 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 Ropeway Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Concessioneing Authority a licence, at no cost to the Concessioneing Authority, authorising continued use of the infringing work. If the Concessionaire is unable to secure such licence within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

27.3 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 27 (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.

27.4 Defence of claims

27.4.1 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 27, 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.

27.4.2 If the Indemnifying Party has exercised its rights under Article 27.3, 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).

27.4.3 If the Indemnifying Party exercises its rights under Article 27.3, 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 Clauses (b), (c) or (d) of this Article 27.4.3 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.

27.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 27, 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.

27.6 Survival on Termination

The provisions of this Article 27 shall survive Termination.

ARTICLE 28: RIGHTS AND TITLE OVER THE SITE

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

28.2 Access rights of the Concessions Authority and others

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

28.3 Property taxes

All property taxes applicable on the Site shall be payable by the Concessions 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 Concessions Authority.

28.4 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 Ropeway Project.

ARTICLE 29: DISPUTE RESOLUTION

29.1 Dispute Resolution

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 Article 29.2.

29.1.1 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

29.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer (during Construction Period)/ RMC (during Operations Period) to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer or RMC, as the case may be, or without the intervention of the Independent Engineer or RMC, as the case may be, either Party may require such Dispute to be referred to the Concessioneing 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 this Article 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 Article 29.3.

29.3 Arbitration

29.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Article 29.2, the parties shall submit such dispute for arbitration by ‘Secretary, Law, Govt. of Himachal Pradesh as the Sole Arbitrator. The proceeding shall be conducted as per the Arbitration and Conciliation Act, 1996. The venue of such arbitration shall be Shimla, and the language of arbitration proceedings shall be English.

- 29.3.2 The Sole Arbitrator shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 29 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Concessioneing Authority agree and undertake to carry out such Award without delay.
- 29.3.3 The Concessionaire and the Concessioneing Authority agree that an Award may be enforced against the Concessionaire and/or the Concessioneing Authority, as the case may be, and their respective assets wherever situated.
- 29.3.4 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

ARTICLE 30: REPRESENTATIONS AND WARRANTIES

30.1 Representations and Warranties of the Concessionaire

The Concessionaire (in the case of Consortium each member) represents and warrants to Concessioneing Authority that:

- (a) It is duly organized, validly existing and in good standing under the laws of India.
- (b) It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby.
- (c) It has taken all necessary, appropriate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement.
- (d) It has the financial standing capacity to undertake the Project.
- (e) This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof.
- (f) 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 the Concessionaire Memorandum and Articles of Association or any Applicable Law or any covenant, Agreement, understanding, decree or order to which the Concessionaire is a party or by which Concessionaire or any of its properties or assets are bound or affected.
- (g) There are no actions, suits, proceedings or investigations pending or to the Concessionaire's knowledge threatened against the Concessionaire at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may constitute the Concessionaire Event of Default or which individually or in the aggregate may result in Material Adverse Effect.
- (h) It has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court of any legally binding order of any government authority which may result in Material Adverse Effect.
- (i) It has complied with all Applicable Law 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 Material Adverse Effect.

- (j) No representation or warranty by the Concessionaire contained herein or in any other document furnished by the Concessionaire to Concessioneing Authority or to any government authority in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading.
- (k) The Concessionaire also acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that Concessioneing Authority shall not be liable for the same in any manner whatsoever to the Concessionaire.
- (l) The Concessionaire shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Article 5.13 and that (i) the selected bidder/ Consortium Members, together with its/ their Associates, shall collectively hold at least 51% (fifty-one percent) in the subscribed and paid up equity share capital of the SPV (Special Purpose Vehicle) at all times until the second anniversary of the full commercial operation date of the Project. (ii) the selected bidder/ Consortium Members, together with its/ their Associates whose technical experience and net worth have been reckoned for the purposes of qualification and short-listing in response to the Request for Proposal shall hold at least 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV, at all times till the second anniversary of the date of full commercial operation of the Project. (iii) the selected bidder /Consortium Members, together with its/ their Associates shall, at all times between the full commercial operation date of the Project and the second anniversary thereof, hold subscribed and paid up equity share capital of SPV equivalent to at least 5% (five percent) of the Total Project Cost.
- (m) The Concessionaire shall make its own arrangements in engagement of its staff and labour and shall at no point represent to or claim that the staff, labour is being recruited for and on behalf of Concessioneing Authority. The Concessionaire shall at all times comply and represent to the staff and labour employed/ engaged by them the requirement for complying with Applicable Laws and Applicable Permits, particularly in relation to safety and environmental regulations.

30.2 Representation and Warranties of the Concessioneing Authority

The Concessioneing Authority represents and warrants to the Concessionaire that:

- i. It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein.

- ii. It has taken all necessary action under the Applicable Laws to authorise the execution, delivery and performance of this Agreement.
- iii. It has the financial standing and capacity to perform its obligations under the Agreement.
- iv. This Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof.
- v. There are no actions, suits or proceedings pending or, to the Concessioneing Authority's 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 default or breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform its obligations under this Agreement.
- vi. 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 agency which may result in any material adverse effect on the Concessioneing Authority's ability to perform its obligation under Agreement.
- vii. It has complied with Applicable Laws in all material respects and
- viii. All information provided by the Concessioneing Authority in the bid documents in connection with the Project is to the best of its knowledge and belief and accurate in all material respects.

30.3 Obligation to notify change

In the event that any of the representations or warranties made/ given by the Concessioneaire ceases to be true or stands changed, it shall promptly notify Concessioneing Authority of the same.

ARTICLE 31: DIVESTMENT OF RIGHTS AND INTEREST

31.1 Divestment Requirements

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

- (a) notify to the Concessioneing Authority forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith the actual or constructive possession of the Ropeway System, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;
- (c) cure all Project Assets of all defects and deficiencies so that the Ropeway System 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 Ropeway System 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 Ropeway System and shall be assigned to the Concessioneing 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 Concessioneing Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Ropeway System, 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 Concessioneing Authority, absolutely unto the Concessioneing 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 Concessioneing Authority, free from all Encumbrances, absolutely unto the Concessioneing Authority or to its nominee.

31.1.2 Subject to the exercise by the Concessioneing 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.

31.2 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 or RMC, as the case may be, shall verify, after giving due notice to the Concessionaire specifying the time, date and venue of such verification, and/ or inspection, 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 23 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 31.

31.3 Cooperation and assistance on transfer of Project

31.3.1 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.

31.3.2 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 Concessioneing Authority, its Concessionaire or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.

31.3.3 The Concessioneing 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 Article 31.1.1. 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.

31.4 Vesting Certificate

The divestment of all rights, title and interest in the Project shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Concessioneing 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 Project, and their vesting in the Concessioneing 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 Concessioneing Authority or its nominee on, or in respect of, the Project on the footing that all Divestment Requirements have been complied with by the Concessionaire.

31.5 Divestment costs etc.

- 31.5.1 The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project in favour of the Concessioneing 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 Concessioneing Authority.
- 31.5.2 In the event of any dispute relating to matters covered by and under this Article 31, the Dispute Resolution Procedure shall apply.

ARTICLE 32: MISCELLANEOUS

32.1 Interest and Right of Set Off

Any sum which becomes payable under any of the provisions of this Agreement by one party to the other Party shall, if the same be not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Such sum shall until payment thereof carry **interest at rate of 12%** per annum from the due date for payment thereof until the same is paid to or otherwise realised by the Party entitled to the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set off.

Provided the stipulation regarding interest for delayed payments contained in this Article 32.1 shall neither be deemed nor construed to authorise any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

32.2 Governing Law and Jurisdiction

This Agreement shall be governed by the laws of India. The Courts at Shimla only shall have exclusive jurisdiction over all matters arising out of or relating to this Agreement.

32.3 Waiver

32.3.1 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:

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

32.3.2 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 hereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver/ breach of any terms, conditions or provisions of this Agreement.

32.4 Survival

Termination of this Agreement (a) shall not relieve the Concessionaire or Concessioneing Authority of any obligations already incurred hereunder which expressly or by implication survives 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.

32.5 Amendments

This Agreement and the Schedules together constitute a complete and exclusive understanding 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 agreed to by all the Parties hereto and evidenced in writing.

32.6 Notices

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, breach of any term of this Agreement and Termination of this Agreement, shall be in writing and shall be given by hand delivery, recognized courier, mail or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

If to the Concessioneing Authority

**Chief General Manager,
Ropeways and Rapid Transport System Development Corporation H.P. Limited**

If to the Concessionaire

Or at such address, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered (i) in the case of any communication made by letter, when delivered by hand, by recognized courier or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by facsimile, when transmitted properly addressed to such facsimile number.

32.7 Severability

If for any reason whatsoever 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 shall negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable. Provided failure to agree upon any such provisions shall not be subject to dispute resolution under this Agreement or otherwise.

32.8 No Partnership

Nothing contained in this Agreement shall be construed or interpreted as constituting a partnership between the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever. Concessioneing Authority is also not a principal employer in regard to the activities of the Concessionaire or the Sub Contractor.

32.9 Language

All notices required to be given under this Agreement and all communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

32.10 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 and any representation by any Party not contained in a binding legal Agreement executed by the Parties.

32.11 Counterparts

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

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

SIGNED SEALED AND DELIVERED

For and on behalf of Concessioneing Authority
by

(Signature) :

(Name) :

(Designation) :

In the Presence of :

1)

2)

For and on behalf of Concessionaire
by:

(Signature) :

(Name) :

(Designation) :

In the Presence of :

1)

2)

DRAFT SCHEDULES

FOR

Development of Ropeway between Chandigarh Manali National Highway (Near Pandoh Dam Reservoir) and Mata Baglamukhi Temple (Bakhli) District Mandi in Himachal Pradesh on PPP Mode

BETWEEN

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

AND

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SCHEDULE A

THE PLAN AND ALIGNMENT

1. BAGLAMUKHI MATA (BAKHLI), MANDI—A Brief

MANDI: formerly known as Mandav Nagar, also known as Sahor (Tibetan: Zahor), is a major town and a municipal council in Mandi District in the Indian state of Himachal Pradesh.

It is situated 153 kilometers (95 miles) north of state capital, Shimla in the north-west Himalayas at an average altitude of 850 meters (2,790 ft), and experiences pleasant summers and cold winters. Mandi is connected to the Pathankot through National Highway 20 which is almost 220 km (140 miles) long and to Manali and Chandigarh through National Highway 21 which is 323 km (201 miles) long. Mandi is approximately 184.6 km (114.7 miles) from Chandigarh, the nearest major city, and 440.9 km (273.9 miles) from New Delhi, the national capital. In the 2011 Indian census, Mandi city had a population of 26,422. Mandi district is currently the 2nd largest economy in the state next to Kangra. Mandi, in the state is having second highest sex ratio of 1013 females per thousand males.

"**BAGALAMUKHI**" is derived from "Bagala" (distortion of the original Sanskrit root "valgā") and "mukha", meaning "bridle" and "face", respectively. Thus, the name means one whose face has the power to capture or control. She thus represents the hypnotic power of the Goddess. Another interpretation translates her name as "Kalyani". In Kubjika Tantra there is a reference to yet another interpretation of the meaning of the name 'Bagala'. In the initial chapter of the text there is a verse – 'Bakare Baruni Devi Gakare Siddhida Smrita. Lakare Prithivi Chaiba Chaitanya Prakrirtita ('Ba', the first letter of the name – 'Bagala', means 'Baruni' or 'She Who is filled with the intoxicating mood to vanquish the demon'. 'Ga', the second letter, means 'She Who grants all kinds of divine powers or siddhis and successes to human beings'. 'La', the third letter, means 'She Who is the foundation of all kinds of sustaining powers in the world like the earth and is Consciousness Herself'.

The legend associated with Baglamukhi Devi is that centuries before people of Mandi State visited the Guma village on Mandi - Pathankot road and used to scrape out rock-salt from the Guma salt mines. As the journey was long the people carries cooked food along with them. A man from Bhakli went to Guma for salt. On the way he stopped under a tree and opened his bundle of food and he found a stone in the midst of the eatables. He threw away the stone. At the second halt again on opening the food he found the same stone. He was bewildered and threw it away again. At Guma and again on the way back the same miracle happened. Exasperated the man threw away again the stone into a stream called Bakhli. As narrated the incident to other villagers. He

even began to demonstrate abnormal symptoms and then rushed out to the stream and jumped into it. The villagers thinking him to be dead performed his last rites.

Eighteen days later suddenly the man appeared with a ladle with smoldering incense and the same round stone. The man told the villagers that the stone was Baglamukhi Devi, a powerful manifestation of Goddess Durga and she wanted a temple to be built and consecrated to her. The temple was built and the round stone was installed as the deity. The doors and lintels, however, had carvings of Krishna episodes. The Raja of Mandi learnt about the appearance of the Devi and visited her. He also gave a 'Jagir' for the temple.

Another legend is also associated with the goddess Bagalamukhi Temple. The Beas-Sutlaj Link authorities in the course of the execution of the Project had decided to acquire the Baglamukhi temple and the village of Bakhli in Mandi as the area had to be submerged in the Pandoh reservoir. The temple has a legend behind it and was not very old either. Mandi Raj had conferred some Jaigir, meaning rent-free grant of land for the maintenance of the temple and the regular worship of Baglamukhi deity.

After all the formalities had been carried out like serving notices, the Acquisition Cell of the Project consisting of a gazetted Sub-Divisional officer and his staff visited the area and wanted to assess the valuation of the property for payment of compensation.

The Gur or diviner of the Devi gave out that he had a visitation and the temple should not be dismantled. He also warned that the goddess would resent any kind of disturbances. However the plea was rejected and some members of the Acquisition Cell of the Project entered the interior of the temple. It is said that some unseen force in the cell suddenly hit the intruders who fell down. The Gur then got into a religious trance and said that unless a goat is sacrificed the goddess would not be appeased. Thus a goat was sacrificed at the feet of the goddess by the Sub Divisional Officer. The Gur had assured them that the Devi which was only a round stone had come out of water and would remain satisfied in water. The temple was submerged in due course along with the Deity.

2. ROPEWAY ALIGNMENT

Mandi is situated at an altitude of 850 meters. The proposed Lower terminal point is at Chandigarh Manali National Highway near Pandoh Dam reservoir. The upper terminal point (UTP) is proposed near Baglamukhi Mata temple (Bakhli), situated at a height of 990 meters from sea level. The location details of these points are as under:

| Terminal | Northing | Easting |
|----------|----------|---------|
|----------|----------|---------|

| | | |
|---|---------------------------|--------------------------|
| UTP (near Baglamukhi Mata temple) | 31 deg 40 min 16.93 Sec N | 77 deg 4 min 57.41 sec E |
| LTP (at Chandigarh Manali National Highway near Pandoh Dam reservoir) | 31 deg 40 min 30 Sec N | 77 deg 04 min 38 sec E |

The total inclined distance of this proposal between LTP to UTP is 800m. The stretch of ropeway crossing the forest area will require permission from the concerned authorities.



SCHEDULE – B

THE PROJECT

1. Development of the Project

1.1 The Development of Project shall mean, subject to the provisions of the RFP and Concession Agreement, an indicative 800 m long Ropeway Facility between Chandigarh Manali National Highway (near Pandoh Dam reservoir) to Baglamukhi Mata Temple.

- (i) Design of ropeway shall conform strictly to Common European Norms (CEN) and also to the satisfaction of Concessioneing Authority.
- (ii) All electro mechanical components of the ropeway including Drive Gear with entire driving arrangement, Cabins, Hanger, Carriage, Tensioning system and Haulage Rope to be as per CEN standards and also to the satisfaction of Concessioneing Authority. The structural elements i.e. civil construction, Tower and Station structure shall be indigenously constructed as per relevant applicable codes.
- (iii) Carrying capacity of the Ropeway system at the time of commencement of Operations shall not be less than minimum 400 PPHPD. Ropeway shall be designed to cope up with the increased foot fall of tourists in the peak season i.e. from mid of June to September.
- (iv) the development of other tourism components as per defined use (Only Eco – Tourism activities under commercial component shall be allowed);
- (v) design, financing, construction of the Project at the Site, implementation, completion, commissioning, marketing, management, operation and maintenance and commercial use of the Project, execution of the Works and all activities incidental thereto, such as engineering, testing, commissioning and insurance etc., by the Concessionaire during the Concession Period;

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

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

2. Description of the Mandatory Project

Ropeway:

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

- Length of the Alignment: indicative 800 m.
- Tariff: Local Residents and Tourist Traffic as per Schedule.

At LTP:

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

At UTP:

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

The Concessionaire may use its discretion to decide on the scale and size of the components, except the Ropeway and its associated structures, which shall be as per the specifications and applicable guidelines.

Annex – I
(SCHEDULE – B)
PROJECT REQUIREMENTS

1. SYSTEM OPERATION

Development of ropeway with suitable and latest technology between Chandigarh Manali National Highway (near Pandoh Dam reservoir) to Baglamukhi Mata Temple.

2. BASIC DESIGN CONSIDERATIONS

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

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

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

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

All building works shall be designed to meet the functional requirements and shall be compatible with the regional architecture and microclimate, particularly incorporating mitigation measures

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

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

3. POWER SUPPLY REQUIREMENT

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

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

4. OPERATION AND MAINTENANCE

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

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

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

| S. No. | Description | Man Power Type | Qty (Nos.) |
|---------------|--------------------|-----------------------|-------------------|
| 1 | Staff | | |
| a. | Ropeway related: | Project Manager | 1 |
| | | Maintenance Engineer | 2 |
| | | Electric Engineer | 1 |
| | | Mechanical Supervisor | 1 |
| | | Supervisor | 1 |

| | | | |
|---|---------------------------|---------------------------|----|
| | | Security Staff | 4 |
| | | Ticket checkers | 2 |
| | | Electrician | 2 |
| | | Cabin Boys | 10 |
| | | Support Staff | 5 |
| b | Finance & Administration: | Account Head | 1 |
| | | Accountant | 1 |
| | | Admin Head | 1 |
| | | Billing / Ticketing Staff | 4 |
| | | Store Keeper | 2 |
| | | Office Assistant | 2 |
| | | Gardener | 1 |
| | | Office Boy | 2 |
| | | Driver | 1 |

5. PERFORMANCE STANDARDS AND MONITORING

Minimum Performance Standards for the Project are set out as follows:

- a. Carrying capacity of the Ropeway system at the time of commencement of Operations shall not be less than minimum 400 PPHPD.
- b. Ropeway should be in daily operation throughout the year, unless otherwise instructed by Ropeway Inspector (during unfavorable conditions).
- c. Performance of the system at boarding and de boarding areas.
 - (i) The speed of ropeway system at boarding and de-boarding areas should enable safe passenger movement.
 - (ii) Queue length of passengers shall commensurate with the requirement.
 - (iii) Waiting time for the passengers shall be minimum.
- d. Performance of standby equipment. The rating of standard DG set should be equal to the main electrical power system to run at full load.
- e. Performance of Rescue systems and carrier evacuation system. The efficiency and number of rescue and evacuation system shall be measured in terms of following:
 - (i) Response time to mishap detected by automatic detection system should be minimum.
 - (ii) Evacuation/ mitigation time period up to terminal stations should be kept at minimum as per code.

Annex – II
(SCHEDULE – B)
PROJECT FACILITIES

1. The Concessionaire shall construct the Project Facilities in accordance with the provisions of this Agreement.
2. Project Facilities means all the amenities and facilities required as basic and support infrastructure for Project, for the optimal functioning thereof more specifically described below:

The Concessionaire shall construct the **Mandatory Project Facilities** to form part of the Project Assets. The Mandatory Project Facilities shall include the Project Facilities required to adequately and efficiently support the Mandatory Project and shall include but not be limited to adequate:

- a) sewage and sanitation facilities;
- b) water supply and distribution;
- c) electricity supply and distribution electricity;
- d) paved interconnecting roads and lanes; pavements and sidewalks;
- e) toilets;
- f) tree plantation and green areas;
- g) facilities for disabled;
- h) refreshment facilities;
- i) public access telephones;
- j) administrative offices;
- k) security;
- l) landscaping and perimeter fencing;
- m) internal road network;
- n) street lighting within the perimeter;
- o) fire fighting system;
- p) drains;
- q) and such other facilities as may be necessary and required to establish and operate and the Project in accordance with the Specifications and Standards.

The Mandatory Project Facilities shall be developed, constructed and commissioned in accordance with the provisions of this Agreement and shall be completed by the Scheduled Completion Date.

Annex – III
(SCHEDULE – B)
STANDARDS AND SPECIFICATIONS

1. ROPEWAY:

The project shall mean, subject to the provisions of the RFP and Concession agreement an indicative 800 m long, ropeway transport system.

2. ROPEWAY SYSTEM:

The Concessionaire shall develop the ropeway system and associated facilities/ infrastructure keeping in view the slope gradients, type of terrain, tourist arrival and other considerations.

- a. The ropeway shall conform to Common European Norms (CEN) standards adhering to the utmost standards of safety standards as well as to the satisfaction of Concessions Authority.
 - b. The proposed capacity of ropeway is minimum 400 PPHPD. However, if concessionaire wants to install higher capacity ropeway then he may do so.
 - c. All ropeway components except structural items shall be strictly as per CEN standards, procured from reputed manufacturer and also to the satisfaction of Concessions Authority. All necessary certificates needs to be submitted along with the design and plans submitted to the Concessions authority.
 - d. The ropeway should be developed in such a manner that the system including the Gondolas/Cabins is above the tree line and the trees to be cut are only in places where the towers and the facilities are to be created or it is required to remove for safety of ropeway system.
- **Lower Terminal Point (LTP) / Upper Terminal Point (UTP):** The LTP will be located near the Chandigarh Manali National Highway near Pandoh reservoir and Upper Terminal Point (UTP) near Baglamukhi Mata Temple. The terminal shall have enough space to provide for:

(a) Ropeway Terminal & Associated Facilities

- ✓ Ropeway Station- Boarding & de-boarding
- ✓ Parking for ropeway Cabins
- ✓ Ropeway Store
- ✓ Ropeway Workshop
- ✓ Office
- ✓ Account and staff room
- ✓ Generator Room
- ✓ Miscellaneous area

- (b) Ticket counters
- (c) Toilets - Gents / Ladies Toilet
- (d) Waiting Area - Approach Road
- (e) Commercial area (if any)
- (f) Cloak Room
- **Towers:** The number and location of towers shall depend upon the final design approved by the Concessioneing Authority. This will also affect the number of trees to be cut for the installation of this ropeway.

3. AERIAL ROPEWAY: TECHNICAL PARAMETERS

The following minimum technical data for the ropeway shall be as follows:

| S. No. | ITEM | Parameters |
|--------|--|---|
| 1 | System | Development of ropeway with suitable and latest technology |
| 2 | Capacity(Designed), PPHPD (Passengers per hour per direction) | Minimum 400 @ max speed |
| 3 | Line speed, m/sec | 6 |
| 4 | Horizontal distance between stations rail back loop crs, m | 800 |
| 5 | Vertical rise, m | 878 |
| 6 | Alignment | Straight |
| 8 | Line gauge, m | 4.3 |
| 9 | Capacity of cabin, persons | 6 – 8 |
| 10. | Cabin Spacing, m | 175 m |
| 11 | Total no of cabins (minimum), in no. | 40 |
| 12 | Travel time one way, min | 12 |
| 13 | Type of cabin | Fully enclosed cabin with ventilation. Door operation – Automatic |
| 14 | Hauling rope | 40mm 6x19(s) 1770N/mm ² poly propylene core, MBL-95.51 MT |
| 15 | Main drive motor, KW | 300 HP AC variable speed 0-1500 rpm |
| 16 | Boarding/De boarding | In motion. Speed should not be more than 0.3 m/sec. Cabin should be guided. |
| 17 | Handling of cabin in station | Cabin conveyor system |

| | | |
|----|---|---|
| 18 | Tensioning system | Hydraulic |
| 19 | Auxiliary drive (diesel engine) for emergency, HP | 25, AC |
| | Line speed with emergency engine, m/sec | 0.5 to 1.0(Max) |
| 20 | Line Rescue System | At least two systems of redundancy |
| 21 | D.G. set @ Intermediate station, KVA | 320 |
| 22 | Stand by D.G. set @ Lower station for station lighting, KVA | 50 |
| 23 | Ambient temp | (+) 40° C max and 0° C min or even lower. |
| 24 | Relevant standard | CEN standards, Himachal Ropeway Act and to the satisfaction of Concessioneing Authority |
| 25 | Location of Tension gears | Upper Terminal near Baglamukhi Mata temple |
| 26 | Location of Drive gears | Lower Station at Chandigarh Manali Highway near Pandoh Dam reservoir |

The above technical data is given for guidance only. Concessionaire may use different parameter keeping the ropeway capacity as minimum 400 PPHPD. However, Concessionaire shall submit a technical plan to the Authority indicating the ropeway system as per their preference conforming to CEN standards and keeping the ropeway Capacity as minimum 400 PPHPD.

3.1 Other Facilities

As per Article 10.3 of the Concession Agreement.

3.2 Area Management Plan

The Concessionaire shall be responsible for general upkeep of the Project Area. The broad activities to be taken as part of area management shall include solid waste management, liquid waste management, provision of public conveniences and utilities such as washrooms, toilets, etc. Following activities shall form part of Area Management Plan, henceforth termed as Project Area Management Plan.

- Provision of utilities and public convenience facilities within the Project site;
- Provision of drainage system in the project influence area. In undertaking this activity, Concessionaire will need to ensure that the natural drainage pattern within the Project Area remains unaltered;
- Landscaping: Soft Landscaping with garden architecture shall be developed at the appropriate time at both the station areas.

- Maintain the project Site area (Lower Terminal, Right of Way, Upper Terminal)

3.3 Environment Management Plan (EMP):

Environment Management Plan for Project Area: The proposed project may influence the environment in the Project Area, both by positive and negative impacts. The Concessionaire shall implement the Environmental Management Plan as part of the project. The Environment Management Plan shall include impact mitigation measures to reduce the negative impacts, to be taken up by the Concessionaire in Project Area. For further details, refer this **Clause 3.3 and its sub clauses**.

A detailed survey of the likely impacts shall be carried out by Concessionaire. Based on the ground conditions, a necessary plan should be prepared by experts in the field and finalised in consultation with the Authority and same shall be implemented after getting the requisite clearance from the Department of Pollution Control, Government of Himachal Pradesh and/or other concerned Authority. Necessary attention shall be paid to provide the requisite drains in the slopes and other locations so that the drainage joins the natural nala with notices against littering placed at various locations, disposal of solid as well as waste water as required.

3.3.1 Environmental Impact Analysis:

Environmental Impact Assessment (EIA) and Environmental Clearance (EC) for developmental projects has been made mandatory by the Ministry of Environment & Forests through its Notification issued on 27.01.1994 under the provisions of Environment (Protection) Act, 1986. The Ministry of Environment and Forests (MoEF) issued revised Notification on EC process in September 2006 and amended it in December 2009.

The EIA Notification 2006 has notified 39 developmental sectors, which require prior environmental clearance. The MOEF has prepared EIA Manuals of ten Sectors including aerial ropeways. Based on the capacity, the Ropeway Projects have been categorised into Category A or B which has been further categorised as B1 or B2.

As Aerial ropeway development will have impact on the environment through activities like construction work, reclamation, excavation and other related activities, development and operation thereof shall be planned with careful consideration of their environmental impact. The preparation of EIA report and implementation of EMP is essential for effectively managing adverse effects.

The EIA report shall covers construction and operation of the development and future expansion. EIA report shall also cover technical disciplines and areas such as noise and vibration, air quality, ecology, water quality & hydrology, archaeology & cultural

heritage, landscape & visual character, sustainability and socio- economics. The EIA report will describe how the project has been improved through the EIA process and what alternatives are considered.

3.3.2 Environmental Clearance Process

The EC process has been specified in the EIA Notification, 2006 and its amendments of Dec, 2009. The suitability of site proposed for the proposed Ropeway development shall be the primary requirement for environmental clearance to the project; the same has to be obtained by the Concessionaire.

For the projects located within 10km of the National Parks, Sanctuaries, Biosphere Reserves, Migratory corridors of wild animals, the Concessionaire shall provide the map showing these features vis-à-vis the project location to the Authority for getting them authenticated and for the recommendations or comments of the Chief Wildlife Warden thereon (at the stage of EC).

Authority shall be responsible for all correspondence with the Ministry of Environment & Forests including submission of application for Environmental Clearance, subsequent clarifications, as may be required from time to time, participation in the EAC meeting. The Concessionaire shall assist the Authority in all the above.

3.3.3 Terms of Reference

The terms of reference (TOR) pertinent to preparation of EIA study reports for construction of aerial ropeways will be as per TOR as given in EIA Manual of the Ministry of Environment and Forest (MoEF), Govt. of India.

In addition, the proponent is required to identify specific issues, if any, pertinent to the project and include those issues also in the TOR for preparation of EIA and EMP report upon approval of the TOR by the Expert Appraisal Committee.

3.4 Safety measures to be adhered to:

- a. The Gondolas/ Cabins should have door lock, which cannot be opened by the passengers.
- b. Two separate brakes are provided in each of the drives of ropeway system i.e. Emergency & Service break.
- c. In the event of main supply power failure, full capacity D.G. sets needs to be provided to supply power to run drive motors.
- d. Independent rescue arrangement to effect evacuation of stranded passenger from cabins on line.
- e. Standby Diesel Engine to be provided to run ropeway at slow speed to rescue passengers from line in case of failure of drive motor.
- f. The Ropeway Main Drive Motors will be tripped if:
 - Set rope speed exceeds by 5%
 - Wind speed exceeds the set limit
- g. All safety devices as per the ropeway system chosen must be provided. In addition, emergency stop buttons should be provided at convenient points to stop the cabin lift in the event of any emergency.
- h. Line Security Devices
 - Line safety devices (Break fork switches) are installed on each trestle, hold downs and pressure frames (PF) which immediately stop the ropeway in the unlikely event of rope derailment.
 - Rope catcher is provided on the incoming side of mount beams on line trestles, hold down, P.F. and Stations to arrest / support the hauling rope in case of deropement.
- i. There should be a programmable controlled digital variable speed drive panel. The ropeway will run smoothly by means of a powerful speed and controlled power circuits. There will be smooth controlled start and stop of the ropeway. Different sensors, safety devices feedback element, speed monitoring, failure of deceleration at a designated distance and annunciation needs to be provided.
- j. Control Panels and Distribution Boards needs to be provided at all stations for operation as well as maintenance purposes. Control relays and interlocks will be provided for rescue engine, emergency motor and brake operation.
- j. The main drive motors must be tripped automatically
 - In case of any safety fault occurred at Line and stations.
 - In case there is variation of desired speed ratio between motor shaft, drive sheave or deflection sheaves at station.
 - In case there is failure of deceleration at a predetermined distance of cabin movement.
- k. Anemometers should be provided to monitor the wind speed and to provide trip signal to main drive in case wind speeds exceeds a pre-determined set speed.

- I. Both the stations and line safety devices must be operative during running the ropeway with diesel engine. Battery back should also be provided for opening of service and emergency brakes.

3.5 Miscellaneous, Communication and Fire Precautions:

a. Communication System:

- (i) Communication system should be available at the terminal stations and should be interlinked.
- (ii) The Public Address system, provided as part of Communication system, shall be available at both the stations and able to operate during power failure.
- (iii) The wireless system will be provided to communicate while maintenance / rescue operation on line and for other reasons, when communication through telephone system will not be possible.

b. Fire Precautions:

- (i) Special precautions should be taken to protect any part of the ropeway from fire as per National Building Code (NBC).
- (ii) Provisions for arresting and mitigating fire hazards due to the storage of fuel for DG sets should be as per practices for such fuel storage.

3.6 GUIDELINES RELATING TO EXECUTION

The Concessionaire shall consider Specifications provided by Common European Norms / International Standards and other applicable statutory code of practices like Indian Electricity Act, National Building Code, Municipal Building Byelaws applicable in Himachal Pradesh, etc for design, construction, operation and maintenance of the project facilities. The Concessionaire shall adhere to the provisions of the Ropeways Act. In case of non-availability of Indian standards, suitable international standards may be followed.

- a. All building works shall conform to Central Public Works Department (CPWD) specifications for Class I building works and standards given in National Building Code (NBC) as amended and/or modified from time to time.
- b. All building works shall be designed to meet the functional requirements and shall be compatible with the regional architecture and microclimate, particularly incorporating mitigation measures for earthquake and natural disasters.
- c. Locally available materials shall be accorded preference subject to meeting the requirement of IS codes and the quality of construction.
- d. All brick and stone masonry works shall be of first class type and as per good practices.
- e. All the open spaces around terminals need to be landscaped.

- f. The design of drinking water supply and storage systems, laying of pipes, cleaning and disinfecting of the water storage shall be as per relevant clauses of the NBC.
- g. The design, layout and construction of drains for sewerage disposal system with all ancillary works shall be in accordance with NBC.
- h. The design and location of all electrical installations, distribution system, wiring, fittings, accessories and lightning protection of buildings shall be as per relevant clauses of the NBC.
- i. Fire fighting equipment including smoke detectors and audiovisual alarm system shall be planned and installed as per relevant sections of NBC.

SCHEDULE - C

PERFORMANCE SECURITY

The value of Performance Security for the various phases of the Project shall be as set out in this Schedule.

| Type of Security | Value of Security | Instrument | Duration From | Duration To |
|-----------------------------------|---|---|---|--|
| Construction Performance security | Rs. 1.0 Crore (Rs One Crore only) | Bank Guarantee in the format as provided in Schedule-C1 | Within 180 days after the date of signing of the Concession Agreement | Till completion of Construction Period and after receiving the Operation Period Performance Security |
| O&M Performance Security | The amount equivalent to Annual Concession Fee Fee which shall become payable in the respective year. | Bank Guarantee in the format as provided in Schedule-C2 | On or before the date of issue of Completion Certificate | Six months after the issuance of Vesting Certificate. |

Annex – C1
FORMAT OF CONSTRUCTION PERFORMANCE SECURITY DURING CONSTRUCTION PERIOD
(Bank Guarantee)
PERFORMANCE BANK GUARANTEE OF CONCESSIONAIRE

Bank Guarantee No.:

Dated:

Issuer of Bank Guarantee:

(Name of the Bank)

(hereinafter referred to as the “**Bank**”)

Beneficiary of Bank Guarantee:

Nature of Bank Guarantee: Unconditional and irrevocable Bank Guarantee.

Context of Bank Guarantee

Performance during Construction Period in respect of draft Concession Agreement (hereinafter referred to as the “**Agreement**”) to be executed amongst (hereinafter referred to as the “**Authority**”), Ropeways and Rapid Transport System Development Corporation H.P. Limited (hereinafter referred to as the “**Government**”) and M/s _____ (hereinafter referred to as the “**Concessionaire**”) for the Design, Finance, Construct, Operate and Maintain the Passenger Ropeway and facilities in the specified location (hereinafter called the ‘Project’ or ‘Ropeway Project’) on Design, Build, Finance Operate and Transfer (DBFOT) basis, provided however, such context of the Bank Guarantee or reference to the Agreement in this Bank Guarantee shall in no manner be relied upon at any stage to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee. The title of this Guarantee i.e. “**Construction Performance Security**” shall in no manner and at no stage be relied upon to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee. The Contract of Bank Guarantee is an independent Contract between the Bank and Authority and is not dependent upon execution or performance of any Agreement amongst Authority, Government and (name of the Concessionaire).

Operative part of the Bank Guarantee:

1. At the request of the Concessionaire, we _____, _____ (name and address of the bank), hereinafter referred to as the “**Bank**”), do hereby unconditionally and irrevocably affirm and undertake that we are the Guarantor and are responsible to the Authority i.e. the beneficiary on behalf of the Concessionaire, upto a total sum of Rs. _____ Crores (Rupees _____ Crores Only), such sum being payable by us to Authority immediately upon receipt of first written demand from the Authority.

2. We unconditionally and irrevocably undertake to pay to the Authority on an immediate basis, upon receipt of first written demand from the Authority and without any cavil or argument or delaying tactics or reference by us to Concessionaire and without any need for the Authority to convey to us any reasons for invocation of the Guarantee or to prove the failure to perform on the part of the Concessionaire or to show grounds or reasons for the demand or the sum specified therein, the entire sum or sums within the limits of Rs.Crores (RupeesCrores Only).

3. We hereby waive the necessity of the Authority demanding the said amount from Concessionaire prior to serving the Demand Notice upon us.

4. We further agree and affirm that no change or addition to or other modification to the terms of the Agreement, shall in any way release us from any liability under this unconditional and irrevocable Guarantee and we hereby waive notice of any such change, addition or modification. We further agree with the Authority that the Authority shall be the sole and the exclusive judge to determine that whether or not any sum or sums are due and payable to him by Concessionaire, which are recoverable by the Authority by invocation of this Guarantee.

5. This Guarantee will not be discharged due to the change in constitution of the Bank or the Concessionaire. We undertake not to withdraw or revoke this Guarantee during its currency/ validity period, except with the previous written consent of the Authority.

6. We unconditionally and irrevocably undertake to pay to the Authority, any amount so demanded not exceeding Rs. Crores (Rupees Crores Only) notwithstanding any dispute or disputes raised by Concessionaire or anyone else in any suit or proceedings before any dispute review expert, arbitrator, court, tribunal or other authority, our liability under this Guarantee being absolute, unconditional and unequivocal. The payment so made by us under this Guarantee to the Authority, shall be a valid discharge of our liability for payment under this Guarantee and the Concessionaire shall have no claim against us for making such payment.

7. This unconditional and irrevocable Guarantee shall remain in full force and effect and shall remain valid until _____

Notwithstanding anything contained herein:

1. Our liability under this Bank Guarantee shall not exceed Indian Rs. _____ Crores (Rupees Crores Only).

2. This unconditional and irrevocable Bank Guarantee shall be valid w.e.f. to _____.

3. We are liable to pay the guaranteed amount or any part thereof under this unconditional and irrevocable Bank Guarantee only and only if the Authority serves upon us a written claim or demand on or before _____.

Authorized Signatory

For Bank

NOTES:

1. The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
2. The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

Annex – C2
FORMAT OF O&M PERFORMANCE SECURITY DURING OPERATION & MAINTENANCE PERIOD
(Bank Guarantee)
PERFORMANCE BANK GUARANTEE OF CONCESSIONAIRE

Bank Guarantee No.:

Dated:

Issuer of Bank Guarantee:

(Name of the Bank)

(hereinafter referred to as the **“Bank”**)

Beneficiary of Bank Guarantee:

Nature of Bank Guarantee: Unconditional and irrevocable Bank Guarantee.

Context of Bank Guarantee

Performance during Operation & Maintenance Period in respect of Concession Agreement dated..... (hereinafter referred to as the **“Agreement”** amongst (“hereinafter referred to as the **“Authority”**), Ropeways and Rapid Transport System Development Corporation H.P. Limited (hereinafter referred to as the **“Government”**) and M/s _____ (hereinafter referred to as the **“Concessionaire”**) for Design, Finance, Construct, Operate and Maintain the Passenger Ropeway and facilities in the specified location (hereinafter called the ‘Project’ or ‘Ropeway Project’) on Design, Build, Finance Operate and Transfer (DBFOT) basis (hereinafter referred to as the **“Project”**), provided however, such context of the Bank Guarantee or reference to the Agreement in this Bank Guarantee shall in no manner to relied upon at any stage to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee. The title of this Guarantee i.e. **“Performance Bank Guarantee”** shall in no manner and at no stage be relied upon to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee. The Contract of Bank Guarantee is an independent Contract between the Bank and Authority and is not dependent upon execution or performance of any Agreement amongst Authority, Government and _____(name of the Concessionaire).

Operative part of the Bank Guarantee

1. At the request of the Concessionaire, we _____, _____ (name and address of the bank), hereinafter referred to as the **“Bank”**), do hereby unconditionally and irrevocably affirm and undertake that we are the Guarantor and are responsible to the Authority i.e. the beneficiary on behalf of the Concessionaire, upto a total sum of Rs.....Crores (Rupees _____ Crores Only), such sum being payable by us to Authority immediately upon receipt of first written demand from the Authority.

2. We unconditionally and irrevocably undertake to pay to the Authority on an immediate basis, upon receipt of first written demand from the Authority and without any cavil or argument or delaying tactics or reference by us to Concessionaire and without any need for the Authority to convey to us any reasons for invocation of the Guarantee or to prove the failure to perform on the part of the Concessionaire or to show grounds or reasons for the demand or the sum specified therein, the entire sum or sums within the limits of Rs. Crores (Rupees Crores Only).
3. We hereby waive the necessity of the Authority demanding the said amount from Concessionaire prior to serving the Demand Notice upon us.
4. We further agree and affirm that no change or addition to or other modification to the terms of the Agreement, shall in any way release us from any liability under this unconditional and irrevocable Guarantee and we hereby waive notice of any such change, addition or modification. We further agree with the Authority that the Authority shall be the sole and the exclusive judge to determine that whether or not any sum or sums are due and payable to it by Concessionaire, which are recoverable by the Authority by invocation of this Guarantee.
5. This Guarantee will not be discharged due to the change in constitution of the Bank or the Concessionaire. We undertake not to withdraw or revoke this Guarantee during its currency/ validity period, except with the previous written consent of the Authority.
6. We unconditionally and irrevocably undertake to pay to the Authority, any amount so demanded not exceeding Rs. Crores (Rupees Crores Only notwithstanding any dispute or disputes raised by Concessionaire or anyone else in any suit or proceedings before any dispute review expert, arbitrator, court, tribunal or other authority, our liability under this Guarantee being absolute, unconditional and unequivocal. The payment so made by us under this Guarantee to the Authority, shall be a valid discharge of our liability for payment under this Guarantee and the Concessionaire shall be a valid discharge of our liability for payment under this Guarantee and the Concessionaire shall have no claim against us for making such payment.
7. This unconditional and irrevocable Guarantee shall remain in full force and effect and shall remain valid until _____

Notwithstanding anything contained herein:

1. Our liability under this Bank Guarantee shall not exceed Indian Rs. Crores (Rupees Crores Only).

2. This unconditional and irrevocable Bank Guarantee shall be valid w.e.f. to
3. We are liable to pay the guaranteed amount or any part thereof under this unconditional and irrevocable Bank Guarantee only and only if the Authority serves upon us a written claim or demand on or before _____.

Authorized Signatory

For Bank

NOTES:

1. The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
2. The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

SCHEDULE - D
APPLICABLE PERMITS

1. Applicable Permits

The Concessionaire shall obtain, as required under the Applicable Laws, the following Applicable Permits on or before the Commencement Date, save and except to the extent of a waiver granted by the Authority in accordance with Clause 4.2 of the Agreement:

- (a) Permission of the State Government for extraction of boulders from quarry;
- (b) Permission of Village Panchayat and Pollution Control Board for installation of crushers;
- (c) Licence for use of explosives, if any;
- (d) Permission of the State Government for getting water connection;
- (e) Permission of State Government for cutting of trees; and
- (f) Any other permits or clearances required under Applicable Laws.

1.1 FOR BUILDING PERMISSIONS:

- a. Complete File containing Approved drawings and Structural Drawings signed by Registered Architect, submitted to Concessioneing Authority.
- b. Forwarding a letter from Municipal Authority to:
 - o Town and Country Planning
 - o PWD
 - o Health
 - o Electricity/Water Supply
 - o To seek their NOC
- c. NOC's from the above four Authorities is to be submitted to Concessioneing authority to issue construction Authorisation.
- d. Construction Authorisation is issued for Start of Construction.
- e. On Completion of Construction of individual structures Occupancy Certificate is to be applied to the Concessioneing Authority.

2. ALL TRADE LICENCES AS APPLICABLE

- a. Shops and Establishment.
3. Approval/permit from Fire Safety Authorities
4. Environmental Clearances/Approvals, as applicable
5. Applicable Permits, as required, relating to environmental protection and conservation shall have been procured by the Authority as a Condition Precedent.

SCHEDULE - E
THE SITE

1. The Site

The objective of the project is to successfully develop a commercially viable Passenger Ropeway Systems including Design, Build, Finance, Operate and Transfer under PPP Mode. The scope shall include Engineering, Procurement, Construction, Testing, Commissioning, Operation and Maintenance of all assets and ropeway system. This shall also include collection of revenue through user fee charges along with all fixed and variable investments relating to ropeway system. The principle objective of the project will be increase in tourist traffic by utilizing efficiencies of Private partner under PPP mode. The proposed project is to support and improve the tourist passenger transit facilities and services.

Site of the Ropeway Project shall include the land, buildings, structures and road works as described in this Schedule-A.

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 Agreement.

The Site of the Project comprises the area of LTP, area of UTP, area of Towers and ROU for cable. The land and structures comprising the Site are described below.

2. Land

The Site of the Project comprises the land described below, which shall be provided by Concessing Authority, however land charges incurred by Authority will be reimbursed by Concessionaire:

| S. No. | Location | Purpose | Land Requirement Right of way (ROW) /Right of use (ROU) | Area available/to be acquired |
|---------------|---|--|--|--|
| 1. | Lower Terminal point at Chandigarh Manali Highway (near Pandoh Dam reservoir) | Lower Terminal Station + Parking for cabins +Boarding / de-boarding/ other public facilities | ROW - 2500 sq. m | Govt. Land |

| | | | | |
|----|---|---|--|-----------------------------------|
| 2. | Upper Terminal point at Baglamukhi Mata Temple | Upper Station area with storage + Boarding / de-boarding/ other public facilities | ROW- 1200 sq. m | Govt. Land / Private Land |
| 3. | Line Towers (3 Nos) | | ROW - 300 sqm @ 100 sqm at each tower. | Govt. Land + Private Land |
| 4. | Corridor of 10 m all along the alignment of 800 m (approx.) | | ROU - 8000 sqm | Pvt. Land/Forest Land /Govt. Land |
| | Total area for ROW | | 4000 sq.m | |
| | Total area for ROU (Right of use) | | 8000 sq.m | |
| | Total Land requirement including approach and site development | | 4000 sq.m | Stations, Q area, Approach |

In addition to the above:

1. Land equivalent to accommodate at least 250 cars would be made available by the Concessioneing Authority to construct a multilevel car parking at LTP.
2. Government Land of 5000 sqm, shall be made available at UTP AND LTP for eco – friendly tourism activities.
3. Eco – friendly tourism activities should be as per Eco – friendly tourism projects policy of the state government (construction of permanent structure will not be allowed).
4. if an alternate privately owned site is found suitable and available for LTP/ UTP, same could be considered but the cost shall be borne by the concessionaire.

The stretch of ropeway crossing the forest area and water reservoir of dam will require permission from the concerned authorities.

SCHEDULE - F
PROJECT COMPLETION SCHEDULE

1. Project Completion Schedule

During Construction Period, the Concessionaire shall comply with the requirements set forth in this Schedule-F for each of the Project Milestones and the Scheduled Completion 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.

2. Project Milestone-I

2.1 Project Milestone-I shall occur on the date falling on the 135th (one hundred and thirty fifth) day from the Commencement Date (the “**Project Milestone-I**”).

2.2 Prior to the occurrence of Project Milestone-I, the Concessionaire shall have commenced construction of one terminal station as per Schedule-B and expended not less than 10% (ten per cent) of the total capital cost set forth in the Financial Package.

3. Project Milestone-II

3.1 Project Milestone-II shall occur on the date falling on the 274th (two hundred and seventy fourth) day from the Commencement Date (the “**Project Milestone-II**”).

3.2 Prior to the occurrence of Project Milestone-II, the Concessionaire shall have commenced the construction of all terminal points and facilities as per Schedule-B and expended not less than 35% (thirty five per cent) of the total capital cost set forth in the Financial Package and conveyed to the Independent Engineer, the nature and extent of physical progress comprising such expenditure so as to enable the Independent Engineer to determine that the physical progress is reasonably commensurate with the expenditure incurred. Provided, however, that at least one-half of the expenditure referred to hereinabove shall have been incurred on physical works which shall not include advances of any kind to any person or expenditure of any kind on plant and machinery.

4. Project Milestone-III

4.1 Project Milestone-III shall occur on the date falling on the 473rd (four hundred and seventy third) day from the Commencement Date (the “**Project Milestone-III**”).

4.2 Prior to the occurrence of Project Milestone-III, the Concessionaire shall have commenced the construction of towers and ropeway as per Schedule-B and expended not less than 70% (Seventy

per cent) of the total capital cost set forth in the Financial Package and conveyed to the Independent Engineer, the nature and extent of physical progress comprising such expenditure so. as to enable the Independent Engineer to determine that the physical progress is reasonably commensurate with the expenditure incurred. Provided, however, that at least one-half of the expenditure referred to hereinabove shall have been incurred on physical works which shall not include advances of any kind to any person or expenditure of any kind on plant and machinery.

5. Project Milestone – IV (i.e. Scheduled Completion Date)

- 5.1 The Scheduled Completion Date and/or Substantial Completion Date shall occur on the 548th (Five Hundred and Forty Eighth) day from the Commencement Date.
- 5.2 On or before the Scheduled Completion Date, the Concessionaire shall have completed the Project, as per Schedule-B and expended not less than 100% (Hundred per cent) of the total capital cost set forth in the Financial Package.
- 5.3 In the event, the Concessionaire achieves completion of the Project in all respects prior to the 548th (Five Hundred and Forty Eighth) day from the Commencement Date, then the Scheduled Completion Date for all intents and purposes, shall be deemed to be the date of such early completion.

6. Extension of period

Upon extension of any or all of the aforesaid Project Milestones or the Scheduled Completion 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 – G TESTS

1. Schedule for Tests

- 1.1 The Concessionaire shall, not later than 30 (thirty) days prior to the likely completion of Ropeway System, notify the Independent Engineer and the Authority of its intent to subject the Ropeway System to Tests, and not 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 Ropeway System.
- 1.2 The Concessionaire shall notify the Independent Engineer of its readiness to subject the Ropeway System 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 this Schedule.

2. Tests

- 2.1 In pursuance of the provisions of Clause 10.9.1 of this Agreement, the Independent Engineer shall conduct, or cause to be conducted, the Tests specified in this Paragraph 2.
- 2.2 Visual and physical Test: The Independent Engineer shall conduct a visual and physical check of the Ropeway System to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.
- 2.3 Test run: The Independent Engineer shall undertake a test run of the Project Ropeway System to determine that the quality of service conforms to the provisions of the Agreement.
- 2.4 Other Tests: The Independent Engineer may require the Concessionaire to carry out or cause to be carried additional Tests, in accordance with Standards and Specifications, Codes, Acts and Good Industry Practice, for determining the compliance of the Ropeway System set therein.
- 2.5 Environmental audit: The Independent Engineer shall carry out a check to determine conformity of the Ropeway System with the environmental requirements set forth in Applicable Laws and Applicable Permits.
- 2.6 Safety review: Safety audit of the Ropeway System shall have been undertaken in accordance with Standards and Specifications, Codes, Acts and Good Industry Practice, as set forth in Agreement /Schedule, and on the basis of such audit, the Independent Engineer shall determine conformity of the Ropeway System with the provisions of this Agreement.

3. Agency for conducting Tests

All Tests set forth in this Schedule shall be conducted by the Independent Engineer or such other agency or person as it may specify in consultation with the Authority.

4. Completion Certificate

Upon successful completion of Tests, the Independent Engineer shall issue the Completion Certificate, as the case may be, in accordance with the provisions of the Agreement.

5. Tests during construction

Without prejudice to the provisions of this Schedule, tests during construction shall be conducted in accordance with the provisions of the Agreement.

SCHEDULE - H
OPERATION AND MAINTENANCE (O&M)

1. Detailed Operation and Maintenance Plan

The Operator shall perform all the obligations under the Agreement with utmost care, effective and efficient and adapt the best practices in all operations and maintenance activities in accordance to the industry standards and in confirmation to the guidelines provided in the Himachal Pradesh Ropeway Act. The Operator shall undertake the operations and maintenance activities including but not limited to the tasks detailed herein.

A. General requirements:-

Operating Functions: Basic Operating Functions

| Area of Operations | Key Operating Functions |
|----------------------------|--|
| Ropeway Station | <ul style="list-style-type: none"> ➤ Conduct routine O&M ➤ Facility management ➤ Asset maintenance ➤ Passenger monitoring |
| Terminals/ Towers/ Ropeway | <ul style="list-style-type: none"> ➤ Conduct routine O&M ➤ Movable parts inspection ➤ Compliance monitoring for service and quality ➤ Flow / movement monitoring of cabins and rope ➤ Fault detection and repair ➤ Store inspection ➤ Repairs, rehabilitation, expansion of facilities ➤ Replacement of assets as per maintenance schedule |
| Consumer services | <ul style="list-style-type: none"> ➤ Maintain ticket counters ➤ User facilities maintenance ➤ Q area maintenance ➤ Safe Boarding and De-boarding ➤ Shop and common area maintenance ➤ Consumer complaints redressal, and monitor Consumer |
| Passenger Safety | <ul style="list-style-type: none"> ➤ Monitor safety plan ➤ Monitoring service quality |

| Area of Operations | Key Operating Functions |
|--------------------|---|
| Administration | <ul style="list-style-type: none"> ➤ Planning and coordination with other authorities ➤ Procurement of materials, works and services ➤ Project Management and supervision ➤ Accounts and financial management, and training ➤ Information recording and management ➤ Regulatory reporting |

In the above table, the key basic operating functions are only listed and there are many more routine O&M functions which the Concessionaire has to undertake at different time frequencies.

- B. Asset / Machinery Replacement:** Considering the wear and tear due to operation, Asset / Machinery, Concessionaire shall replace in two phase during operation period i.e. first in 15th of Operation and second in 30th Year of Operation. The replaced Machinery shall be accordingly depreciated over the remaining life time of the Asset. The asset / machinery replacement schedule is shown in the following Table.

| Item | Scheduled Replacement |
|---|-----------------------|
| Mechanical Equipments including gear box, coupling, thruster, clutch, drive & return sheave, deflection & line sheaves, gland boxes, rescue etc | Once in 15 years |
| Tools & tackles, Spares | Once in 15 years |
| Power Equipment (DG Sets, Transformers, | Once in 15 years |
| Tension rope | Once in 15 years |

- 2. Other Facility Maintenance Plan:** It will cover other than the Ropeway Component – parking, toilets, waiting area, (commercial area, if any) solid waste management, drainage, sewerage etc.

Preventive Maintenance: The preventive maintenance tasks generally required in O&M are given in the following Table.

| Component | Daily Maintenance Tasks |
|--|--|
| Parking | <ul style="list-style-type: none"> ➤ Routine Maintenance ➤ Cleaning and Sweeping ➤ Surveillance for unauthorized parking ➤ Collection points for parking charges ➤ Marking for entry, exit and parking ➤ Check condition of safety equipment |
| Toilets | <ul style="list-style-type: none"> ➤ Routine Maintenance ➤ Cleaning and Sweeping ➤ Surveillance for leakage – pipe breaks and leaks - Daily ➤ Pipe flushing once in 6 months |
| Waiting area / Common Open Area | <ul style="list-style-type: none"> ➤ Routine Maintenance ➤ Cleaning and Sweeping ➤ Surveillance for unauthorized persons ➤ Marking for entry, exit and waiting ➤ Check condition of safety equipment ➤ Check proper operation of door |
| Commercial area (if any) | <ul style="list-style-type: none"> ➤ Routine Maintenance ➤ Cleaning and Sweeping ➤ Surveillance for unauthorized persons ➤ Marking for entry, exit and waiting ➤ Check condition of safety equipment ➤ Check proper operation of door |
| Solid waste management / Drainage / Sewerage | <ul style="list-style-type: none"> ➤ Disposal plan ➤ Maintain collection bins ➤ Check for overflow ➤ Replace and remove any hazardous material immediately |

3. O&M Requirements

3.1 The Concessionaire shall, at all times, operate and maintain the Ropeway System 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 operations and maintenance requirements set forth in this Schedule (the “**O&M Requirements**”).

3.2 The Concessionaire shall repair or rectify any defect or deficiency set forth in this Schedule 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 the Agreement, without prejudice to the rights of the Authority under the Agreement, including Termination thereof.

- 3.3 The Concessionaire shall be required to meet the Performance Benchmarks set forth in this Schedule 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 the Agreement, without prejudice to the rights of the Authority under the Agreement, including Termination thereof.

4. Repair/rectification of defects and deficiencies

- 4.1 The obligations of the Concessionaire in respect of O&M requirements shall include repair and rectification of the defects and deficiencies specified in this Schedule within the time limit set forth therein.
- 4.2 The Concessionaire shall at all times maintain an adequate inventory of spares and consumables to meet the Maintenance Requirements.

5. Performance Benchmarks

The obligations of the Concessionaire in respect of O&M Requirements shall include meeting the Performance Benchmarks specified in this Schedule within the time limit set forth therein.

6. Other defects and deficiencies

- 6.1 In respect of any defect or deficiency not specified in this Schedule, the Concessionaire shall undertake repair or rectification in accordance with Good Industry Practice and within the time limit specified by the RMC.
- 6.2 In respect of any defect or deficiency not specified in this Schedule, the RMC 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 in accordance with Good Industry Practice and within the time limit specified by the RMC.

7. Extension of time limit

Notwithstanding anything to the contrary specified in this Schedule, 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. Such additional time shall be determined by the RMC and conveyed to the Concessionaire and the Authority with reasons thereof.

8. Emergency repairs/restoration

Notwithstanding anything to the contrary contained in this Schedule, if any defect, deficiency or deterioration in the Ropeway System poses danger to the life or a hazard to safety or risk of damage to property of the Users thereof, the Concessionaire shall promptly take all reasonable measures for eliminating or minimizing such danger.

9. Daily Inspection by the Concessionaire

The Concessionaire shall, through its engineer, undertake a daily visual inspection of the Ropeway System and maintain a record thereof in a register to be kept in such form and manner as the RMC may specify. Such record shall be kept in safe custody of the Concessionaire and shall be open to inspection by the Authority and the RMC at any time during office hours.

10. Divestment Requirements

All defects and deficiencies specified in this Schedule shall be repaired and rectified by the Concessionaire so that the Ropeway System conforms to the O&M Requirements on the Transfer Date.

11. Display of O&M Schedule

The Concessionaire shall display a copy of this Schedule at the ticket counters along with the Complaint Register.

SCHEDULE – I

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 Ropeway Project, irrespective of the person(s) at fault.
- 1.2 Users of the Ropeway Project include staff of the Concessionaire and its contractors working on the Ropeway Project.
- 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**.

2. Obligations of the Concessionaire

The Concessionaire shall abide by the following insofar as they relate to safety of the Users:

- (a) Applicable Laws and Applicable Permits;
- (b) Manual for Safety, issued by the Concessioneing Authority;
- (c) relevant Standards/Guidelines contained in internationally accepted codes; and
- (d) provisions of this Agreement; and
- (e) Good Industry Practice.

3. Appointment of Safety Consultant

For carrying out safety audit of the Ropeway Project under and in accordance with this Schedule, the Concessioneing Authority shall appoint from time to time, one or more qualified firms or organisations as its consultants (the “**Safety Consultant**”). The Safety Consultant shall employ a team comprising, without limitation, one ropeway safety expert and one traffic planner to undertake safety audit of the Ropeway Project.

4. Safety measures during Development Period

- 4.1 No later than 90 (ninety) days from the date of this Agreement, the Concessioneing Authority shall appoint a Safety Consultant for carrying out safety audit at the design stage of the Project.
- 4.2 The Concessionaire shall provide to the Safety Consultant, in four copies, the relevant drawings containing the design details that have a bearing on safety of Users (the “**Safety Drawings**”). Such design details shall include horizontal and vertical alignments, elevated structures; and Terminals along with other incidental or consequential information. The Safety Consultant shall review the design details and forward three copies of the Safety Drawings with its recommendations, if any, to the Independent Engineer during Construction phase of the Project and to the RMC during the Operation Period, who shall record its comments, if any, and forward one copy each to the Concessioneing Authority and the Concessionaire.
- 4.3 The design details shall be compiled, analysed and used by the Safety Consultant for evolving a package of recommendations consisting of safety related measures for the Ropeway Project. The safety audit shall be completed in a period of three months and a report thereof (the “**Safety Report**”) shall be submitted to the Concessioneing Authority, in five copies. One copy each of the Safety Report shall be forwarded by the Concessioneing Authority to the Concessionaire and the Independent Engineer or RMC as the case may be, forthwith.
- 4.4 The Concessionaire shall endeavour to incorporate the recommendations of the Safety Report in the design of the Ropeway Project, as may reasonably be required in accordance with Applicable Laws, Applicable Permits, Manuals and Guidelines of the Concessioneing 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 Concessioneing 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-B, the Concessionaire shall make a report thereon and seek the instructions of the Concessioneing Authority for funding such works in accordance with the provisions of Agreement.
- 4.5 Without prejudice to the provisions of Paragraph 4.4, the Concessionaire and the Independent Engineer or the RMC as the case may be, shall, within 15 (fifteen) days of receiving the Safety Report, send their respective comments thereon to the Concessioneing Authority, and no later than 15 (fifteen) days of receiving such comments, the Concessioneing 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 Concessioneing Authority may

specify; provided that any works or services required to be undertaken hereunder shall be governed by the provisions of Agreement.

5. Safety measures during Construction Period

- 5.1 A Safety Consultant shall be appointed by the Concessioneing Authority, no later than 4 (four) months prior to the expected Project Completion Date, for carrying out a safety audit of the completed Construction Works.
- 5.2 The Safety Consultant shall study the Safety Report for the Development Period and inspect the Ropeway System 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 Ropeway Project. 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.
- 5.3 The Concessionaire shall make adequate arrangements during the Construction Period for the safety of workers and Ropeway Users in accordance with Applicable Laws and Good Industry Practice for safety in construction zones, and notify the Concessioneing Authority, RMC and the Independent Engineer about such arrangements.

6. Safety measures during Operation Period

- 6.1 The Concessionaire shall develop, implement and administer a surveillance and safety programme for Users, including correction of safety violations and deficiencies and all other actions necessary to provide a safe environment in accordance with this Agreement.
- 6.2 The Concessionaire shall establish a Ropeway Safety Management Unit (the “RSMU”) to be functional on and after COD, and designate one of its officers to be in-charge of the RSMU. Such officer shall have specialist knowledge and training in ropeway safety system by having attended a course conducted by a reputed organisation on the subject.
- 6.3 The Concessionaire shall keep a copy of every FIR recorded by the Police with respect to any accident occurring on the Ropeway Project. In addition, the Concessionaire shall also collect data for all cases of accidents not recorded by the Police. The information so collected shall be summarised in the form prescribed by the Concessioneing Authority for this purpose. The Concessionaire shall also record the exact location of each accident on a route map. The aforesaid

data shall be submitted to the Concessioneing Authority at the conclusion of every quarter and to the Safety Consultant as and when appointed.

- 6.4 The Concessionaire shall submit to the Concessioneing Authority before the 31st (thirty first) May of each year, an annual report (in ten copies) containing, without limitation, a detailed listing and analysis of all accidents of the preceding Accounting Year and the measures taken by the Concessionaire pursuant to the provisions of Paragraph 6.1 of this **Schedule** for averting or minimising such accidents in future.
- 6.5 Once in every Accounting Year, a safety audit shall be carried out by the Safety Consultant to be appointed by the Concessioneing Authority. It shall review and analyse the annual report and accident data of the preceding year, and undertake an inspection of the Ropeway System. 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 Ropeway System. 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**.

7. Costs and expenses

Costs and expenses incurred in connection with the Safety Requirements set forth herein, including the provisions of this Schedule, and in particular, the remuneration of the Safety Consultant, safety audit, and costs incidental thereto, shall be met out of the Concessionaire.

Annex – I
(Schedule - I)
Safety Guidelines

1. Safe movement

In the design, construction and operation of Terminals, particular care shall be taken to ensure safety of Users in entry and exit; while waiting, boarding or alighting from the Gondolas. This shall include facilities for safe and efficient evacuation in case of emergency. In particular, Ropeway System shall be designed and tested for safe movement.

2. System integrity

In the design of power supply, circuits and equipments, particular care shall be taken to minimize the likely incidence of failure.

3. Restoration of service

The Ropeway System shall be designed such that in the event a fault occurs, a limited service can be provided within a few minutes by isolation of the affected area or equipment, to the extent possible.

4. Safety management

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.

5. Safety equipment

The following equipment shall be provided at every Station;

- (a) Fire extinguishers and fire alarms at the appropriate locations on each of the Terminal;
- (b) Adequate fire extinguishers in the terminal offices;
- (c) Adequate stretchers and two standard first aid boxes; and
- (d) Such other equipment as may be required in conformity with Good Industry Practice.

6. Emergency

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 emergence through periodic simulated exercises as laid down in a Disaster Management Manual to be prepared and published by the Concessionaire prior to COD.

7. Fire safety

- a. The Concessionaire shall adopt provisions of the National Fire Protection Association (NFPA) 130 standard for fixed guide way transit and passenger Ropeway Systems
- b. 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.

8. User safety and information system:

- 8.1 The Concessionaire shall provide the RSMU with the facilities required for supervising passenger areas and shall provide visual information to Users at all the terminals. The Concessionaire shall also provide one way communication to Users at the terminals through a Public Announcement (PA) system. The User call points should be located on all the terminals at convenient locations to allow Users to contact the RSMU in emergencies.
- 8.2 The User information system shall comprise dynamic visual displays and loudspeakers.

SCHEDULE - J

SELECTION OF INDEPENDENT ENGINEER

1. Selection of Independent Engineer

- 1.1 The provisions of the Model Request for Proposal for Selection of Technical Consultants, issued by the Ministry of Finance, GOI vide OM 24(23)/PF~II/2008 dated 21 May 2009, or any substitute thereof shall apply for selection of an experienced firm to discharge the functions and duties of an Independent Engineer.
- 1.2 In the event of termination of an Independent Engineer appointed in accordance with the provisions of paragraph 1.1, the Authority shall appoint another firm of Technical Consultants forthwith or may engage a government-owned entity in accordance with the provisions of paragraph 4 of this Schedule.
- 1.3 The Concessionaire may, in its discretion, nominate a representative to participate in the process of selection to be undertaken by the Authority under this Schedule.

2. Terms of Reference

The Terms of Reference for the Independent Engineer shall substantially conform with Schedule-K.

3. Fee and expenses

- 3.1 In determining the nature and quantum of duties and services to be performed by the Independent Engineer during the Development Period and Construction Period, the Authority shall endeavour that payments to the Independent Engineer on account of fee and expenses shall be borne equally by the Authority and the Concessionaire in accordance with the provisions of this Agreement.

4. Appointment of government entity as Independent Engineer

Notwithstanding anything to the contrary contained in this Schedule, 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 that a government-owned entity which is owned or controlled by the Authority shall not be eligible for appointment as Independent Engineer.

SCHEDULE – K

TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

1. Scope

- 1.1 These Terms of Reference for the Independent Engineer (the “**TOR**”) are being specified pursuant to the Concession Agreement dated *** (the “**Agreement**”), which has been entered into between the Authority and **** (the “**Concessionaire**”) for Design, Finance, Construct, Operate and Maintain the Passenger Ropeway and facilities in the specified location (hereinafter called the ‘Project’ or ‘Ropeway Project’) on Design, Build, Finance Operate and Transfer (DBFOT) basis.
- 1.2 This TOR shall apply for services of Independent Engineer to be appointed as per Schedule-J for construction, operation and maintenance of the Ropeway Project.

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.
- 2.3 The rules of interpretation stated in 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 during the Term of its appointment 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) conducting Tests on completion of construction and issuing Completion/ Provisional Certificate as set forth in Paragraph 5;
 - (iv) determining, as required under the Agreement, the costs of the works or services and/or their reasonableness w.r.t this Project and certifying the same;
 - (v) determining, as required under the Agreement, the period or any extension thereof, for

performing any duty or obligation;

- (vi) assisting the Parties in resolution of disputes as set forth in Paragraph 7; and
- (vii) undertaking all other duties and functions in accordance with the Agreement.

3.2 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 from borrow areas and quarry sites and topographical 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 to the Authority and the Concessionaire. 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.

4.3 The Independent Engineer shall review the Detailed Project Report providing 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.

4.4 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 Ropeway System, 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 and Documents 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 the Ropeway System once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the “**Inspection Report**”) setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works 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 Ropeway System. The Inspection Report shall also contain a review of the maintenance of the existing lanes in conformity with the provisions of the Agreement. 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 Ropeway System 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. 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, 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 above, 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.
- 5.8 In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the Specifications and Standards, and the provisions of this Paragraph 5 shall apply to such tests.
- 5.9 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 Ropeway System 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 the Project Completion Date 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.
- 5.10 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 passersby 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 passersby, 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.
- 5.11 In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works, 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.
- 5.12 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.

5.13 The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in Schedule-G and issue a Completion Certificate or Provisional Certificate, as the case may be. For carrying out its functions under this Paragraph 5.13 and all matters incidental thereto, the Independent Engineer shall act under and in accordance with the provisions of Agreement and Schedule-G.

5.14 The Independent Engineer shall aid and advise the Concessionaire in preparing the Maintenance Manual.

6. Determination of costs and time

6.1 The Independent Engineer shall determine the costs of the works or services, and/or their reasonableness w.r.t this Project that are required to be determined by it under the Agreement.

6.2 The Independent Engineer shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

7. Assistance in Dispute resolution

7.1 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.

7.2 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.

8. Other duties and functions

The Independent Engineer shall perform all other duties and functions specified in the Agreement.

9. Miscellaneous

9.1 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.

- 9.2 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.
- 9.3 The Independent Engineer shall obtain, and the Concessionaire shall furnish in 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 one of the copies to the Authority along with its comments thereon.
- 9.4 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.
- 9.5 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 micro film form or in such other medium as may be acceptable to the Authority.
- 9.6 Wherever no period has been specified for delivery of services by the Independent Engineer, the Independent Engineer shall act with the efficiency and urgency necessary for discharging its functions in accordance with Good Industry Practice.

SCHEDULE - L

USER FEE

- 1. USER FEE (TICKET PRICE):** - The price of ticket (user charges) to be charged from the Users/ passengers shall be governed by the Financial Offer submitted by the bidder, subject to negotiation and approval of RTDC.

Price for Ticket shall be at two locations for different categories, based on the division of passenger into Adults and Child and also based on Round Trip and Single Trip. Hence, there shall be four categories at each location:

TICKET PRICE

Round Trip Rates

Price per Adult Ticket / Round Trip

Price per Child Ticket / Round Trip

Single Trip Rates

Price per Adult Ticket / single Trip

Price per Child Ticket / single Trip

SCHEDULE - M

SUBSTITUTION AGREEMENT

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

AMONGST

- 1 The Ropeways and Rapid Transport System Development Corporation H.P. Limited acting through its and having its principal office at, Himachal Pradesh (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]¹, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at ****, (hereinafter referred to as the "**Concessionaire**" which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);
- 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 Design, Finance, Construct, Operate and Maintain the Passenger Ropeway and facilities in the specified location (hereinafter called the 'Project' or 'Ropeway Project') on Design, Build, Finance Operate and Transfer (DBFOT) basis, 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 IT IS HEREBY AGREED 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, 1956/2013, 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 assigns 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

Ropeway System 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 Project in accordance with the provisions 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; provided further that the Lenders' Representative may at any time withdraw its representation hereunder and upon such withdrawal, the Authority may terminate this Agreement in accordance with the provisions hereof.

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 Ropeway System 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 fulfill the eligibility criteria that were laid down by the Authority for short listing 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 Ropeway System 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 7 (seven) 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 7 (seven) 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.

3.4.5 The transfer of Concession hereunder to a Nominated Company may, notwithstanding anything to the contrary in this Agreement and the Concession Agreement, be undertaken by transfer of no less than 75% (seventy five per cent) of the equity of the Concessionaire to the Nominated Company, and upon such transfer hereunder, the Concessionaire shall be deemed to be the Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

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 24 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 or any designated account of the Concessionaire which it is operating and maintaining for the Project, 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, or 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 fulfill 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 fulfill 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 Shimla 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 Shimla 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 judgment 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 judgment 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 there under 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. The address for service of each Party and its facsimile number 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 5.00 (five) 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. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

9.12 Authorised representatives

Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

9.13 Original Document

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

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

SIGNED, SEALED AND DELIVERED

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)

SIGNED, SEALED AND DELIVERED

For and on behalf of

SENIOR LENDERS by the Lenders' Representative:

(Signature)

(Name)

(Designation)

(Address)

In the presence of:

1.

2.

SCHEDULE - N

VESTING CERTIFICATE

- 1 The (the **“Authority”**) refers to the Concession Agreement dated *** (the **“Agreement”**) entered into between the Authority and **** (the **“Concessionaire”**) for design, finance, construct, operate and maintain the Passenger Ropeway and facilities in the specified location (hereinafter called the **‘Project’** or **‘Ropeway Project’**) on Design, Build, Finance Operate and Transfer (DBFOT) basis.
- 2 The Authority hereby acknowledges compliance and fulfillment by the Concessionaire of the Divestment Requirements set forth in 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 Project shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.
- 3 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

AGREED, ACCEPTED AND SIGNED

For and on behalf of

CONCESSIONAIRE by:

(Signature)

(Name)

(Designation)

(Address)

In the presence of:

1.

SIGNED, SEALED AND DELIVERED

For and on behalf of

Authority by:

(Signature)

(Name)

(Designation)

(Address)

2.