

JABALPUR SMART CITY LIMITED



Development of Aerial Passenger Ropeway System between Sangram Sagar and Madan Mahal Fort, Jabalpur Design, Build, Finance, Operate and Transfer Basis under PPP Framework

Volume II

Draft Project Development and Management Agreement

CHIEF EXECUTIVE OFFICER
JABALPUR SMART CITY LIMITED
MANAS BHAWAN, WRIGHT TOWN
JABALPUR 482001

DRAFT PROJECT DEVELOPMENT AND MANAGEMENT AGREEMENT

This Project Development and Management Agreement ("**Agreement**") is entered into on this the ____ day of __, 20__ at ____.

AMONGST

1. **Jabapur Smart City Limited**, represented herein by its Chief Executive Officer / Authorized Officer, and having its principal office at Office of Jabalpur Smart City Limited, Manas Bhawan, Wright Town, Jabalpur, M.P./ Registered Office (hereinafter referred to as the "**Authority**") which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of First Part;

AND

2. [**Name of SPV**], a company incorporated under the provisions of the Companies Act, 2013, (as re-enacted, substituted, amended from time to time) and having its registered office at _____ (hereinafter referred to as the "Developer" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Second Part.

AND

The consortium¹ of (i) M/s _____, and (ii) M/s _____ having its registered office at _____, in their capacity as the confirming party to this Agreement (hereinafter referred to as the "Selected Bidder" which expression shall, unless the context otherwise requires, include its successors) duly represented through M/s _____, the Lead Member of the consortium, through its _____ of the Third Part.

OR

_____ a company incorporated under the _____

¹ To be modified in case the selected bidder is a single entity and not a consortium.

provisions of the Companies Act, 1956, (as re-enacted, amended, substituted, from time to time) and having its registered office at _____(hereinafter referred to as the "Selected Bidder" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Third Part

Each of the parties of the First and Second parts are hereinafter, as the context may admit or require, individually referred to as a "**Party**" and collectively as the "**Parties**".

The "**Authority**" and "**Developer**" are hereinafter, as the context may admit or require, referred to as "**Party**" individually and "**Parties**" collectively.

WHEREAS:

- A. Jabalpur Smart City Limited, (the "DoT, GoJ" or "Authority") is engaged in the development of tourism infrastructure and as part of this endeavor, it has decided to undertake development of aerial passenger ropeway at Sangram Sagar to Madan Mahal fort in Jabalpur on Design, Build, Finance, Operate and Transfer (the "DBFOT") basis under Public Private Partnership Mode (the "Project") in accordance with the terms and conditions to be set forth in this Agreement.
- B. The Authority had accordingly invited single stage two envelope proposals by its RFQ-cum-RFP No. _____ dated _____ (the "**RFQ-cum-RFP**") on terms and conditions contained therein for the selection of successful bidder for undertaking the development of the Project on DBFOT basis in terms hereof.
- C. After evaluation of the bids received in accordance with the RFQ-cum-RFP, the Authority had accepted the bid of _____ (hereinafter referred to as the "**Selected Bidder**") and issued Letter of Award ("**LOA**") No. _____ dated _____ (hereinafter called the "**LOA**") to the Selected Bidder i.e. M/s _____ requiring, inter alia, the execution of this Project Development and Management Agreement within 45 (forty-five) days of the date of issue of LOA.
- D. The Selected Bidder has incorporated an appropriate Special Purpose Vehicle under the Indian Companies Act, 2013 (hereinafter called the "**Developer**") and has requested the Authority to accept the Developer as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder under the LOA, including the obligation to enter into this Project Development and Management Agreement pursuant to the LOA for executing the Project.
- E. By its letter dated _____, the Developer has also joined in the said request of the Selected Bidder to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder including the obligation to enter into this Agreement pursuant to the LOA. The Developer has further represented to the effect that it has been promoted by the Selected Bidder for the purposes hereof.
- F. The Authority has agreed to the said request of the Selected Bidder and the Developer,

and has accordingly agreed to enter into this Agreement with the Developer for execution of the Project, subject to and in accordance with the terms and conditions set forth hereinafter.

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

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 41) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedule S and used therein shall have the meaning ascribed thereto in the Schedule S.

1.2 Interpretation

- a. 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 Madhya Pradesh, 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, refurbishment, augmentation, up gradation 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 Ranchi 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 "reorganization" 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, reorganization, dissolution, arrangement, protection or relief of debtors;
- s) any reference, at any time, to any agreement, deed, instrument, lease or document of any description shall be construed as reference to that agreement, deed, instrument, lease or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
- t) Any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party or the Independent Engineer, as the case may be, in this behalf and not otherwise;
- u) The Schedule S and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- v) References to Recitals, Articles, Clauses, Sub-clauses or Schedule S in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedule S 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; and
- 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").

- b. Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Developer to the Authority and/or the Independent Engineer shall be provided free of cost and in three copies, and if the Authority and/or the Independent Engineer is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.
- c. 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.
- d. Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

1.3 Measurements and arithmetic conventions

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

1.4 Priority of agreements and errors/discrepancies

- a. This agreement, and all other agreements and documents forming part of this agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this agreement, the priority of this agreement and other documents and agreements forming part hereof shall, in the event of any conflict between them, be in the following order:
 - a) this agreement; and
 - b) all other agreements (including RFQ-cum-RFP and LOA) and documents forming part hereof; i.e. the agreement at (a) above shall prevail over the agreements and documents at (b) above.
- b. Subject to Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:
 - a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
 - b) between the Clauses of this agreement and the Schedule S, the Clauses shall prevail and between Schedule S and Annexes, the Schedule S shall prevail;
 - c) between any two Schedule S, 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

2.1 Scope of the Project

2 SCOPE OF THE PROJECT

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

- a) Planning, designing, financing, constructing, operating, maintaining and transfer of the Project as specified in Schedule B and Schedule C on the Site set forth in Schedule A, and in conformity with the Specifications and Standards set forth in Schedule D;
- b) Operation and maintenance of the Project Facilities in accordance with Good Industry Practice and the provisions of this Agreement as specified in Schedule K;
- c) Performance and fulfillment of all other obligations of the Developer 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 Developer under this Agreement; and
- d) Transfer of Project Site along with the Project Facilities in good operational conditions on the Transfer Date in accordance with the terms and conditions of this Agreement.

3 GRANT OF CONCESSION

3. The Concession

- a. Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Authority hereby grants to the Developer the concession set forth herein including the exclusive right, license and authority during the subsistence of this Agreement to design, construct, finance, operate and maintain the Project (the "Concession") for a period of 30 (thirty) years (including the construction period) commencing from the Appointed Date and ending on the Transfer Date, unless terminated earlier in accordance with this Agreement, and the Developer hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.
- b. Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted shall oblige or entitle (as the case may be) the Developer to:
 - a. Fulfill the Minimum Development Obligations as specified in Schedule B in accordance with the Specifications and Standards, Applicable Laws, Applicable Permits and Good Industry Practice in terms as set out in this Agreement.
 - b. Finance and construct the Project and Project Facilities as per Schedule B and Schedule C of this PDMA;
 - c. Manage, operate and maintain the project and project facilities and regulate the use thereof by third parties;
 - d. Demand, collect and appropriate Fee from Project and persons liable for payment of Fee for using the Project or any part thereof;
 - e. Perform and fulfill all of the Developer's obligations under and in accordance with

- this Agreement;
- f. Bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Developer under this Agreement; and
 - g. Neither assign, transfer or sublet or create any lien or Encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project and Project Facilities nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement.

4 CONDITIONS PRECEDENT

4.1 Conditions Precedent

- 4.1.1 Save and except as expressly provided in Articles 4, 9, 10, 24, 29, 36 and 39, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the "Conditions Precedent").
- 4.1.2 The Authority shall be required to fulfill the following Conditions Precedents within 180 (one hundred and eighty) days from the Effective Date:
 - a. Procured the ownership and possession and/or right to use/No Objection Certificate for other land component of the Site from the respective agencies;
 - b. Procured the forest clearance for the project from the respective agency;
 - c. Provided required assistance in removal of trees/ branches/shrubs from the project site;
 - d. Provided to the Developer the Right of Way of the Site in accordance with the provisions of Clause 10.4; and
 - e. Provided best effort assistance to Developer in procurement of environmental clearance as per Environment (Protection) Act, 1986 subject to the Developer fulfilling the eligibility conditions and duly complying with all other requirements [including payment of charges/fees (if any) by the Developer].
- 4.1.3 The Developer shall be required to fulfill the following Conditions Precedents to the satisfaction of the Authority within 180 (one hundred and eighty) days from the Effective Date:
 - a. Procured environmental clearance as per Environment (Protection) Act, 1986 at its own cost [including payment of charges/fees (if any)] with best effort basis assistance from the Authority;
 - b. Executed and procured execution of the Substitution Agreement;
 - c. Procured all the Applicable Permits specified in Schedule E unconditionally or if subject to conditions then all such conditions shall have been satisfied in full and such Applicable Permits are in full force and effect;
 - d. Carried out any surveys, investigations and soil tests that the Developer may

- deem necessary for the Project;
- e. Submitted to the Authority and the Independent Engineer its detailed design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project;
 - f. Prepared and submitted the Project drawings as per Clause 12.3 to the Independent Engineer for review;
 - g. Executed the Financing Agreements in accordance with Article 24 and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Developer;
 - h. Delivered to the Authority 3 (three) true copies of the Financial Package and the Financial Model, duly attested by the authorized person of the Developer, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Lenders;
 - i. Delivered to the Authority the confirmation, in original, of the correctness of its representations and warranties set forth in clause 7.1 of this Agreement;
 - j. Delivered to the Authority a legal opinion from the legal counsel of the Developer with respect to the authority of the Developer to enter into this Agreement and the enforceability of the provisions thereof; and
 - k. Fulfilled the eligibility conditions and duly complied with all other requirements including payment of all charges, sums, moneys, fees, etc. as required by the Authority or any Government Instrumentality towards procurement of forest, wildlife and environment clearances by the Authority.
 - l. Provided that upon request in writing by the Developer, the Authority may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.3.
- 4.1.4 Each Party shall make all reasonable endeavors to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.
- 4.1.5 The Parties shall notify each other in writing at least once a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

4.2 Damages for delay by the Authority

Save & except for reasons directly attributable to the Selected Bidder/Developer or Force Majeure, any delay by the Authority in the fulfillment of any or all of the Conditions Precedent set forth in Clause 4.1.2, except those which have been waived off by mutual agreement of the Parties hereto, beyond a period of 270 (two hundred and seventy) days from the Effective Date or such later date as mutually agreed between the Parties, would entitle the Developer to

terminate this Agreement as per provisions hereof.

In such an event, the Authority shall be required to

- a. Subject to any outstanding dues of the Developer hereunder refund all the payments made by the Developer to the Authority as per the terms of the Project Development and Management Agreement till the date of such termination; and
- b. Release the Construction Period Performance Security, subject to any outstanding dues of the Developer hereunder.

4.3 Damages for delay by the Developer

- a. In the event that
 - i. the Developer does not procure fulfillment of any or all of the Conditions Precedent set forth in Clause 4.1.3 within a period 180 (one hundred and eighty) days from the Effective Date, and
 - ii. the delay has not occurred as a result of Authority's failure to fulfill the obligations under Clause 4.1.2 or due to Force Majeure or fulfillment of such Condition Precedent has not been waived off by the Authority; the Developer shall pay to the Authority, Damages in an amount calculated at the rate of 0.2% (zero point two percent) of the Construction Period Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum of 20% (twenty per cent) of the Construction Period Performance Security, without prejudice to any other rights and remedies available to the Authority in terms hereof or under the law or otherwise.
- b. Notwithstanding anything to the contrary in the event of delay referred to in the clause 4.3 (a) above, exceeds beyond a period of 270 (two hundred and seventy) days from the Effective Date or goes beyond such later date as may be mutually agreed between the Parties, for fulfillment of condition precedent, then the Authority would be entitled to terminate this Agreement in accordance with the provisions hereto.

In such an event, notwithstanding anything to the contrary contained in the Project Development and Management Agreement, the Authority shall, without prejudice to any other right or remedy that may be available to the Authority under this Agreement, be entitled to

- i. Forfeit/invoke and appropriate the Bid Security or Construction Period Performance Security; and
- ii. Appropriate the payments, if any, made by the Developer as Damages.

4.4 Without prejudice to and notwithstanding anything to the contrary set out in the foregoing, the Parties may by mutual agreement, instead decide to extend the time for fulfilling the Conditions Precedent.

5 OBLIGATIONS OF THE DEVELOPER AND THE SELECTED BIDDER

5.1 Obligations of the Developer

- 5.1.1 Subject to and on the terms and conditions of this Agreement, the Developer shall at its cost and expense procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Project and Project Facilities and observe, fulfill, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2 The Developer shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.3 Subject to Clauses 5.1.1 and 5.1.2, the Developer shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 5.1.4 The Developer shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
 - a. make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details, as may be required for obtaining all Applicable Permits and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
 - b. comply and adhere to the terms and conditions including renewals indicated in the clearances with respect to forest, wildlife and environment and keep these clearances in force including any renewal or modification, if required;
 - c. procure, as required, the appropriate proprietary rights, licenses, lease, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project Facilities;
 - d. perform and fulfill its obligations under the Financing Agreements;
 - e. make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
 - f. ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Developer's obligations under this Agreement;
 - g. not do or omit to do any act, deed or thing which may in any manner be volatile of

- any of the provisions of this Agreement;
- h. support, cooperate with and facilitate the Authority in the implementation and operation of the Project and Project Facilities in accordance with the provisions of this Agreement; and
 - i. prepare the Detailed Project Report and the Designs and Drawings;
 - j. implement the Project in a timely manner in accordance with the provisions of this Agreement, including the Specifications and Standards and the project implementation schedule;
 - k. implement the measures for safety, security and protection of the works, property, life and materials at the Project Site and the environment;
 - l. compliance with and implementation of the environment, wildlife and forest management plan, if required;
 - m. transfer the Project and Project Facilities to the Authority upon Termination, of this agreement, in accordance with the provisions thereof.

5.2 Obligations relating to Project Agreements

- 5.2.1 It is expressly agreed that the Developer shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Developer from its obligations or liability hereunder.
- 5.2.2 The Developer shall submit to the Authority the drafts of all Project Agreements or any amendments or replacements thereto for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Developer within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Developer shall submit to the Authority a true copy thereof, duly attested by a Director of the Developer, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that no review and/or observation of the Authority and/or its failure to review and/or convey its observations on any document shall relieve the Developer of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.
- 5.2.3 The Developer shall not make any replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Developer shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Developer.

- 5.2.4 The Developer shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Developer in the event of Termination or Suspension.
- 5.2.5 Notwithstanding anything to the contrary contained in this Agreement, the Developer agrees and acknowledges that selection or replacement of an O&M Contractor and execution of the O&M Contract shall be subject to the prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Developer, and undertakes that it shall not give effect to any such selection or contract without prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavor to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Developer or its Contractors from any liability or obligation under this Agreement.

5.3 Obligations relating to Change in Ownership

- 5.3.1 The Selected Bidder shall adhere to the “Lock-in-Period” requirements set out in clause 5.13 below and shall not undertake or permit any Change of Ownership in the equity shareholding of the Developer, except with the prior written approval of the Authority.
- 5.3.2 Notwithstanding anything to the contrary contained in this Agreement, the Developer agrees and acknowledges that:
- a. 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 Developer; or
 - b. acquisition of any control directly or indirectly of the Board of Directors of the Developer by any person either by himself or together with any person or persons acting in concert with him shall be subject to prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Developer, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Developer without such prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavor to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Developer from any liability or obligation under this Agreement.

For the purposes of this Clause 5.3.2:

- a. the expression "**acquirer**", "**control**" and "**person acting in concert**" shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Developer;
 - b. the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Developer; and
 - c. power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situate in India or abroad) the Equity of the Developer, not less than half of the directors on the Board of Directors of the Developer or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of not less than 15% (fifteen per cent) of the Equity of the Developer shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Developer.
- 5.3.3 In case any shareholder of the Developer dilutes/transfers its equity in the Developer, subject to the provisions of this Agreement, to a third party, the member transferring the share / Developer shall ensure that the third party acquiring the equity shall agree and conform to the provisions of this Agreement.

5.4 Obligations relating to employment of foreign nationals

The Developer acknowledges, agrees and undertakes that employment of foreign personnel by the Developer and/or its contractors and their subcontractors 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 Developer and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Developer or any of its contractors or sub- contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Developer from the performance and discharge of its obligations and liabilities under this Agreement.

5.5 Obligations relating to employment of trained personnel

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

5.6 Obligations relating to medical aid

For providing emergency medical aid to Users, the Developer shall, at each Terminal Station, 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 from hospitals / clinics in the vicinity.

5.7 Obligations relating to basic amenities

5.7.1 The Developer shall during the entire term of the Concession Period, in addition to the infrastructure required to be developed, operated and maintained by it under this Agreement, provide and maintain amenities, in adequate numbers in accordance with Good Industry Practice for common use by the Users of the Project. These shall include drinking water facilities, sanitation facilities, toilets, and telephone and communication facilities.

5.8 Obligations relating to aesthetic quality of the Project

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

5.9 Obligations relating to noise control

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

5.10 Sole purpose of the Developer

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

5.11 Branding of the Project

The Developer undertakes that it shall not, in any manner, use the name or identity of the Project to advertise or display its own identity, brand equity or business interests, including those of its shareholders, save and except as may be necessary in the normal course of business. For the avoidance of doubt, it is agreed that for advertisement purposes, the Developer may, only at every Terminal Station, display its own name along with the name of the Authority and as agreed by the Authority at a spot where other public notices are displayed for the Users.

5.12 Facilities for physically challenged and elderly persons

The Developer shall, in conformity with the guidelines issued from time to time by the Government of India, procure a barrier free environment for the physically or visually challenged and for elderly persons using the Project.

5.13 Obligations of the Selected Bidder

The Selected Bidder shall in accordance with and subject to the provisions of this Agreement, undertake or manage, inter alia, the herein mentioned areas of the Developer's activities such that the experience and expertise becomes available to the Developer on an on- going basis:

- a. Assist the Developer in arranging finances for the Project, including mobilization of financial assistance and equity;
- b. Assist the Developer in procurement of Applicable Permits for commencing and implementing the Project;
- c. Assist the Developer in award of project contracts (if any) in respect of operation and maintenance of the Project Facilities;
- d. Assist the Developer to comply with and implementation of the environment, wildlife and forest management plan, if required;
- e. Assist the Developer to comply with the provisions of this Agreement relating to liability and indemnification; and
- f. The Selected Bidder shall ensure that its equity shareholding Pattern in the paid-up capital of the Concessionaire shall be as under:

The aggregate direct equity shareholding of the Selected Bidder in the issued and paid up equity capital of the Developer shall not be less than 51% (fifty-one percent) throughout the Concession Period of the Project (the "**Lock-in Period**"). However, it is clarified that any divestment shall be subject to the prior consent of the Authority (which shall not be unreasonably denied by the Authority) and at the option of the Authority, be accompanied by suitable no objection letters from the lenders.

Further, in the event Selected Bidder is a Consortium, the Lead Member shall hold equity share capital not less than 51% (fifty-one per cent) of the subscribed and paid up equity of the Developer throughout the Concession Period; and Other Member shall, for a period of at least

3 (three) years from COD, hold equity share capital not less than 26% (twenty-six per cent) of the subscribed and paid up equity of the Developer.

6 SUPPORT OF THE AUTHORITY

6.1 Support of the Authority

6.1.1 The Authority agrees to at its own cost and expense to provide support to the Developer and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:

- a. upon written request from the Developer, and subject to the Developer complying with Applicable Laws, provide all reasonable support and assistance to the Developer in procuring Applicable Permits required from any Government

- Instrumentality for implementation and operation of the Project;
- b. upon written request from the Developer, assist the Developer in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favorable to the Developer than those generally available to commercial customers receiving substantially equivalent services;
 - c. ensure that no barriers are erected or placed on the Site by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency, national security, law and order or collection of inter-state taxes;
 - d. subject to and in accordance with the Applicable Laws, grant to the Developer the authority to regulate trespass on the Project Site;
 - e. if required, assist the Developer in procuring police assistance from the State Police Department or a substitute thereof;
 - f. not do or omit to do any act, deed or thing which may in any manner be violate of any of the provisions of this Agreement;
 - g. support, cooperate with and facilitate the Developer in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
 - h. upon written request from the Developer and subject to the provisions of Clause 5.4, provide reasonable assistance to the Developer and any expatriate personnel of the Developer or its Contractors to obtain applicable visas and work permits for the purposes of discharge by the Developer or its Contractors their obligations under this Agreement and the Project Agreements.

7 REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of the Developer

The Developer represents and warrants to the Authority that:

- a. it is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- b. it has taken all necessary corporate and other actions under Applicable Laws to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- c. it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- d. this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;

- e. it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- f. the information furnished in the Bid and as updated on or before the Effective Date is true and accurate in all respects as on the Effective Date;
- g. the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association or those of any member of the Consortium or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- h. there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- i. it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- j. it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- k. it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3
- l. all its rights and interests in the Project shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;
- m. no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material

- fact necessary to make such representation or warranty not misleading; and
- n. no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith.

7.2 Representations and Warranties of the Authority

The Authority represents and warrants to the Developer that:

- a. it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- b. it has taken all necessary actions under the Applicable Laws to authorize the execution, delivery and performance of this Agreement;
- c. it has the financial standing and capacity to perform its obligations under the Agreement;
- d. this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- e. it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Authority's ability to perform its obligations under this Agreement; and
- f. it has complied with Applicable Laws in all material respects.

7.3 Representations and Warranties of the Selected Bidder

- a) The aggregate direct shareholding of the Selected Bidder in the subscribed and paid up equity share capital of the Developer shall be as follows:
 - i. The aggregate direct equity shareholding of the Selected Bidder in the issued and paid up equity capital of the Developer shall not be less than 51% (fifty-one percent) throughout the Concession Period. Further, any divestment shall be subject to the prior consent of the Authority (which shall not be unreasonably denied by the Authority) and at the option of the Authority, be accompanied by suitable no objection letters from the lenders.
 - ii. Further, in the event Selected Bidder is a Consortium, the Lead Member shall hold equity share capital not less than 51% (fifty-one per cent) of the subscribed and paid up equity of the Developer throughout the Concession Period; and Other Member for a period up to 3 (three) years from the COD, hold equity share capital not less than 26% (twenty-six per cent) of the subscribed and paid up equity of the Developer.
- b) that the Selected Bidder has the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing

- the Project in accordance with this Agreement;
- c) that the Selected Bidder is duly organized and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Authority to enter into this Agreement with the Concessionaire pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
 - d) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty;
 - e) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith; and
 - f) all information provided by the Selected Bidder in response to the RFQ-cum-RFP or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects.

7.4 Disclosure

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

8 DISCLAIMER

8.1 Disclaimer

- 8.1.1 The Selected Bidder /Developer affirms, acknowledges and agrees that assumptions, assessments, statements, data and information furnished in the bidding document by the Authority and/or by any consultant appointed by Authority, as the case may be, are only indicative and for the sole purpose of facilitating the formulation of the bid. The Selected Bidder / Developer further agrees, acknowledges and affirms that, it has, before placing reliance on the same, conducted its own investigations and analysis and checked the accuracy, adequacy, correctness, reliability and completeness thereof; and the Selected Bidder / Developer shall have no claim against the Authority and/or its consultant, to indemnify the Selected Bidder / Developer in respect of any loss/damage/costs whatsoever arising out of or in connection with such reliance placed by the Selected Bidder/Developer on the aforesaid assumptions, assessments,

statements, data and information furnished in the bidding document [including this Agreement] by the Authority and/or by any consultant appointed by Authority, as the case may be.

- 8.1.2 The Selected Bidder / Developer acknowledges that prior to the execution of this Agreement, the Selected Bidder has, after a complete and careful examination, made an independent evaluation of the RFQ-cum-RFP (inter-alia including any project report/feasibility report/ furnished therein by any of its consultant, for and on behalf of the Authority), Scope of the Project, Specifications and Standards, Site, local conditions, physical qualities of ground, subsoil and geology, and all information provided by the Authority and/or its consultant or obtained procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Authority and/or its consultant makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy and/or completeness of the information provided by it and the Developer confirms that it shall have no claim whatsoever against the Authority and/or its consultant in this regard.
- 8.1.3 The Developer has obtained for itself all necessary information as to the risks, contingencies and all other circumstances which may influence or affect the Developer and its rights and obligations under this Agreement.
- 8.1.4 The Developer acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 and 8.1.2 above and hereby acknowledges and agrees that the Authority and/or its consultant shall not be liable for the same in any manner whatsoever to the Developer or the Selected Bidder or any person claiming through or under any of them.
- 8.1.5 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 and 8.1.2 above shall not vitiate this Agreement or render it voidable.
- 8.1.6 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 and 8.1.2 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority and/or its consultant to give any notice pursuant to this Clause 8.1.6 shall not prejudice the disclaimer of the Authority and/or its consultant contained in Clause 8.1.1 and 8.1.2 and shall not in any manner shift to the Authority any risks assumed by the Developer pursuant to this Agreement or the Project Agreements.
- 8.1.7 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Developer and the Authority and/or its consultant shall not be liable in any manner for such risks or the consequences thereof to the Developer or the Selected Bidder or any person claiming under or through the Developer.

9 PERFORMANCE SECURITY

9.1 Construction Period Performance Security

- 9.1.1 The Developer shall for the performance of its obligations hereunder during the Concession Period, provide to the Authority within 30 days of the Effective Date, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs. 65,00,000/- (Rupees sixty five Lakh only) in the form set forth in Schedule F (the **“Construction Period Performance Security “or “Performance Security”**).
- 9.1.2 The details of the Construction Period Performance Security as and when submitted will form part of this agreement.
- 9.1.3 If the Developer fails to submit the Construction Period Performance Security within the period specified in the Clause 9.1.1, the Authority shall be entitled to encash and appropriate Bid Security of the Selected Bidder as Damages, and to terminate this Agreement in accordance with Article 31.
- 9.1.4 The Authority shall return the Bid Security of the Selected Bidder; subject to such deductions as would be required towards setting off any amount due and payable to the Authority in terms hereof after the submission of Construction Period Performance Security by the Developer.

9.2 Appropriation of Construction Period Performance Security

- 9.2.1 Upon occurrence of a Developer Default, from the time the Construction Period Performance Security comes into effect, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Construction Period Performance Security as Damages for such Developer Default. Upon such encashment and appropriation from the Construction Period Performance Security, the Developer shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level of the Construction Period Performance Security, and in case of appropriation of the entire Construction Period Performance Security provide a fresh Construction Period Performance Security, as the case may be, and the Developer shall, within the time so granted, replenish or furnish fresh Construction Period Performance Security as aforesaid failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 31. Upon replenishment or furnishing of a fresh Construction Period Performance Security, as the case may be, as aforesaid, the Developer shall be entitled to an additional Cure Period of 60 (sixty) days for remedying the Developer Default, and in the event of the Developer not curing its default within such Cure Period, the Authority shall be entitled to encash and appropriate such Construction Period Performance Security as Damages, and to terminate this Agreement in accordance with Article 31.

9.3 Release of Construction Period Performance Security

- 9.3.1 The Authority shall forthwith the expiry of 6 (six) months period commencing from the Commercial Operation Date, return to the Developer the Construction Period Performance Security; subject to such deductions as would be required towards setting off any amount due and payable to the Authority in terms hereof.

9.4 Operation Period Performance Security

- 9.4.1 The Developer shall for the performance of its obligations hereunder during the **"Operation Period"**, provide to the Authority prior to or on the Commercial Operations Date, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to <2.5% of the Estimated Project Cost or equivalent to next year's concession n fee whichever is higher > in the form set forth in Schedule F (the **"Operation Period Performance Security"**).
- 9.4.2 The Operation Period Performance Security shall be increased by 5% (five per cent) every year on compound basis.
- 9.4.3 The details of the Operation Period Performance Security as and when submitted will form part of this agreement.

9.5 Appropriation of Operation Period Performance Security

- 9.5.1 Upon occurrence of a Developer Default, from the time the Operation Period Performance Security comes into effect, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Operation Period Performance Security as Damages for such Developer Default. Upon such encashment and appropriation from the Operation Period Performance Security, the Developer shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level of the Operation Period Performance Security, and in case of appropriation of the entire Operation Period Performance Security provide a fresh Operation Period Performance Security, as the case may be, and the Developer shall, within the time so granted, replenish or furnish fresh Operation Period Performance Security as aforesaid failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 31. Upon replenishment or furnishing of a fresh Operation Period Performance Security, as the case may be, as aforesaid, the Developer shall be entitled to an additional Cure Period of 60 (sixty) days for remedying the Developer Default, and in the event of the Developer not curing its default within such Cure Period, the Authority shall be entitled to encash and appropriate such Operation Period Performance Security as Damages, and to terminate this Agreement in accordance with Article 31.

9.6 Release of Operation Period Performance Security

- 9.6.1 The Authority shall forthwith the expiry of 6 (six) months period commencing

from the “**Transfer Date**”, return to the Developer the Operation Period Performance Security; subject to such deductions as would be required towards setting off any amount due and payable to the Authority in terms hereof.

10 RIGHT OF WAY

10.1 The Site

The site of the Project shall comprise of the land substantially described in Schedule A (the "Site"), the Right of Way shall be granted by the Authority to the Developer as a licensee under and in accordance with this Agreement. For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the land required for the Project as set forth in Schedule A.

10.2 License, Access and Right of Way

- 10.2.1 Subject to and in accordance with the provisions of the Applicable Laws, the Authority hereby grants to the Developer access to the Site for carrying out any surveys, investigations and soil tests that the Developer may deem necessary during the Condition Precedent Period as per clause 4.1.3, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Developer on or about the Site pursuant hereto in the event of Termination or otherwise.
- 10.2.2 In consideration of the payment of Concession Fee, this Agreement and the covenants and warranties on the part of the Developer herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Developer, commencing from the Appointed Date, leave and license rights in respect of all the land (along with any buildings, constructions or immovable assets, if any, thereon) comprising the Site which is substantially described, delineated and shown in Schedule A hereto (the "Licensed Premises") for the duration of the Concession Period with effect from the Appointed Date on an "as is where is" basis, free of any Encumbrances, to the Developer in order to enable the Developer to develop, operate and maintain the said Licensed Premises, together with all and singular, liberties, privileges, easements and appurtenances whatsoever to the said Licensed Premises, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement and the Forest Land lease deed, and for no other purpose whatsoever.
- 10.2.3 The license, access and Right of Way granted by this Agreement to the Developer shall always be subject to existing rights of way and the Developer shall perform its obligations in a manner that alternative right of way is made available for an existing right of way affected by the Project.
- 10.2.4 The license, access, possession and Right of Way granted by this Agreement to the Developer shall always be subject to Developer performing its duties and responsibilities at all times during the Concession Period as per the terms and conditions of this Agreement.

10.2.5 It is expressly agreed that the Right of Way granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority upon the Termination of this Agreement, for any reason whatsoever subject to the provisions of Article 31. Further, the Parties undertake to execute such other documents as may be required to give effect to the aforesaid documents including the termination agreements for the purpose of registration of termination with the appropriate authorities.

10.2.6 The Developer hereby irrevocably appoints the Authority (or its nominee) to be its true and lawful attorney, to execute and sign for and on behalf of the Developer in favour of the Authority, 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 authorized officer of the Authority, and the Developer consents to it being registered for this purpose.

10.2.7 It is expressly agreed that:

- i. trees on the Site are property of the Authority except that the Developer shall be entitled to exercise usufructuary rights thereon during the Concession Period provided that the Developer shall be entitled to cut down the trees for the mandatory development according to the approved DPR;
- ii. any archaeological discoveries shall belong to and vest in the Authority and the Developer shall promptly report the discovery thereof to the Authority and follow its instructions for safe removal thereof;
- iii. mining rights, excluding mining for the purposes of construction of the Project, do not form part of the license granted to the Developer under this Agreement and the Developer hereby acknowledges that it shall not have any mining rights or any interest in the underlying minerals or fossils on or under the Licensed Premises other than that required for aforesaid construction purposes. For the avoidance of doubt, mining rights mean the right to mine any and all minerals or interest therein. Any statutory charges, fees, etc., as may be payable shall be borne by the Developer; and
- iv. license granted under the provision of this Agreement in favour of the Developer shall not be permanent grant in any circumstances whatsoever.

10.3 Procurement of the Site

10.3.1 Pursuant to the notice specified in Clause 4.1.2 and upon completion of the Conditions Precedent to be fulfilled by the Developer under Clause 4.1.3, the Authority and the Developer shall, on a mutually agreed date and time, inspect the Site and prepare a memorandum containing an inventory of the Site including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Site. Signing of the memorandum, in two counterparts (each of which shall constitute an original), by the authorized representatives of the Parties shall be deemed to constitute a valid license and Right of

Way to the Developer for free and unrestricted use and development of the vacant and unencumbered land during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever.

- 10.3.2 On and after signing the memorandum and until the Transfer Date, the Developer shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Developer shall notify such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.
- 10.3.3 The Developer may procure at its cost and expense and on its own the land that may be required by it for additional facilities and the Authority shall have no obligation or liability in respect thereof. For the avoidance of doubt, the Developer shall seek prior consent of the Authority to connect any Additional Facility to the Project Facilities and such consent shall not be unreasonably withheld. For avoidance of doubt, the land procured by the Developer for additional facilities shall not form part of the Site and the ownership of such land shall remain with the Developer in the event of Termination or otherwise.
- 10.3.4 Upon receiving access in respect of any land included in the Site, the Developer shall complete the Construction Works in accordance with the Project Completion Schedule and in accordance with Good Industry Practice; provided that the issue of Provisional Certificate shall not be affected or delayed on account of vacant access to any part of the Site not being granted to the Developer or any construction on such part of the Site remaining incomplete on the date of Tests on account of the delay or denial of such access thereto. For the avoidance of doubt, it is expressly agreed that Construction Works on all lands for which access is granted shall be completed before the Project Completion Date. It is also expressly agreed that completion of the respective Construction Works within the time determined by the Independent Engineer hereunder shall be deemed to be Project Milestones for the Clause 12.4.2.
- 10.3.5 The Developer shall, if so required by the Authority, procure on behalf of the Authority, on the terms and to the extent specified by the Authority, the additional land required for the Project or for construction of works specified in Change of Scope Order issued under Clause 16, in accordance with this Agreement and upon procurement, such land shall form part of the Site; provided that the Developer may, by notice given to the Authority no later than 60 (sixty) days from the Appointed Date or the date of Change of Scope Order, as the case may be, require the Authority to initiate and undertake proceedings for acquisition of such land under the provisions of the Applicable Laws and the Authority shall take all such steps as may be reasonably necessary for such land acquisition forthwith; provided further that the cost of land acquired under this Clause 10.3.4 shall be borne by the Developer in accordance with the provisions of Applicable Laws.

10.4 Protection of Site from encroachments

During the Concession Period, the Developer shall protect the Site from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any

Contractor or other person claiming through or under the Developer 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 Developer therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

10.5 Special/temporary right of way

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

10.6 Access to the Authority and Independent Engineer

- 10.6.1 The license, Right of Way and right to the Site granted to the Developer hereunder shall always be subject to the right of access of the Authority and the Independent Engineer and other employees and agents of the Authority for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.
- 10.6.2 The Developer shall allow free access to the Site at all times for the authorized representatives of the Authority, Lenders, Independent Engineer, and for the persons duly authorized by any Government Instrumentality to inspect the Project or Project Facilities or to investigate any matter within their authority, and upon reasonable notice, the Developer shall provide to such persons' reasonable assistance necessary to carry out their respective duties and functions.
- 10.6.3 The Developer shall, for the purpose of operation and maintenance of any utility specified in Article 11, allow (subject to terms of Forest Land Lease Deed) free access to the Site at all times for the authorized persons of the controlling body of such utility.
- 10.6.4 Subject to clause 10.6.2 and 10.6.3, the Developer would not be required by the Authority to provide relief or waiver on the User Fee to any class of people using the ropeway facility. In the event, the Authority would like to provide free access of the ropeway facility to a certain class of people, then such relief shall be informed to the Developer through express written correspondence from the authorized signatory of the Authority and adequate compensation shall be provided to the Developer on mutually agreed terms.

10.7 Geological and archaeological finds

It is expressly agreed that mining, geological and archaeological rights do not form part of the license granted to the Developer under this Agreement and the Developer hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Site shall vest in and belong to the Authority or the concerned Government Instrumentality. The Developer shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Authority forthwith

of the discovery thereof and comply with such instructions as the concerned Government Instrumentality may reasonably give for the removal of such property. The Authority shall procure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period.

10.8 Sub-licensing

10.8.1 Save and except as otherwise provided in terms hereof, the Developer shall not be entitled to create or permit to subsist any Encumbrances on the whole or part(s) of the Site or otherwise dispose the same by way of any device/mechanism/arrangement (including among others sale, license, sublet, etc.). Provided that nothing contained herein shall be construed or interrupted as restricting the right of the Developer to appoint Contractors for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Project.

10.8.2 The Parties hereby agree that this shall constitute an essential condition of the Agreement and in case of breach of the same, it shall be deemed as Developer's Event of Default and liable to be treated in accordance with the terms hereof.

11 Utilities

11.1 Existing utilities

Notwithstanding anything to the contrary contained herein, the Developer shall ensure that all existing right of way or utilities on, under or above the Site are kept in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the authority of the controlling body of that right of way or utility.

11.2 Shifting of obstructing utilities

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

11.3 New utilities

The Developer shall allow, subject to such conditions as the Authority may specify, access to, and use of the Site for laying telephone lines, water pipes, electric cables or other public utilities. Where such access or use causes any financial loss to the Developer, it may require the user of the Site to pay compensation or damages as per Applicable Laws. For the avoidance of doubt, it is agreed that use of the Site under this Clause shall not in any manner relieve the

Developer of its obligation to maintain the Project and Project Facilities in accordance with this Agreement and any damage caused by such use shall be restored forthwith.

12 CONSTRUCTION OF THE PROJECT

12.1 Obligations prior to commencement of construction

Prior to commencement of Construction Works, the Developer shall:

- a) submit to the Authority its detailed design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project within 180 days of the Effective Date as per clause 4.1.3 in accordance with the Project Completion Schedule as set forth in Schedule G;
- b) appoint its representative duly authorized to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement;
- c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, the Applicable Laws and Applicable Permits; and
- d) make its own arrangements for quarrying of materials needed for the Project under and in accordance with the Applicable Laws and Applicable Permits.

12.2 Maintenance during Construction Period

During the Construction Period, the Developer shall maintain, at its cost, the Site and shall undertake the necessary maintenance works for this purpose.

12.3 Drawings

In respect of the Developer's obligations with respect to the Drawings of the Project Facilities, the following shall apply:

- a) The Developer shall prepare and submit within 180 days of the Effective Date per Clause 4.1.3, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, three copies each of all Drawings (Schedule H) to the Authority for review;
- b) By submitting the Drawings for review to the Independent Engineer, the Developer 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 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 Developer with particular reference to their conformity or otherwise with the Scope of the Project and the

Specifications and Standards. The Developer 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 Developer 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 Developer of its obligations and liabilities under this Agreement in any manner nor shall the Independent Engineer or the Authority be liable for the same in any manner;
- f) Without prejudice to the foregoing provisions of this Clause 12.3, the Developer shall submit to the Authority for review and comments, its Drawings, location and layout of Project and Project Facilities, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, within 21 (twenty-one) days of the receipt of such Drawings. The provisions of this Clause 12.3 shall apply mutatis mutandis to the review and comments hereunder; and
- g) Within 90 (ninety) days of the Project Completion Date, the Developer shall furnish to the Authority and the Independent Engineer a complete set of as-built Drawings, in 2 (two) hard copies and in micro film form or in such other medium as may be acceptable to the Authority, reflecting the Project and Project Facilities as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Project and Project Facilities and setback lines, if any, of the buildings and structures forming part of the Project and Project Facilities.

12.4 Schedule D Completion Date

12.4.1 On or after the Appointed Date, the Developer shall undertake construction of Project and Project Facilities as specified in Schedule B and Schedule C and in conformity with the Specifications and Standards set forth in Schedule D. The 730th(seven hundred and thirtieth)day from the Appointed Date shall be the Schedule D date for completion of construction of the Project (the "Schedule D Completion Date") and the Developer agrees and undertakes that the Project Facilities shall be completed on or before the Schedule D Completion Date.

12.4.2 The Developer shall construct the Project Facilities as per Schedule C in accordance with the Project Completion Schedule set forth in Schedule G. In the event that the Developer fails to achieve any Project Milestone within a period of 60 (sixty) days from the date set forth for such Milestone in Schedule G, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Authority, it shall pay Damages to the Authority at a rate of 0.1% of the Construction Period Performance

Security for delay of each day until such Milestone is achieved; provided that if any or all project milestones or the Schedule D Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule G shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule G has been amended as above; provided further that in the event Project Completion Date is achieved despite the aforesaid delays, the damages paid under this Clause 12.4.2 shall be refunded by the Authority to the Developer, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of damages under this Clause 12.4.2 shall be without prejudice to the rights of the Authority under this Agreement, including the right of termination thereof.

12.4.3 In the event that Project and Project Facilities are not completed within 120 (one hundred twenty) days from the Schedule D Completion Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.

13 MONITORING OF CONSTRUCTION

13.1 Monthly progress reports

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

13.2 Inspection

During the Construction Period, the Independent Engineer shall inspect the Project Facilities at least once a month and make a report of such inspection (the "Inspection Report") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Scope of the Project and Specifications and Standards. It shall send a copy of the Inspection Report to the Authority and the Developer within 7 (seven) days of such inspection and upon receipt thereof, the Developer 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 Developer of its obligations and liabilities hereunder in any manner whatsoever.

13.3 Tests

13.3.1 For determining that the Construction Works conform to the Specifications and Standards, the Independent Engineer shall require the Developer to carry out or cause to be carried out Tests, at such time and frequency and in such manner as may be specified by the Independent Engineer from time to time, in accordance with Good Industry Practice for quality assurance. The Developer shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the

Independent Engineer in accordance with Article 14 and as specified in Schedule I and furnish the results thereof to the Independent Engineer. 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 Developer.

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

13.4 Delays during construction

- 13.4.1 If the Developer 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 Project is not likely to be achieved by the Schedule D Completion Date, it shall notify the Developer to this effect, and the Developer shall, within 15 (fifteen) days of such notice, by a communication inform the Independent Engineer in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Project Completion Date.

13.5 Suspension of unsafe Construction Works

- 13.5.1 Upon recommendation of the Independent Engineer to this effect, the Authority may by notice require the Developer to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Authority, such work threatens the safety of the Users and pedestrians.
- 13.5.2 The Developer shall, pursuant to the notice under Clause 13.5.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works and the Users. The Developer may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Independent Engineer, the Authority shall either revoke such suspension or instruct the Developer to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this Clause 13.5 shall be repeated until the suspension hereunder is revoked.

- 13.5.3 Subject to the provisions of Clause 30.7, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of Suspension (the "Preservation Costs"), shall be borne by the Developer.
- 13.5.4 If suspension of Construction Works is for reasons not attributable to the Developer, the Independent Engineer shall determine any extension of the dates set forth in the Project Completion Schedule to which the Developer is reasonably entitled, and shall notify the Authority accordingly whereupon the Authority shall extend such Project Completion Schedule dates in accordance with the recommendations of the Independent Engineer. In the event that the Schedule D Completion Date is extended pursuant hereto, the Concession Period shall be deemed to be extended by a period equal in length to the period of extension of the Schedule D Completion Date.

13.6 Video recording

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

13.7 Monitoring by External Consultant

The Authority, at its own discretion, reserves the right to appoint an external consultant for assisting / facilitating the Authority in the monitoring process. The cost of the external consultant shall be borne by the Authority.

14 COMPLETION CERTIFICATE

14.1 Tests

- 14.1.1 At least 45 (forty-five) days prior to the likely completion of the Project, the Developer shall notify the Independent Engineer of its intent to subject the Project to Tests. The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Developer, and notified to the Authority who may designate its representative to witness the Tests. The Developer shall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests. In the event of the Developer and the Independent Engineer failing to mutually agree on the dates for conducting the Tests, the Developer shall fix the dates by not less than 7 (seven) days' notice to the Independent Engineer.
- 14.1.2 All Tests shall be conducted in accordance with Schedule I. The Independent Engineer shall observe, monitor and review the results of the Tests to determine compliance of the Project with Specifications and Standards and if it is reasonably anticipated or determined by the Independent Engineer during the course of any Test that the performance of the Project or any part thereof does not meet the Specifications and

Standards, it shall have the right to suspend or delay such Test and require the Developer to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Independent Engineer shall provide to the Developer and the Authority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent Engineer may require the Developer to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project with Specifications and Standards.

14.2 Completion Certificate

Upon completion of Construction Works and the Independent Engineer determining the Tests to be successful, it shall forthwith issue to the Developer and the Authority a certificate substantially in the form set forth in Schedule J (the "Completion Certificate").

14.3 Provisional Certificate

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

14.3 Completion of Punch List items

- 14.3.1 All items in the Punch List shall be completed by the Developer within 90 (ninety) days of the date of issue of the Provisional Certificate and for any delay thereafter, other than for reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to complete the Punch List items on its own cost and recover the same from the Developer including by way of forfeiture of Construction Period Performance Security, as the case may be; and in case of such forfeiture, the provisions of clause 9 hereof shall apply.
- 14.3.2 Upon completion of all Punch List items, the Independent Engineer shall issue the Completion Certificate. Failure of the Developer to complete all the Punch List items within the time set forth in Clause 14.4.1 for any reason, other than conditions constituting Force Majeure or for reasons solely attributable to the Authority, shall entitle the Authority to terminate this Agreement.

14.4 Withholding of Provisional Certificate

- 14.4.1 If the Independent Engineer determines that the Project or any part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in commercial operation, it shall forthwith make a report in this behalf and send copies

thereof to the Authority and the Developer. Upon receipt of such a report from the Independent Engineer and after conducting its own inspection, if the Authority is of the opinion that the Project or any part thereof is not fit and safe for commercial service, it shall, within 7 (seven) days of receiving the aforesaid report, notify the Developer of the defects and deficiencies in the Project and direct the Independent Engineer to withhold issuance of the Provisional Certificate. Upon receipt of such notice, the Developer shall remedy and rectify such defects or deficiencies and thereupon Tests shall be undertaken in accordance with this Article 14. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.

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

14.5 Rescheduling of Tests

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

15 COMPLETION OF CONSTRUCTION

15.1 Commercial Operation Date (COD)

The Project shall be deemed to be complete when the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 14, and accordingly the commercial operation date of the Project shall be the date on which such Completion Certificate or the Provisional Certificate is issued (the "**COD or Commercial Operation Date**"). The COD is the date whereupon the Developer shall be entitled to demand and collect Fee in accordance with the provisions of Article 27.

15.2 Damages for delay

Subject to the provisions of Clause 12.4, if COD does not occur prior to the 61st(sixty first) day from the Schedule D Completion Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Developer shall pay Damages to the Authority at the rate of **0.1% of the Construction Period Performance Security** for delay of each day until COD is achieved.

15.3 Termination due to delay

In the event that Project and Project Facilities are not completed within **120 (one hundred twenty) days** from the Schedule D Completion Date, unless the delay is on account of reasons

solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.

16 CHANGE OF SCOPE

16.1 Change of Scope

- 16.1.1 The Authority, notwithstanding anything to the contrary contained in this Agreement, for the efficient and safe operations of the Project, may require the provision of additional works and services which are not included in the Scope of the Project as contemplated by this Agreement (the "Change of Scope"). Any such Change of Scope shall be made in accordance with the provisions of this Article 16 and the costs thereof shall be expended by the Developer in accordance with Clause 16.3.
- 16.1.2 If the Developer determines at any time that a Change of Scope is necessary for providing safer and improved services to the Users, it shall by notices in writing request the Authority to consider such Change of Scope. The Authority, may in its sole discretion, within 30 days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefore in accordance with this Article 16 or inform the Developer in writing of its reasons for not accepting such Change of Scope.
- 16.1.3 Any works or services which are provided under and in accordance with this Article 16 shall form part of the Project and the provisions of this Agreement shall apply mutatis mutandis to such works or services.

16.2 Procedure for Change of Scope

- 16.2.1 In the event of the Authority determining that a Change of Scope is necessary for the efficient and safe operations of the Project, it shall issue to the Developer a notice specifying in reasonable detail the works and services contemplated thereunder (the "Change of Scope Notice").
- 16.2.2 Upon receipt of a Change of Scope Notice, the Developer shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary Documentation in support of:
- a. the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule, if the works or services are required to be carried out during the Construction Period; and
 - b. the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Authority to its contractors, along with the proposed premium/ discount on such rates.

- 16.2.3 Upon receipt of information set forth in Clause 16.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Developer, and the Parties shall, thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (the "Change of Scope Order") requiring the Developer to proceed with the performance thereof. In the event that the Parties are unable to agree, the Authority may, by issuing a Change of Scope Order, require the Developer to proceed with the performance thereof pending resolution of the Dispute, or carry out the works in accordance with Clause 16.5.
- 16.2.4 The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply mutatis mutandis to the works undertaken by the Developer under this Article 16.

16.3 Restrictions on certain works

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

16.4 Power of the Authority to undertake works

- 16.4.1 Notwithstanding anything to the contrary contained in Clauses 16.1.1 and 16.2, the Authority may, after giving notice to the Developer and considering its reply thereto, award any works or services, contemplated under Clause 16.1.1, to any person on the basis of open competitive bidding, provided that the Developer shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 1% (one percent) of the bid amount to the Authority, and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Developer shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid. In case the Developer does not get the award of such works or services according to the provisions of this clause 16.4.1, it is agreed that the Developer shall provide access, assistance and cooperation to the

person who undertakes the works or services hereunder.

- 16.4.2 The works undertaken in accordance with this Clause 16.4 shall conform to the Specifications and Standards and shall be carried out in a manner that minimizes the disruption in operation of the Project. The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply mutatis mutandis to the works carried out under this Clause 16.4.

17 OPERATION AND MAINTENANCE

17.1 O&M obligations of the Developer

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

- a. permitting safe, smooth and uninterrupted O&M of the Project in terms hereof during normal operating conditions;
- b. collecting and appropriating the Fee;
- c. minimizing disruption of operation of Project in terms hereof in the event of accidents or other incidents affecting the safety and use of the Project by providing a rapid and effective response and maintaining liaison with emergency services available in the State;
- d. carrying out periodic preventive maintenance of the Project;
- e. undertaking major & routine maintenance as per Schedule K;
- f. preventing, with the assistance of concerned law enforcement agencies, any unauthorized use or encroachments of the Project, including the Site;
- g. protection of the environment and provision of equipment and materials thereof;
- h. operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Project;
- i. maintaining a public relations unit to interface with and attend to suggestions from the
- j. Users, government agencies, media and other agencies; and
- k. complying with Safety Requirements in accordance with Article 18 and as specified in
- l. Schedule L.

- 17.1.2 The Developer shall remove promptly from the Project all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and

keep the Project and Project Facilities in a clean, tidy and orderly condition, and in conformity with the Applicable Laws, Applicable Permits and Good Industry Practice.

17.2 Maintenance Requirements

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

17.3 Maintenance Manual

Not later than 60 (sixty) days prior to the Schedule D Completion Date, the Developer shall evolve a repair and maintenance manual (the "Maintenance Manual") for the regular and preventive maintenance of the Project in conformity with the Maintenance Requirements, Safety Requirements and Good Industry Practice, and shall provide 5 (five) copies thereof to the Authority. The Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause 17.3 shall apply, mutatis mutandis, to such revision.

17.4 Maintenance Program

17.4.1 Not later than 45 (forty-five) days prior to the beginning of each Accounting Year during the Operation Period, the Developer shall provide to the Authority, its proposed annual programme of preventive, urgent and other Schedule D maintenance (the "Maintenance Programme") to comply with the Maintenance Requirements, Maintenance Manual and Safety Requirements. Such Maintenance Programme shall include:

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

17.4.2 Within 30 (thirty) days of receipt of the Maintenance Programme, the Authority shall review the same and convey its comments to the Developer with particular reference to its conformity with the Maintenance Requirements, Maintenance Manual and Safety Requirements.

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

17.5 Safety, breakdowns and accidents

17.5.1 The Developer shall ensure safe conditions for the Users, and in the event of unsafe conditions, breakdowns and accidents, it shall follow the relevant operating procedures and removal of obstruction and debris without delay. Such procedures shall

conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.

- 17.5.2 The Developer's responsibility for rescue operations at the Project Site shall include safe evacuation of all Users and staff from the affected area as an initial response to any particular incident and shall also include prompt removal of debris or any other obstruction, which may endanger or interrupt the smooth flow of traffic and movement of the Users. For this purpose, it shall maintain and operate at-least 2 (two) round the clock rescue vehicles with rescue equipment and position the vehicles in a manner that allows prompt access to the accident site.

17.6 De-commissioning due to Emergency

- 17.6.1 If, in the reasonable opinion of the Developer, there exists an Emergency which warrants de- commissioning and closure to Users of the whole or any part of the Project, the Developer 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 Developer to the Authority without any delay, and the Developer shall diligently carry out and abide by any reasonable directions that the Authority may give for dealing with such Emergency.
- 17.6.2 The Developer shall re-commission the 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 Developer to re-commission the Project.

17.7 Section closure

- 17.7.1 The Developer shall not close any section of the Project for undertaking maintenance or repair works, except with the prior written approval of the Authority. Such approval shall be sought by the Developer through a written request to be made to the Authority, at least 7 (seven) days before the proposed closure of such section and shall be accompanied by particulars thereof. Within 7 (seven) days of receiving such request, the Authority may grant permission with such modifications as it may deem necessary.
- 17.7.2 The provisions of Clause 17.7.1 shall not apply to de-commissioning under Clause 17.6.1 or to closure of any section of the Project for a period not exceeding 6 (six) hours in a day at any time of the day specified by the Authority as off-peak hours.
- 17.7.3 Upon receiving the permission pursuant to Clause 17.7.1, the Developer shall be entitled to close the designated section for the period specified therein, and in the event of any delay in re-opening such section, the Developer shall pay Damages to the Authority calculated at the rate of 0.1% (zero point one percent) of the Operation Period Performance Security for that section, for each day of delay until the section has been re-opened for traffic.

17.8 Authority's right to take remedial measures

- 17.8.1 In the event the Developer does not maintain and/or repair the Project or any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual or the Maintenance Programme, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from the Authority, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake, by itself and/or through third party / agency, such remedial measures at the risk and cost of the Developer, and to recover its cost from the Developer.
- 17.8.2 The Authority shall have the right and the Developer hereby expressly grants to the Authority the right, to recover the costs specified in Clause 17.8.1 directly from the Operation Period Performance Security.
- 17.8.3 Upon occurrence of a Developer Default, from the time the Operation Period Performance Security comes into effect, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Operation Period Performance Security as Damages for such Developer Default. Upon such encashment and appropriation from the Operation Period Performance Security, the Developer shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level of the Operation Period Performance Security, and in case of appropriation of the entire Operation Period Performance Security provide a fresh Operation Period Performance Security, as the case may be, and the Developer shall, within the time so granted, replenish or furnish fresh Operation Period Performance Security as aforesaid failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 31. Upon replenishment or furnishing of a fresh Operation Period Performance Security, as the case may be, as aforesaid, the Developer shall be entitled to an additional Cure Period of 60 (sixty) days for remedying the Developer Default, and in the event of the Developer not curing its default within such Cure Period, the Authority shall be entitled to encash and appropriate such Operation Period Performance Security as Damages, and to terminate this Agreement in accordance with Article 31.

17.9 Overriding powers of the Authority

- 17.9.1 If in the reasonable opinion of the Authority, the Developer is in material breach of its obligations under this Agreement and, in particular, the Maintenance Requirements, and such breach is causing or likely to cause material hardship or danger to the Users, the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Developer to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.
- 17.9.2 In the event that the Developer, upon notice under Clause 17.9.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise

overriding powers under this Clause 17.9.2 and take over the performance of any or all the obligations of the Developer to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Authority shall be entitled to recover them from the Developer in accordance with the provisions of Clause 17.8.

17.9.3 In the event of a national emergency, civil commotion or any other act specified in Clause 30.3, the Authority may take over the performance of any or all the obligations of the Developer to the extent deemed necessary by it or as directed by the State Government or Government of India, and exercise such control over the Project or give such directions to the Developer as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of doubt, the consequences of such action shall be dealt in accordance with the provisions of Article 30. It is also agreed that the Developer shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause

17.9.4 and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

17.10 Restoration of loss or damage to Project

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

17.11 Modifications to the Project

The Developer shall not carry out any material modifications to the Project save and except where such modifications are necessary for the Project to operate in conformity with the Maintenance Requirements and Good Industry Practice; provided that the Developer shall notify the Authority of the proposed modifications along with particulars thereof at least 30 (thirty) days before commencing work on such modifications and shall comply with all suggestions that the Authority may make within 15 (fifteen) days of receiving the Developer's proposal. For the avoidance of doubt, all modifications made hereunder shall comply with the Specifications and Standards, Applicable Laws and the provisions of this Agreement.

17.12 Excuse from performance of obligations

The Developer shall not be considered in breach of its obligations under this Agreement if any part of the Project is not available to User on account of any of the following for the duration thereof:

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

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

17.13 Barriers and diversions

The Authority shall procure that during the Operation Period, no barriers are erected or placed by any Government Instrumentality on the Project Site except for reasons of Emergency, national security and law & order. The Authority shall also make best endeavors to procure that no Government Instrumentality shall undertake or cause to be undertaken, except for reasons of Emergency, national security or law and order, any diversions of traffic from, or closing down of approach roads to the Project Site that may cause a material adverse effect on the flow of traffic to and from the Project Site.

18 SAFETY REQUIREMENTS

18.1 Safety Requirements

- 18.1.1 The Developer 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 Developer shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project, and shall comply with the safety requirements set forth in Schedule (the "Safety Requirements").
- 18.1.2 The Authority with mutual consultation with the Developer shall appoint an experienced and qualified firm or organization (the "Independent Engineer") for carrying out safety audit of the Project in accordance with the Safety Requirements, and shall take all other actions necessary for securing compliance with the Safety Requirements.

18.2 Expenditure on Safety Requirements

All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Developer to the extent such costs and expenses form part of the works and services included in the Scope of the Project.

19 MONITORING OF OPERATION AND MAINTENANCE

19.1 Monthly status reports

During Operation Period, the Developer shall, no later than 7 (seven) days after the close of each month, furnish to the Authority a monthly report stating in reasonable detail the condition of the Project including its compliance or otherwise with the Maintenance Requirements, Maintenance Manual, Maintenance Programme and Safety Requirements, and shall promptly give such other relevant information as may be required by the Authority.

19.2 Inspection

The Authority or its authorized representative may inspect the Project at any time. It shall make a report of such inspection (the "**O&M Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Requirements, Maintenance Manual, the Maintenance Programme and Safety Requirements, and send a copy thereof to the Developer within 15 (fifteen) days of such inspection.

19.3 Tests

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

19.4 Remedial measures

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

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

19.5 Monthly Fee Statement

During the Operation Period, the Developer shall furnish to the Authority, within 7 (seven) days of completion of each month, a statement of Fee substantially in the form set forth in **Schedule** (the "**Monthly Fee Statement**").

20 TRAFFIC REGULATION

20.1 Traffic regulation by the Developer

The Developer shall regulate the passenger traffic on the Ropeway Facility in accordance with the Applicable Laws, and subject to the supervision and control of the Authority or a substitute thereof empowered in this behalf under the Applicable Laws.

20.2 Police assistance

For regulating the use of Ropeway Facility in accordance with the Applicable Laws and this Agreement, the Authority shall assist the Developer in procuring police assistance from the State Police Department or a substitute thereof.

21 KEY PERFORMANCE INDICATORS

21.1 Key Performance Indicators

Without prejudice to the obligations specified in this Agreement, the Developer shall operate the Project such that it achieves or exceeds the performance indicators specified in this Clause 21 (the "**Key Performance Indicators**").

21.2 Operation of Ropeway Cabins

21.2.1 The Developer shall operate and maintain the Ropeway Facility to ensure maximum safety and security to the end users and in a manner such that it conforms to the Key Performance Indicators specified in this Clause 21.2.

21.2.2 The Developer shall ensure machine up-time of 95% daily for non-critical machine equipment and 99% daily for critical machine equipment.

21.2.3 The Developer shall at all times procure that:

- h) the Ropeway Cabins are clean, hygienic and free of odour; and
- i) there is adequate lighting within the Cabin in conformity with the Specifications and Standards.

21.3 Operation of Terminal Stations

21.3.1 The parties hereto agree that the primary purpose of the Station is to provide space for the Users who normally stay at a station for a period of time no longer than necessary to wait for and enter a departing Cabin or to exit the Station after arriving on an incoming Cabin.

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

- a) A User alighting at the cabin platform should be able to reach a point outside the Terminal Station in not more than 10 minutes of brisk walking and a User crossing the fare collection point should be able to reach the Cabin Platform in no more than 5 minutes of brisk walking; and;
- b) In case of emergency, evacuation from any point on the cabin platform to a point of safety in an open space within or outside the Terminal Station shall not exceed 20 meters.

21.3.3 The entry and exit gates, including the ticket vending machines and ticket counters, if any, shall be so designed and operated that the waiting time for the Users shall not exceed 30 minutes during Peak Hour.

21.3.4 The Developer shall at all times procure that:

- a. the Terminal Stations and its toilets are clean, hygienic and free of odour;
- b. there is adequate lighting within the Terminal Stations in conformity with the Specifications and Standards;
- c. all entry and exit points, passages and circulation areas are so managed that they have minimum waiting time;
- d. all information systems, public address systems and lighting systems function efficiently and their availability is no less than 98% (ninety-eight per cent) in a month; and
- e. 50% (fifty per cent) of all phone calls during office hours and the Schedule D operating time are answered within 30 (thirty) seconds.

21.4 Monthly status report

During Operation Period, the Developer shall, no later than 7 (seven) days after the close of each month, furnish a monthly report stating in reasonable detail the compliance with all the Key Performance Indicators specified in this Article 21 along with an analysis of the reasons for failures, if any, and the strategies for addressing the same and for otherwise improving the operational performance of the Project. The monthly report shall include a quantification of the Damages calculated in accordance with Clause 21.5.

21.5 Penalty for shortfall in performance

The Developer shall ensure and procure compliance of each of the Key Performance Indicators specified in this Article 21 and for any shortfall in average performance during a quarter, it shall pay Damages within 30 (thirty) days of the close of the quarter in which the shortfall occurred. The Damages due and payable under this Clause 21.5 shall be determined at the rate of 1% (one per cent) of the Operation Period Performance Security for every shortfall of 10% (ten per cent) in any single performance indicator specified in this article 21; provided, however, that the Authority may waive the Damages, in part or full, if it is satisfied that the Developer has been carrying out its obligations diligently and efficiently and that the shortfall to be waived was on account of reasons beyond the control of the Developer.

21.6 ISO certification

- 21.6.1 The Developer shall, within 6 (six) months from COD, achieve and thereafter maintain throughout the Concession Period, ISO 9001:2000 certification or a substitute thereof for all the facilities at the Project, and shall provide a certified copy thereof to the Authority forthwith.
- 21.6.2 In the event of default in obtaining the certification specified in Clause 21.6.1, the Developer shall, within 15 (fifteen) days thereof, submit to the Authority an action plan that sets out the actions proposed to be taken by the Developer for rectifying its deficiencies and obtaining such certification for all facilities at the Project.
- 21.6.3 If the period of default in obtaining the ISO certification under this Clause 21.6 shall exceed a continuous period of 3 (three) months, the Developer shall thereafter pay Damages to the Authority in an amount equal to 2% (two per cent) of the Operation Period Performance Security for every 1 (one) month of default.
- 21.6.4 If the period of default in obtaining the ISO certification under this Clause 21.6 shall exceed a continuous period of 6 (six) months, it shall be construed as a Developer Event of Default and the Authority will be entitled to terminate the Agreement as per provisions of Clause 31, without prejudice to any other rights and remedies available to the Authority in terms hereof or under the law or otherwise.

21.7 Passenger Charter

The Developer shall publish and implement a charter articulating the rights and expectations of Users (the "**Passenger Charter**") substantially in the form specified in Schedule of this Agreement. The Developer shall at all-time be accountable and liable to Users in accordance with the provisions of the Passenger Charter and Applicable Laws.

22 TRAFFIC CENSUS

22.1 Traffic census

The Developer shall install, maintain and operate electronic/ computerized ticketing counters at each of the terminal stations of the Ropeway and collect data relating to the Fee charged to the Users of the Ropeway and the number of Users using the Ropeway Facility. A monthly statement of such data shall be compiled and furnished forthwith by the Developer to the Authority substantially in the form specified in Schedule O.

22.2 Computer systems and network

The Developer shall install, operate and maintain a computer system, and if possible, with round- the-clock connections to the networks of the Authority and other related entities for exchange of data and information useful or necessary for efficient and transparent regulation and management of traffic. For this purpose, it shall follow such protocol for Electronic Data Interchange (the "EDI") as the Authority may specify.

23 INDEPENDENT ENGINEER

23.1 Appointment of Independent Engineer

The Authority shall appoint a consulting engineering firm, substantially in accordance with the selection criteria set forth in Schedule P of this Agreement, to be the independent consultant under this Agreement (the "Independent Engineer"). The appointment shall be made no later than 60 (sixty) days from the Effective Date and shall be for a period till the expiry of 6 (six) months from the Project Completion Date.

23.2 Duties and functions

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

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

23.3 Remuneration

23.3.1 The remuneration, cost and expenses of the Independent Engineer shall be paid by the Developer to the Authority within 15 (fifteen) days of receiving a statement of expenditure from the Authority. The Authority shall forthwith upon receipt of the same from the Developer pay the remuneration to the Independent Engineer.

23.3.2 In the event of any delay in making the said payments, the Developer shall pay interest for a period of delay calculated at a rate equal to 5% (five per cent) above the Bank Rate and the Authority would reserve the right to recover the amount from the Construction Period Performance Security, without prejudice to the right of the Authority under the provisions of this Agreement including Termination. In case of such appropriation and forfeiture of delinquent amount from Construction Period Performance Security, the provisions of Article 9 hereof shall apply.

23.4 Termination of appointment

23.4.1 The Authority may, in its discretion, terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer in accordance with Clause 23.1.

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

23.5 Authorized signatories

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

23.6 Dispute resolution

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

24 FINANCIAL CLOSE

24.1 Financial Close

24.1.1 The Developer hereby agrees and undertakes that it shall achieve Financial Close within 180 (one hundred and eighty) days from the Effective Date as per Clause 4.1.3 and in the event of delay, it shall be entitled to a further period not exceeding 60 (sixty) days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the Construction Period Performance Security for each day of delay, provided that the Damages specified herein shall be payable every week in advance, provided further that no Damages shall be payable if such delay in Financial Close has occurred solely as a result of any default or delay by the Authority in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Developer shall be in additions to the Damages, if any, due and payable under the provisions of Clause 4.3.

24.1.2 The Developer shall, upon occurrence of Financial Close, notify the Authority forthwith, and shall have provided to the Authority, at least 2 (two) days prior to Financial Close, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Developer, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Lenders.

24.2 Termination due to failure to achieve Financial Close

24.2.1 Not with standing anything to the contrary contained in this Agreement, but subject to Clause 30.6.1, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 24.1.1, all rights, privileges, claims and entitlements of the Developer under or arising out of this Agreement shall

Security, as the case may be, as Damages for such Developer Default. In such case, the Developer has to replenish the Performance Security in accordance with the provisions of Article 9.

26 USER FEE

26.1 Collection and appropriation of User Fee by the Developer

26.1.1 With effect from the COD till the Transfer Date, the Developer shall have the sole and exclusive right to demand, collect, revise and appropriate Fee from the Users in accordance with this Agreement.

26.1.2 The Developer shall be free to decide on the fee structure for the Project subject to the following conditions:

- a. Maximum Fee of Rs. 100/- (Rupees One Hundred only) per person for a one-way trip (excluding GST) for using Ropeway Facility from the Commercial Operation Date to the end of Financial Year 2020-21; and
- b. Thereafter, the Developer can increase the fee for Ropeway Facility once in every two years to the extent of the variation in CPI.

Provided that for ease of payment and collection, such Fee shall be rounded off to the nearest 5 (five) rupees in accordance with provisions hereinabove; provided further that the Developer may determine and collect Fee at such lower rates as it may decide, by public notice to the Users.

26.1.3 Subject to terms hereof and without prejudice to the rights/discretion of the Authority (as set out herein) to grant extension in case of delay in achievement of specified milestones by the Developer and/or termination of the Agreement in terms hereof, in the event of any delay by the Developer in the fulfillment of Condition Precedents as per clause 4.1.3 or Schedule D Completion Date as per clause 12.4 which results in the delay in the achievement of Commercial Operation Date beyond Financial Year 2020-21, the Developer shall, notwithstanding anything to the contrary, be entitled to charge Fee for that year as per clause 26.1.2 (a) but without any right to revision in Fee for that year as per clause 26.1.2 (b).

26.1.4 The Developer shall be free to charge in addition to the Fee, actual state and central government taxes, GST, duties, levies, cess laid specifically for the ropeway operations, but excluding income tax, to be paid by the Developer to the competent authority under the Applicable Laws.

26.1.5 The Developer may formulate, publish and implement customized scheme(s) for specific, bulk, regular users or for different parts of the year as may reasonably be required from time to time.

26.1.6 The Developer acknowledges and agrees that upon payment of Fee any User shall be entitled to use the Project and the Developer 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.

26.2 Fee collection points

Fee from the users of the Ropeway Facility shall be collected at the Lower/Upper terminal stations and / or any intermediate terminal stations. The Developer shall ensure that the Fee is collected through a computerized ticketing system only which automatically generates the ticket numbers.

26.3 Additional charge for evasion of Fee

In the event that any User uses the Ropeway Facility without payment of Fee due, the Developer shall, subject to Applicable Law and Applicable Permits, be entitled to determine and collect from such User the Fee due and an equivalent amount towards predetermined liquidated damages for attempt to make unauthorized use of the Ropeway Facility; provided that the determination and collection of such Fee and liquidated damages shall be at the risk and cost of the Developer and the Authority shall not in any manner be liable on account thereof.

26.3 Display of Fee rates

- 26.3.1 The Developer shall conspicuously display the Fee structure at the Lower and Upper terminal stations of the Project at least in English and Hindi.
- 26.3.2 The Developer shall, from time to time, inform the Authority of the applicable Fee. Such information shall be communicated at least 15 (fifteen) days prior to the revision of Fee under and in accordance with this Agreement.
- 26.3.3 The Developer shall not revise, display or collect any amounts in excess of the rates of Fee payable under this Agreement. In the event any excess amounts are collected by or on behalf of the Developer, it shall, upon receiving a notice to this effect from the Authority, refund such excess amounts to the Authority along with Damages equal to 100% (hundred percent) thereof.

27 INSURANCE

27.1 Insurance during Concession Period

- 27.1.1 The Developer shall effect and maintain at its own cost, during the Construction Period and the Operation Period, such insurances for such maximum sums as may be required under the Financing Agreements, and the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice (the "Insurance Cover"). The Developer shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Developer during the Construction Period and/or Operation Period. For the avoidance of doubt, the level of insurance to be maintained by the Developer after repayment of Lenders' dues in full shall be determined on the

same principles as applicable for determining the level of insurance prior to such repayment of Lenders' dues.

27.1.2 The Developer shall, procure and maintain Insurance Cover including but not limited to the following:

- i. Standard Fire and Special Perils Policy with earthquake cover to insure loss, damage or destruction of the Project Assets;
- ii. Machinery Break-down Insurance Policy for insuring critical plant & equipment against any damage;
- iii. Comprehensive third party liability insurance including injury to or death of personnel of the Authority or others who may enter the Project;
- iv. Developer's general liability arising out of the Concession;
- v. Workmen's compensation insurance, personal accident insurance and medical insurance;
- vi. Passenger accident insurance for the passengers on-board the ropeway project having a valid ticket according to the amount specified in Schedule T; and
- vii. any other insurance that may be necessary to protect the Developer and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (i) to (vi) above.

27.2 Notices to the Authority

Not later than 45 (forty-five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Developer shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 27. Within 30 (thirty) days of receipt of such notice, the Authority may require the Developer to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

27.3 Evidence of Insurance Cover

All insurances obtained by the Developer in accordance with this Article 27 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Developer shall furnish to the Authority, copies of the certificate(s) of insurance, copies of insurance policies and premium payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty-five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Developer to the Authority.

27.4 Remedy for failure to insure

If the Developer shall fail to effect and keep in force all insurances for which it is responsible

pursuant hereto, the Authority shall have the option to either keep in force any such insurances, and pay such premium and recover the costs thereof from the Developer, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Developer.

27.5 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Developer pursuant to this Article 27 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

27.6 Developer's waiver

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

27.7 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Developer and it shall, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

28 ACCOUNTS AND AUDIT

28.1 Audited accounts

28.1.1 The Developer shall maintain books of accounts recording all its receipts and other revenues derived/collected by it from or on account of the Project and/or its use), income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Developer shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain. The Authority shall have the right to inspect the records of the Developer during office

hours and require copies of relevant extracts of books of accounts, duly certified by the Auditors, to be provided to the Authority for verification.

28.1.2 The Developer shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.

28.1.3 On or before the thirty-first day of May each Year, the Developer shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarized information on (a) the traffic count using the Ropeway Facility and liable for payment of Fee thereof, (b) Fee charged and received and other revenues derived from the Project and (c) such other information as the Authority may reasonably require.

28.2 Appointment of auditors

28.2.1 The Developer shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from a list of 5 (five) reputable firms of chartered accountants (the "Panel of Chartered Accountants") mutually agreed with the Authority. All fees and expenses of the Statutory Auditors shall be borne by the Developer.

28.2.2 The Developer may terminate the appointment of its Statutory Auditors after a notice of 45 (forty-five) days to the Authority, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.

28.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, another firm (the "Additional Auditors") from the panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realizations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

28.3 Certification of claims by Statutory Auditors

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

28.4 Dispute resolution

In the event of there being any difference between the findings of the Additional Auditors and the certification provided by the Statutory Auditors, such Auditors shall meet to resolve the differences and if they are unable to resolve the same, such Disputes shall be resolved by the

Authority by recourse to the Dispute Resolution Procedure.

29 FORCE MAJEURE

29.1 Force Majeure

As used in this Agreement, the expression "Force Majeure" or "Force Majeure Event" shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 29.2, 29.3 and 29.4 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.

29.2 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 ionizing 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 Developer, 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 7 (seven) days and an aggregate period exceeding 30 (thirty) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 29.3;
- 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 Developer by or on behalf of such Contractor;
- d) any delay or failure of an overseas contractor to deliver rolling stock or equipment in India if such delay or failure is caused outside India by any event specified in Sub-clause (a) above and which does not result in any offsetting compensation being payable to the Developer by or on behalf of such overseas contractor,
- e) any judgment or order of any court of competent jurisdiction or statutory authority made against the Developer in any proceedings for reasons other than (i) failure of the Developer to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;
- f) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a

- site inspection; or
- g) any event or circumstances of a nature analogous to any of the foregoing.

29.3 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 Developer for an aggregate period exceeding 30 (thirty) 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 Developer 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.

29.4 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 33;
- b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Developer or of the Contractors; or
- c) any event or circumstance of a nature analogous to any of the foregoing.

29.5 Duty to report Force Majeure Event

29.5.1 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 29 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.

29.5.2 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.

29.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 29.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

29.6 Effect of Force Majeure Event on the Concession

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

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

- a. before COD, the Concession Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
- b. after COD, whereupon the Developer is unable to collect Fee despite making best efforts or it is directed by the Authority to suspend the collection thereof during the subsistence of such Force Majeure Event, the Concession Period shall be extended by a period, equal in length to the period during which the Developer was prevented from collection of Fee on account thereof.

29.7 Allocation of costs arising out of Force Majeure

29.7.1 Upon occurrence of any Force Majeure Event, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.

29.7.2 Save and except as expressly provided in this Article 29, 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.

29.8 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 29, 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.

29.9 Termination Payment for Force Majeure Event

29.9.1 If Termination is on account of a Non-Political Event, the Authority shall make a Termination Payment to the Developer in an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover.

29.9.2 If Termination is on account of an Indirect Political Event, the Authority shall make a Termination Payment to the Developer in an amount equal to Debt Due less Insurance Cover.

29.9.3 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Developer in an amount that would be payable under Clause 30.3 as if it were an Authority Default.

29.10 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.

29.11 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.

30 SUSPENSION OF DEVELOPER'S RIGHTS

30.1 Suspension upon Developer Default

Upon occurrence of a Developer Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the Developer under this Agreement including the

Developer's right to collect Fee, and other revenues pursuant hereto, and (ii) exercise such rights itself or authorize any other person to exercise the same on its behalf during such suspension (the "Suspension"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Developer and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Developer and the Lenders' Representative, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

30.2 Authority to act on behalf of Developer

- 30.2.1 During the period of Suspension, the Authority shall, on behalf of the Developer, collect all Fee and revenues under and in accordance with this Agreement and deposit the same in the Project Account. The Authority shall be entitled to make withdrawals from the Project Account for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses.
- 30.2.2 During the period of Suspension hereunder, all assets and liabilities in relation to the Project shall continue to vest in the Developer and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Developer under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Developer and the Developer undertakes to indemnify the Authority for all costs incurred during such period.

30.3 Revocation of Suspension

- 30.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Developer under this Agreement.
- 30.3.2 Upon the Developer having cured the Developer Default within a period not exceeding 90 (ninety) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Developer under this Agreement.

30.4 Substitution of Developer

At any time during the period of Suspension, the Lenders' Representative, on behalf of Lenders, shall be entitled to substitute the Developer under and in accordance with the Substitution Agreement, and upon receipt of notice thereunder from the Lenders' Representative, the Authority shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 30.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Lenders.

30.5 Termination

- 30.5.1 At any time during the period of Suspension under this Article 30, the Developer may by notice require the Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Clause 30.4, the Authority shall within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 30.
- 30.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 30.1, the Project Development and Management Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, mutatis mutandis, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Developer Default.

31 TERMINATION

31.1 Termination for Developer Default

- 31.1.1 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Developer fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 120 (one hundred twenty) days, the Developer shall be deemed to be in default of this Agreement (a "Developer Default"), unless the default has occurred solely as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include:
- a. the Construction Period Performance Security / Operation Period Performance Security has been encashed and appropriated in accordance with this Agreement and the Developer fails to replenish or provide fresh Construction Period Performance Security / Operation Period Performance Security as the case may be within a Cure Period of 30 (thirty) days;
 - b. subsequent to the replenishment or furnishing of fresh Construction Period Performance
 - c. Security / Operation Period Performance Security in accordance with this Agreement, the Developer fails to cure, within a Cure Period of 60 (sixty) days, the Developer Default for which whole or part of the Construction Period Performance Security / Operation Period Performance Security as the case may be was appropriated;
 - d. the Developer does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule G and continues to be in default for 60 (sixty) days;

- e. the Developer abandons or manifests intention to abandon the construction or operation of the Project Facilities without the prior written consent of the Authority;
- f. Project Completion Date does not occur within the period specified in Clause 12.4.3;
- g. the Punch List items have not been completed within the period set forth in Clause 14.4.1;
- h. the Developer has failed to make any payment such as Concession Fee to the Authority within the period specified in this Agreement;
- i. occurrence of a Financial Default, the Lenders' Representative has by notice required the
- j. Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Developer fails to cure the default within the Cure Period specified hereinabove;
- k. a breach of any of the Project Agreements by the Developer has caused a Material Adverse Effect;
 - a. the Developer creates any Encumbrance in breach of this Agreement;
 - b. the Developer repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
 - c. a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- l. there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Developer under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Developer, and such transfer causes Material Adverse Effect;
- m. an execution levied on any of the assets of the Developer has caused a Material Adverse Effect;
- n. the Developer is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Developer or for the whole or material part of its assets that has a material bearing on the Project;
- o. the Developer has been, or is in the process of being liquidated, dissolved, wound- up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
- p. resolution for winding up of the Developer is passed, or any petition for winding up on the Developer is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Developer is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction, provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Developer are transferred to the amalgamated or reconstructed entity and that the amalgamated or

reconstructed entity has unconditionally assumed the obligations of the Developer under this Agreement and the Project Agreements, provided further that:

- i. the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
- ii. the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Developer as at the Appointed Date, and each of the Project Agreements remains in full force and effect;
- q. any representation or warranty of the Developer / Selected Bidder herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Developer is at any time hereafter found to be in breach thereof;
- r. the Developer/ Selected Bidder submits to the Authority any statement which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
- s. the Developer has failed to fulfill any obligation, for which failure Termination has been specified in this Agreement; or
- t. the Developer commits a default in complying with any other provision of this Agreement if such a default causes a Material Adverse Effect on the Authority.

31.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Developer Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Developer; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Developer of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Developer to make a representation, issue the Termination Notice, subject to the provisions of clause 31.1.3.

31.1.3 The Authority shall, if there be Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 31.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Lenders stating the intention to substitute the Developer in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of 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 Lenders' right of substitution in accordance with the Substitution Agreement:

Provided that the Lenders' Representative may, instead of exercising the Lenders' right of substitution, procure that the default specified in the notice is cured within the

aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the Authority shall withdraw its notice referred to above and restore all the rights of the Developer:

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

31.2 Termination for Authority Default

31.2.1 In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of 120 (one hundred twenty) days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the "Authority Default") unless the default has occurred as a result of any breach of this Agreement by the Developer or due to Force Majeure. The defaults referred to herein shall include:

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

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

31.3 Termination Payment

31.3.1 No Termination Payment shall be made by the Authority on account of termination of the Agreement on a Developer Default. Further, in such case, the Authority shall be entitled to forfeit and appropriate the Construction Period Performance Security or Operation Period Performance Security, as the case may be, without any prejudice to its other rights and remedies available under law or otherwise.

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

- a. Debt Due; and
- b. The fair market value of the aggregate Equity as determined by an Expert, less any outstanding amount payable to the Authority by the Developer under the provisions of this Agreement.

31.3.3 Termination Payment shall become due and payable to the Developer within 30 (thirty)

days of a demand being made by the Developer to the Authority with the necessary particulars. In the event of any delay beyond a period of 180 days from the due date, the Authority shall pay interest at a rate equal to 3% (three per cent) per annum above the Bank Rate, on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 270 days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

31.4 Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

- a) be deemed to have taken unencumbered possession and control of the Project, Site and Project Assets and Project Facilities forthwith free of any encroachments or Encumbrances;
- b) take possession and control of all materials, stores, implements, tangible and intangible assets including movable and immovable properties and tools, furniture, consumer durables on or about the Site;
- c) be entitled to restrain the Developer and any person claiming through or under the Developer from entering upon the Site or any part of the Project;
- d) require the Developer to comply with the Divestment Requirements set forth in Clause 32.1;
- e) succeed upon election by the Authority, without the necessity of any further action by the Developer, to the interests of the Developer under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Developer. For the avoidance of doubt, it is hereby agreed, and the Developer hereby acknowledges, 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 Developer and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment; and
- f) transfer of all of Developer's rights, titles and interest in or over the Project including tangible assets and intangible assets comprised in the Project [including Site and Project Asset] to Authority through execution of appropriate deeds and documents as may be necessary for the said purpose and complete all legal or other formalities required in this regard at its cost. In this regard, the Parties hereby agree and confirm that notwithstanding anything to the contrary contained in this Agreement, such transfer of the Developer's rights, titles and interest in or over the Project, Project

Assets and Site to the Authority through appropriate conveyance documents shall be against a consideration equivalent to Re. 1 (Rupee one) to be paid by the Authority to the Developer.

31.5 Liability for defects after Termination

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

31.6 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, 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.

32 DIVESTMENT OF RIGHTS AND INTEREST

32.1 Divestment Requirements

32.1.1 Upon Termination, the Developer shall comply with and conform to the following Divestment Requirements:

- a) conduct or cause to be conducted, by an independent expert under Authority's supervision, a condition survey of the Project, Site and the Project Assets to ascertain the condition thereof, verifying compliance with the Developer's obligations under this Agreement and to prepare an inventory of the assets, comprised in the Project and notify to the Authority forthwith the location and particulars of all Project Assets and Project Site;
- b) deliver / transfer / surrender forthwith (i) the peaceful, actual or constructive possession of the Project Assets and Site, free and clear of all Encumbrances and encroachments to the Authority and (ii) transfer all of Developer's rights, titles and interest in or over the Project including tangible assets and intangible assets

comprised in the Project [including Site and Project Asset] against a consideration of **Re. 1 (Rupee one)** only, save and except to the extent set forth in the Substitution Agreement. For avoidance of doubt, only the assets of the Developer shall be taken over and liabilities, including without limitation, liabilities relating to labour and personnel related obligations of the Developer shall not be taken over by the Authority;

- c) cure all Project Assets, of all defects and deficiencies so that the Project and Project Facilities are 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 licenses pertaining to the Project and its design, engineering, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date. For the avoidance of doubt, the Developer represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Project and shall be assigned to the Authority free of any encumbrance;
- e) The Developer shall at the cost of the Authority transfer/assign such of the Project Agreements which the Authority may require to be transferred in its favour subject to the counter parties to such contracts consenting to such transfer/assignment. The Developer shall entirely at its cost, terminate all such Project Agreements which are not transferred/assigned to the Authority;
- f) The Developer shall, at its own cost, transfer to the Authority all such Applicable Permits which the Authority may require and which can be legally transferred. Provided if the termination is on account of Authority Event of Default the cost of such transfer shall be borne/ reimbursed by the Authority;
- g) execute deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Developer in the Project and right to receive outstanding insurance claims to the extent due and payable to the Authority, absolutely unto the Authority or its nominee against a consideration amount of Re. 1 (Rupee One), and the Developer agrees and confirms that the same shall be deemed as valid and adequate consideration for the purposes hereof;
- h) The Authority shall be entitled to encash any subsisting Bank Guarantee(s) provided by the Developer, if the termination is on account of a Developer Event of Default.
- i) 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 Developer in the Project, free from all Encumbrances, absolutely unto the Authority or to its nominee; and
- j) Until the Transfer Date, all risks shall lie with the Developer for loss of or damage to

the whole or any part of the Project and the Project Assets unless the loss or damage is due to an act or omission of the Authority in contravention of its obligations under this Agreement. On and from the Transfer Date all risks in relation to the Project and the Project Assets shall be deemed to have been transferred to and lie with the Authority or its nominated agency.

32.2 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 Authority shall verify, after giving due notice to the Developer of the time, date and venue of such verification, compliance by the Developer with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Developer's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Developer at its cost and the provisions of Article 32 shall apply, mutatis mutandis, in relation to curing of defects or deficiencies under this Article 32.

32.3 Cooperation and assistance on transfer of Project

- 32.3.1 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.
- 32.3.2 The Parties shall provide to each other, 9 (nine) months prior to the Transfer Date in the event 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 Developer shall further provide such reasonable advice and assistance as the Authority or its nominee may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.

32.4 Vesting Certificate

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

32.5 Divestment costs etc.

- 32.5.1 The Developer shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Developer in the Project in favour of the Authority upon termination, save and except that all stamp duties payable on any deeds or Documents executed by the Developer in connection with such divestment shall be borne by the Authority:
- 32.5.2 In the event of any dispute relating to matters covered by and under this Article 32, the Dispute Resolution Procedure shall apply.

33 ASSIGNMENT AND CHARGES

33.1 Restrictions on assignment and charges

- 33.1.1 Subject to Clauses 33.2 and 33.3, this Agreement shall not be assigned by the Developer to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.
- 33.1.2 Subject to the provisions of Clause 33.2, the Developer 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 Developer is a party except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

33.2 Permitted assignment and charges

The restraints set forth in Clause 33.1 shall not apply to:

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

33.3 Substitution Agreement

- 33.3.1 The Lenders' Representative, on behalf of Lenders, may exercise the right to substitute the Developer in accordance with the agreement for substitution of the Developer (the "Substitution Agreement") to be entered into amongst the Developer, the Authority and

the Lenders' Representative, on behalf of Lenders, substantially in the form set forth in Schedule S.

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

33.4 Assignment by the Authority

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

34 CHANGE IN LAW

34.1 Change in Law

- 34.1.1 In the event of a Change in Law results in a Material Adverse Effect, the Authority or the Developer may by notice in writing to the other party request such modifications to the terms of this Agreement as the requesting party reasonably believes is necessary to place it in substantially the same legal, commercial and economic position as it was prior to such Change in Law. The Developer and the Authority shall thereafter consult in good faith to agree to such modifications and in the event agreement cannot be reached, either of them may refer the matter for determination in accordance with the Dispute Resolution Procedure described under Article 36 of this Agreement.

For the avoidance of doubt, a change in the rate of any Tax or the imposition of a new Tax shall not constitute a Change in Law and the Parties shall be liable to bear the impact and incidence thereof at their cost and risk.

35 LIABILITY AND INDEMNITY

35.1 General indemnity

- 35.1.1 The Developer will indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and Government owned and/or controlled entities/enterprises, ("the Authority Indemnified Persons") against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Developer 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 Developer to any User, except to the extent that any such suits, proceedings, actions, demands and claims have arisen solely due to any negligent act or omission, or breach of this Agreement on the part of the Authority Indemnified Persons.

- 35.1.2 The Authority will indemnify, defend, save and hold harmless the Developer against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of breach by the Authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Developer 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 Developer, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Developer.

35.2 Indemnity by the Developer

- 35.2.1 Without limiting the generality of Clause 35.1, the Developer shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any all loss and/or damages arising out of or with respect to:
- a. failure of the Developer to comply with Applicable Laws and Applicable Permits;
 - b. payment of taxes required to be made by the Developer in respect of the income or other taxes of the Developer's contractors, suppliers and representatives; or
 - c. non-payment of amounts due as a result of materials or services furnished to the Developer or any of its contractors which are payable by the Developer or any of its contractors.
- 35.2.2 Without limiting the generality of the provisions of this Article 35, the Developer shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Developer or by the Developer's Contractors in performing the Developer'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 Developer shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Developer shall

promptly make every reasonable effort to secure for the Authority a lease/license, at no cost to the Authority, authorizing continued use of the infringing work. If the Developer is unable to secure such lease/license within a reasonable time, the Developer 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.

35.3 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 35 (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.

35.4 Defence of claims

- 35.4.1 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 35, 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.
- 35.4.2 If the Indemnifying Party has exercised its rights under Clause 35.3, 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).
- 35.4.3 If the Indemnifying Party exercises its rights under Clause 35.3, 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 authorized 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 defenses available to it which are different from or additional to those available to the Indemnifying Party; or
 - ii. that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement.

Provided that if Sub-clauses (b), (c) or (d) of this Clause 35.4.3 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.

35.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 35, 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.

35.6 Survival on Termination

The provisions of this Article 35 shall survive Termination.

36 DISPUTE RESOLUTION

36.1 Dispute resolution

36.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "Dispute") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 36.2.

36.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to

provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

36.2 Conciliation by Expert

In the event of any Dispute between the Parties, either Party may call upon the Expert to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Expert or without the intervention of the Expert, either Party may require such Dispute to be referred to the Principal Secretary / Secretary, Department of Tourism, Government of Jharkhand and the Chairman of the Board of Directors of the Developer for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 36.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 36.3.

36.3 Arbitration

- 36.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 36.2, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 36.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules"), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation (Amendment) Act, 2015 as amended from time to time. The venue of such arbitration shall be at Jabalpur and the language of arbitration proceedings shall be English.
- 36.3.2 There shall be a Board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.
- 36.3.3 The arbitrators shall make a reasoned award (the "Award"). Any Award made in arbitration held pursuant to this Article 36 shall be final and binding on the Parties as from the date it is made, and the Developer and the Authority agree and undertake to carry out such Award without delay.
- 36.3.4 The Developer and the Authority agree that an Award may be enforced against the Developer and/or the Authority, as the case may be, and their respective assets wherever situated.
- 36.3.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

36.4 Adjudication by Regulatory Authority or Commission

In the event of constitution of a statutory regulatory authority or commission with powers to adjudicate upon disputes between the Developer and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 36.3, be adjudicated upon by such regulatory authority or commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or High Court having jurisdiction in this regard, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

37 DISCLOSURE

37.1 Disclosure of Specified Documents

Subject to terms hereof and Applicable Laws, the Developer shall make available for inspection by any person, copies of this Project Development and Management Agreement, the Maintenance Manual, the Maintenance Programme and the Maintenance Requirements (hereinafter collectively referred to as the “Specified Documents”), free of charge, during normal business hours on all working days at the Developer’s registered office and at the Project Site. The Developer shall prominently display at the Project Site, public notices stating the availability of the Specified Documents for such inspection, and shall provide copies of the same to any person upon payment of copying charges on a ‘no profit no loss’ basis.

37.2 Disclosure of Documents relating to safety

Subject to terms hereof and Applicable Laws, the Developer shall make available for inspection by any person copies of all documents and data relating to safety of the Project, free of charge, during normal business hours on all working days, at the Developer’s registered office. The Developer shall make copies of the same available to any person upon payment of copying charges on a ‘no profit no loss’ basis.

37.3 Withholding disclosure of Protected Documents

Notwithstanding the provisions of Clauses 37.1 and 37.2, the Authority shall be entitled to direct the Developer, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses. Explanation: The capitalized expression “Protected Documents” shall mean such of the Specified Documents or documents referred to in Clauses 37.1 and 37.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

38 REDRESSAL OF PUBLIC GRIEVANCES

38.1 Complaints Register

- 38.1.1 The Developer shall maintain a public relations office at the Project Site where it shall keep a register (the "Complaint Register") open to public access at all times for recording of complaints by any person (the "Complainant"). Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Developer at each terminal station so as to bring it to the attention of all Users.
- 38.1.2 The Complaint Register shall be securely bound and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Developer. Immediately after a complaint is registered, the Developer shall give a receipt to the Complainant stating the date and complaint number.
- 38.1.3 Without prejudice to the provisions of Clauses 38.1.1 and 38.1.2, the Authority may, in consultation with the Developer, specify the procedure for making complaints in electronic form and for responses thereto.

38.2 Redressal of complaints

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

39 MISCELLANEOUS

39.1 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 Jabalpur shall have jurisdiction over matters arising out of or

relating to this Agreement.

39.2 Waiver of immunity

Each Party unconditionally and irrevocably:

1. agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
2. agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
3. 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
4. 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).

39.3 Depreciation and Interest

- 39.3.1 For the purposes of depreciation under the Applicable Laws, the property representing the capital investment made by the Developer in the Project shall be deemed to be acquired and owned by the Developer. For the avoidance of doubt, the Authority shall not in any manner be liable in respect of any claims for depreciation to be made by the Developer under the Applicable Laws.
- 39.3.2 Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis and shall be compounded on the basis of quarterly rests.

39.4 Delayed payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 15 (fifteen) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 5% (five per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

39.5 Waiver

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

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

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

39.6 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

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

39.7 Exclusion of implied warranties etc.

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

39.8 Survival

39.8.1 Termination shall:

- a) not relieve the Developer or the Authority, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and
- b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

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

39.9 Entire Agreement

This Agreement and the Schedule S together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or

modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn.

39.10 Severability

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

39.11 No partnership

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

39.12 Third Parties

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

39.13 Successors and Assigns

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

39.14 Notices

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

- a. in the case of the Developer, be given by facsimile or e-mail and by letter delivered by hand to the address of the <Designated Official of Developer> of the Developer or to such other person as the Developer may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside Ranchi may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile to the number as the Developer may from time to time designate by notice

- to the Authority;
- b. in the case of the Authority, be given by facsimile and by letter delivered by hand and be addressed to the CEO, Jabalpur Smart City Limited or such other person as the Authority may from time to time designate by notice to the Developer; provided that if the Developer does not have an office in Jabalpur it may send such notice by facsimile and by registered acknowledgement due, air mail or by courier; and
 - c. any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post, it ought to have been delivered.

39.15 Language

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

39.16 Counterparts

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

40 DEFINITIONS

40.1 Definitions

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

"Accounting Year" means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year; provided however that the first Accounting Year shall be deemed to mean the period commencing from Appointed Date until thirty-first day of March of the immediately succeeding calendar year; and the last Accounting Year shall be deemed to mean the period commencing from first day of April of relevant calendar year until Transfer Date;

"Affected Party" shall have the meaning set forth in Clause 29.1;

"Agreement" or "Project Development and Management Agreement" means this Agreement, its Recitals, and the Schedule S hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

"Applicable Laws" means all laws, brought into force and effect by GOI or the State Government including rules, regulations and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and

obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

"Applicable Permits" means all clearances, licenses, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Project Facilities during the subsistence of this Agreement;

"Appointed Date" means the date on which every Condition Precedent shall have been satisfied or waived, and shall be deemed to be the date of commencement of the Concession Period;

"Arbitration Act" means the Arbitration and Conciliation (Amendment) Act, 2015 and shall include modifications to or any re-enactment thereof, as in force from time to time;

"Associate" or "Affiliate" means, in relation to either Party (and/or Consortium Members), a person who controls, is controlled by, or is under the common control with such Party (or Consortium Member). The expression "control" shall mean, 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 authorized 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 fulfill any obligations of the Authority under this Agreement;

"Bank" means a Schedule D Bank, but does not include a bank in which any Lender has an interest;

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

"Bid" means the documents in their entirety comprised in the bid submitted by the Developer/ Consortium in response to the RFQ-cum-RFP in accordance with the provisions thereof;

"Change in Law" means the occurrence of any of the following after the Effective Date (other than in case of any tax laws) having direct bearing on the implementation of the Project:

- a) the enactment of any new Indian law;
- c) the repeal, modification or re-enactment of any existing Indian law;
- d) the commencement of any Indian law which has not entered into effect until the Effective Date;
- e) a change in the interpretation or application of any Indian law by judgment of a court

of record which has become final conclusive and binding, as compared to such interpretation or application by a court of record prior to the Effective Date.

"Commercial Operation Date" or **"COD"** shall have the meaning ascribed in clause 15.1;

"Developer" shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

"Concession Fee" shall have the meaning set forth in Clause 25.1;

"Concession Period" means a period of 30 (thirty) years starting from the Appointed Date and ending on the Transfer Date;

"Condition Precedent Period" means the period from the Effective Date until the Appointed Date;

"Consortium Member" means a company specified in Recital (C) as a member of the Consortium;

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

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

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

"CPI" means the Consumer Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the CPI, and any reference to CPI shall, unless the context otherwise requires, be construed as a reference to the CPI published for the period ending with the preceding month, save and except that for the purposes of revision of Fee shall be computed with reference to CPI as on January 31 of that year.

"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 Developer requires any reasonable action

by the Developer that must be approved by the Authority hereunder, the applicable Cure Period shall be extended by the period taken by the Authority to accord their approval;

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

"Debt Due" means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date as verified by an Expert [whose cost shall be shared equally between Authority and Developer] to the satisfaction of the Authority:

- a) the principal amount of the debt provided by the Lenders under the Financing Agreements for financing the Project (the "principal") but excluding any part of the principal that had fallen due for repayment 2 (two) years prior to the Transfer Date; and
- b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-clause (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due 1 (one) year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such changes have arisen due to Authority Default.

"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 Lenders under the Financing Agreements;

"Dispute" shall have the meaning set forth in Clause 36.1;

"Dispute Resolution Procedure" means the procedure for resolution of Disputes set forth in Article 36;

"Divestment Requirements" means the obligations of the Developer for and in respect of Termination as set forth in Clause 32.1;

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

"Drawings" means all of the drawings, calculations and documents pertaining to the Project and Project Facilities as set forth in Schedule H, and shall include 'as built' drawings of the Project and Project Facilities;

"Effective Date" shall mean the date on which the Project Development and Management Agreement has been executed by the Parties;

"EPC Contract" means the engineering, procurement and construction contract or contracts

entered into by the Developer with one or more Contractors for, inter alia, engineering and construction of the Project and Project Facilities in accordance with the provisions of this Agreement;

"EPC Contractor" means the person with whom the Developer has entered into an EPC Contract;

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

"Encumbrances" means, in relation to the Project and Project Facilities, 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 and Project Facilities, where applicable herein but excluding utilities referred to in Clause 11.1;

"Equity" means the sum expressed in Indian Rupees representing the paid up equity share capital of the Developer 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;

"Expert" means any person, body or organization of repute with recognized technical/professional expertise in respect of any field, matter or subject relevant for the purpose of this Agreement, appointed by the Authority.

"Fee" means all charges, tariff, fees, deposits and amounts received by or paid to the Developer from or with respect to the Project, for services provided and maintenance charges for the Project, including rental amounts accruing from the Project; and other tariff and charges including maintenance charges for services provided to the Users;

"Financial Close" means the date on which the Financing Agreements providing for financial assistance by the Lenders have become effective and conditions if any for draw down of fund have been met by the Developer such that the Developer has immediate access to such sanctioned funding under the Financing Agreements;

"Financial Default" shall have the meaning set forth in Schedule U;

"Financial Model" means the financial model adopted by 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 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 Project and the means of financing thereof, as set forth in the Financial Model and approved by the Lenders, and includes Equity and all financial assistance specified in the Financing Agreements;

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

"Force Majeure" or "Force Majeure Event" shall have the meaning ascribed to it in Clause 29.1;

"GOI" means the Government of India;

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

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

"Indemnified Party" means the Party entitled to the benefit of an indemnity pursuant to Article 35; **"Indemnifying Party"** means the Party obligated to indemnify the other Party pursuant to Article 35; **"Independent Engineer"** shall have the meaning set forth in Clause 22.1;

"Indirect Political Event" shall have the meaning set forth in Clause 29.3;

"Insurance Cover" means the aggregate of the maximum sums insured under the insurances taken out by the Developer pursuant to Article 27, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable in relation to such act or event;

"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 Developer under any of the

Financing Agreements for meeting all or any part of the Total Project Cost;

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

"**Mandatory Project**" shall mean the Project components, which are mandatory to be developed by the Developer and shall comprise of the components as more particularly described in Schedule B;

"**Mandatory Project Facilities**" shall have the meaning ascribed to it in Schedule C;

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

"**Medical Aid Post**" shall have the meaning set forth in Clause 5.6;

"**Nominated Company**" means a company selected by the Lenders' Representative and proposed to the Authority for substituting the Developer in accordance with the provisions of the Substitution Agreement;

"**Non-Political Event**" shall have the meaning set forth in Clause 29.2;

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

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

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

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

incurred under Applicable Laws, Applicable Permits or this Agreement;

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

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

"Panel of Chartered Accountants" shall have the meaning set forth in Clause 28.2.1;

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

"Peak Hour" means an hour when the number of Users commuting on the Ropeway Project is the highest during the course of a day;

"Political Event" shall have the meaning set forth in Clause 29.4;

"Project" shall mean and refer development of aerial passenger ropeway at Sangram Sagar to Madan Mahal Fort in Jabalpur on Design, Build, Finance, Operate and Transfer basis under Public Private Partnership Mode as described in Schedule B and Schedule C in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project;

"Project Agreements" means this Agreement, the Financing Agreements, EPC Contract, O&M Contract, and any other agreements or contracts that may be entered into by the Developer 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 lease or otherwise; (b) tangible assets such as civil works and equipment including but not limited to foundations, embankments, drainage works, sign boards, electrical systems, communication systems, rest areas, maintenance depots and administrative offices; (c) Project Facilities situated on the Site; (d) all rights of the Developer under the Project Agreements; (e) insurance proceeds; and (f) Applicable Permits and authorizations relating to or in respect of the Project;

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

"Project Completion Schedule" means the progressive Project Milestones set forth in Schedule G for completion of the Mandatory Project & Project Facilities on or before the Schedule D Completion Date;

"Project Facilities" means all the amenities and facilities required as basic and support infrastructure for Project, for the optimal functioning thereof, including but not limited to

sewage and sanitation system, water supply, electricity distribution and supply, paved roads and lanes, situated on the Site, as described in Schedule C;

"Project Milestones" means the project milestones set forth in Schedule G;

"Provisional Certificate" shall have the meaning set forth in Clause 14.3;

"RBI" means the Reserve Bank of India, as constituted and existing under the Reserve Bank of India

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

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

"Ropeway Facility" shall mean Aerial Passenger ropeway at Sangram Sagar to Madan Mahal Fort in Jabalpur along with the lower and upper terminal stations and associated facilities.

"Security Interest" means any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, security interest or other encumbrances of any kind securing or conferring any priority of payment in respect of any obligation of any Person and includes without limitation any right granted by a transaction which, in legal terms, is not the granting of security but which has an economic or financial effect similar to the granting of security in each case under Applicable Laws;

"Selected Bidder" means the bidder who has been awarded the Project;

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

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

"State" means the State of Jharkhand and **"State Government"** means the Government of Madhya Pradesh;

"Statutory Auditors" means a reputable firm of chartered accountants acting as the statutory auditors of the Developer under the provisions of the Companies Act, 1956 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 28.2.1;

"Substitution Agreement" shall have the meaning set forth in Clause 33.3;

"Suspension" shall have the meaning set forth in Clause 30.1;

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

"Terminal Stations" means the place in the Project from where the passengers board and de-board the ropeway cabin and which consists of other basic facilities such as waiting area, ticket counter, toilets, drinking water facility, etc.

"Termination" means the expiry or earlier termination of this Agreement and the Concession hereunder;

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

"Termination Payment" means the amount payable, under and in accordance with this Agreement, by the Authority to the Developer upon Termination.

"Tests" means the tests set forth in schedule I to determine the completion of Project in accordance with the provisions of this Agreement

"Total Project Cost" means the capital cost incurred on construction and financing of the Project, including the cost of acquisition of land, and shall be the lowest of:

a) the capital cost of the Project, as set forth in the Financial Package; and b) the actual capital cost of the Project upon completion of the Project. provided that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in WPI or Reference Exchange Rate occurring in respect of fair market value of Equity and Debt Due, as the case may be, in accordance with the provisions of this Agreement;

"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 the Project or Project Facility or any part thereof;

"Vesting Certificate" shall have the meaning set forth in Clause 32.3; and

"WPI" means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to

WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month, save and except that for the purposes of revision of Fee shall be computed with reference to WPI as on January 31 of that year.

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
Jabalpur Smart City Limited
("Authority") by:

For and on behalf of
("Developer") by:

For and on behalf of
("Selected Bidder") by:

Sign and Seal:
Name:
Designation: CEO,
Jabalpur Smart City Limited

Sign and Seal:
Name:
Designation:

Sign and Seal:
Name:
Designation:

In the presence of:

1.

2.

Schedules to the Project Development and Management Agreement

- A.** Site of the Project
- B.** Development of Project
- C.** Project Facilities
- D.** Specifications and Standards
- E.** Applicable Permits
- F.** Construction Period Performance Security
- G.** Project Completion Schedule
- H.** Drawings
- I.** Tests
- J.** Completion Certificate
- K.** Maintenance Requirements
- L.** Safety Requirements
- M.** Monthly Fee Statement
- N.** Passenger Charter
- O.** Monthly Traffic Census
- P.** Selection of Independent Engineer
- Q.** Terms of Reference for Independent Engineer
- R.** Vesting Certificate
- S.** Substitution Agreement
- T.** Compensation Amount

SCHEDULE A

(See Clause 10.1)

SITE OF THE PROJECT

1. The Site

1.1. Project Area

The Site comprises of land admeasuring approximately as indicated in the table below:

Components / Location	Approximate Area
	(in Square Meters)
Upper Terminal (UTP)	3,000
Lower Terminal (LTP)	3,500
Ropeway corridor along the alignment	10*1300 = 13,000
Total	19,500

Further details are provided in the Volume III – Project Information Memorandum.

Schedule 2

(See Clause 2.1)

DEVELOPMENT OF PROJECT

1. Development of the Project:

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

2. Mandatory Project Components / Minimum Development Obligations:

The Developer shall be required to develop the following components as minimum development obligations:

2.1. Development of an Aerial Passenger Ropeway System at Sangram Sagar to Madan Mahal Fort in Jabalpur

- a. Mono Cable Fixed Grip or Mono Cable Detachable Grip Gondola 4-Seater cabin system technology with Design Capacity of Minimum 60 PPH (person per hour). The Developer is free to adopt an improved or better technology with increased capacity based on its own assessment subject to the approval of the Authority.
- b. The Developer is required to procure Gear Box, Emergency and Service Brakes, Cabins, Hanger, Carriage and Haulage Rope from a reputed supplier who should be following an approved Code of Practice for aerial passenger ropeways.
- c. The Developer is required to adopt latest & modern technology for design, construction and operation of the Ropeway System and its associated structures as per relevant IS codes and other specifications mentioned in this Agreement including procurement of the associated equipment from the reputed vendors / manufacturers.

2.2. Development of following components at Lower Terminal Point:

- a) Ropeway Lower Terminal Station with boarding and de-boarding facility,
- b) Passenger holding / waiting area,
- c) Control Room, Workshop & Spares Stock room,
- d) Guard Room
- e) Ticket Booth
- f) Food & Beverage Outlet, Drinking water Fountains
- g) Toilet Block
- h) Parking Space
- i) Staff Welfare, Dining and Rest Room
- j) Transformer Room,
- k) First Aid Room, and
- l) Diesel Generator Room/Shed.

2.3. Development of following components at Upper Terminal Point:

- a) Ropeway Upper Terminal Station with boarding and de-boarding facility,
 - b) Passenger holding / waiting area,
 - c) Ticket Booth,
 - d) Guard Room,
 - e) Drinking Water Fountains, and Food & Beverage Outlet
 - f) Rescue Gear Storage Lockers
3. The Developer is required to adhere and comply to various terms and conditions stipulated by the Ministry of Environment and Forest, Government of India or other government agencies for such projects.
4. The Developer is required to adhere to the applicable Building Byelaws.

SCHEDULE C

(See Article 2.1)

PROJECT FACILITIES

1. Project Facilities

The Developer shall construct or install the Project Facilities in accordance with the provisions of this Agreement.

2. Mandatory Project Facilities

The Developer shall construct the Mandatory Project Facilities described as under on or before the Project Completion Date. 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 the following:

- 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) signage system;
 - p) firefighting system;
 - q) drains; and
 - r) such other facilities as may be necessary and required to establish and operate and the
1. 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 Schedule D Completion Date.

SCHEDULE D

(See Clause 2.1)

SPECIFICATIONS AND STANDARDS

1. INTRODUCTION

- 1.1** The specifications provided under this clause are only for reference of the Developer and Developer is required to undertake design based on its own analysis of the site, topography and expected demand. The designs should conform to the applicable rules, regulations and safety standards and should adhere to Good Industry Practices. Failure to review the design by the Authority or its representatives would not absolve the Developer from its obligations to ensure the safety of operations of the ropeway.

2. SPECIFICATIONS AND STANDARDS:

2.1. Ropeway System:

The Developer, while designing the system, may consider the following aspects:

- a) Choice of Ropeway System: The ropeway system proposed is Mono Cable Fixed Grip or Detachable Grip Gondola System. The Developer is free to adopt an improved technology with increased capacity based on its own assessment subject to the approval of the Authority.
- b) Design Capacity: Minimum 60 Persons Per Hour (PPH) at maximum speed
- c) The Developer is required to procure Gear Box, Service and Emergency Brakes, Cabins, Hanger, Carriage, Haulage Rope based on time-tested international technology. The Developer is required to adopt a world-class technology specifically for design, construction and operation of the Ropeway System and its associated structures as per the relevant IS codes or any other higher international standard / codes.
- d) Ropeway Cabins: The Project shall have sufficient cabins to achieve the design capacity.
- e) The entire ropeway plant shall be controlled with AC/DC Drive and PLC system and will have the provision to stop the plant at any given time.
- f) The Electro Mechanical Equipment of the Ropeway System shall include Bull Wheels, Girth Gear, Rescue Drive, Main Motor, Gear Box, Service and Emergency Brakes, Hydraulic Tension System, Control Switches, Communication Cable, Communication Systems, Grips, Hangers, Tower Surveillance System, Power/ Distribution / Control Panels, Anemometers, etc.
- g) Detailed Seismic and Geotechnical studies & investigations shall be carried out by the Developer to finalize on protection measures, most suitable design of the structures and the entire ropeway system.

2.2. Terminal stations:

2.2.1. Lower Terminal Station:

- a) The lower terminal station shall be a structural shed, which will house all ropeway drive machinery. Under-part of the shed will provide the foundation for ropeway structure. The shed height shall be as per industries norms and the same shall be open from all sides for better visibility.
- b) Control Room: It will house the control panel for operation of the ropeway. This shall be located inside the terminal station building. The control room has glass on all sides to provide uninterrupted view to the operator; of the cabins movement and passengers boarding and de-boarding.
- c) Workshop: A small workshop will be provided at the lower station to facilitate the ropeway crew to undertake repairs and other associated work of the ropeway parts. The workshop is normally provided next to spare parts room and can be located inside or outside the terminal station.
- d) Spares Stock Room: Ropeways use special parts and some parts are specific to the plant. The plant therefore houses sufficient quantity of such spares and other off-the-shelf spares as inventory to undertake any repair. These spares are stored in a fully closed room. The spare parts room is normally located next to Work shop.
- c) Guard Room: The plant has to be protected against any theft or mischief during the silent hour and patrolling guards shall be deployed for the same. Guards are also needed for crowd control during operational time. A guard room is therefore provided in the station area.
- d) Ticket Booth: Ticketing booth is located adjacent to station perimeter near the entrance gate. As the name suggest, it is used to dispense manual/computerized ticket of the ropeway to visitors. It is normally built solid with small window for transaction and inside lockable door, as the space has fair amount of cash money.
- e) Drinking Water Fountains: Drinking water fountains shall be scattered all over the station area. The water is fed from overhead tank or pressurized feed line, which is processed by either individual or central Reverse Osmosis (RO) plant. The water is cooled in the electrically operated coolers during summer time for passenger comfort. If the municipality water supply is not available in the area, the ropeway company should be allowed to make a bore well in the station premises.
- f) Toilet Block: Clean toilets are a national requirement and ropeway station is capable of proving the same. The proposed toilet block for male and female passengers should be established in the station block. The male block should have 3 urinals and two latrines; whereas the female block should have 4 Indian latrines with auto flush facility. The common area should have a combined wash space with three wash basins in each block. The entire toilet and wash block for men and women should be provided clad with ceramic tiles to maintain spotless cleanliness. The block should also have good ventilation system to keep bad odour away. The discharge of these blocks can go to an underground bacterial septic tank and its processed outlet water may be used for watering the garden plants.
- g) i) Landscaping: The ropeway company should undertake minor landscaping

- of area surrounding the station building and pond area to add to the greenery as well beauty of the place.
- h) **Parking Space:** The ropeway company should undertake development of full or part construction of parking space with concrete-tiled finish, which should be sufficient for over 100 standard cars. It should be paid parking and the area should be properly marked for systematic movement of the vehicles.
 - i) **Staff Welfare, Dining and Rest Room:** The ropeway company should provide a small but well-appointed room as staff entertainment, welfare and dining facility. It is quite possible that during the tourist season, the ropeway may need to operate for 18 hours daily. This will lead to requirement of a place for staff to relax while on duty or take breaks between their shifts, so as to be able to maintain their utmost performance.
 - j) **Transformer Room:** Since the lower station will house all the power machinery, the ropeway company can install combination of GODO pole with transformer or can house the transformer with gang switches in designated transformer room.
 - k) **First Aid Room:** The lower station shall have one small but equipped first aid room for passengers and the staff, in case of any eventuality.
 - l) **Diesel Generator Room/Shed:** Room housing for the diesel generator would be provided with a tall stack to conform to the Pollution Control Board norms. Or else, the generator may be an outdoor type with an acoustic housing.

2.3. Upper Terminal Station:

- a. **Upper Terminal Station** will be minimal structural shed and shall house the necessary tension device and just enough place to accommodate the boarding and de-boarding platform. The entire station will be enclosed in chain link fencing for safety, security and passenger management. The equipment foundation shall be the floor area of the station. No miscellaneous facilities are envisaged due to the proximity of the Madan Mahal Fort
- b. **Ticket Booth:** A small ticket booth shall be provided, which will serve the dual purpose of return ticket check as well fresh issue of one way return ticket to those passenger, who wish to avail ropeway ride only for their return trip.
- c. **Guard Room:** A Guard room shall be provided for security of the plant during non-working hours and silent hours.
- d. **Drinking Water Fountains:** As part of essential passenger amenities, drinking water fountains and water coolers will be provided at Upper Station for passengers.
- e. **Rescue Gear Storage Lockers:** Upper station traditionally houses the rescue gear for rescuing the passengers from the stranded cabins in event of any eventuality. The rescuers move with the gravity from top to bottom and therefore the rescue gear, including the rescue chair is stored at upper station in two large lockers. These lockers are part of upper station shed and no extra space is needed.

2.4. Ropeway Towers:

As per design to be finalized by the Developer after detailed Seismic and Geotechnical

studies & investigations

2.5. Garbage Disposal and Processing:

Appropriate coordination with local municipal authority for collection and disposal of garbage generated inside the Project Site.

2.6. Remote Surveillance of Towers and Stations

A minimum of 4 cameras should be located at each station to check the condition of critical machines, such as hydraulic tension cylinder position and pressure, station clearance, start-up of critical machines as drive lorry and so on. This will ensure very safe start-up of the system under controlled condition, which can then be followed by physical verification, daily maintenance routine as greasing, etc. with the help of maintenance cabin.

3. Construction Methodology

- a. Material design and workmanship for civil, structural, sanitary, water supply fittings will be latest Indian Standards and where not available as per Central Public Works Department Specifications. Construction of housing shall be of RCC columns, brick/stone panel walling, and cement concrete flooring, CGI sheet roofing steel doors and windows. The station and other structures shall be on RCC foundations and RCC pedestals.
- b. It is important that the terminal stations be designed with special care so as to fit in aesthetically with the surroundings. The basic raw materials such as aggregates, sand and cement etc. to be used for the civil works as available in the region shall be pre- tested for suitability.
- c. The civil works will essentially consist of Station Buildings, towers (if any) and equipment foundations. The main activities regarding civil works to be done are detailed below:
 - Detailed field survey and fixing of specific alignment.
 - Requisite geo-technical and soil investigation as per IS codes at tower and terminal locations to determine design parameters for the foundations against super-imposed loads.
 - Detailed designs and drawings for system, foundations and structures including architectural drawings of buildings, restaurants approaches etc.
 - Detailed designs and drawings for station towers and buildings along with specifications.
 - Civil works in foundation for station towers and stations along with equipment including any special precautionary measures required for Seismic load and slope protection, if any, in ropeway structures and buildings.
 - Works for completion of station buildings and other structures. d) Guidelines relating to execution
 - 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 LTP, UTP and Pond shall be landscaped.
- The design of water distribution and storage systems, laying of mains and pipes, cleaning and disinfecting of the water supply system 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 audio-visual alarm system shall be planned and installed as per relevant sections of NBC.
- Design of sewage/ wastewater treatment plant shall be in accordance with applicable rules in Jharkhand.

4. REGULATIONS

- 4.1 The Developer is required to refer to the applicable Building Byelaws for the ropeway terminal buildings stipulated by competent authority before finalizing the design.
- 4.2 The Developer shall also adhere to the provisions of any Act for Ropeway that is applicable or enacted in the state of Madhya Pradesh at any time.
- 4.3 The Developer shall consider Specifications provided by Bureau of Indian Standards and other applicable statutory code of practices like Indian Electricity Act, National Building Code, Municipal Building Bylaws of Madhya Pradesh, etc. For design, construction, operation, and applicable maintenance of the Project Facilities.
- 4.4 A safety factor for each sub-component shall be considered as given in Codes and specifications.

SCHEDULE E
(See Clause 4.1.3)
APPLICABLE PERMITS

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

- a) Consent to establish from State Pollution Control Board;
- b) Permission of the State Government for extraction of boulders from quarry if required;
- c) Permission of Village Panchayat and Pollution Control Board for installation of crushers if required;
- d) Approval/permit from Fire Safety Authorities, if required;
- e) License for use of explosives from Regional Superintendent of Police;
- f) Permission of the State Government for drawing water from river/reservoir;
- g) Any other permits or clearances required under Applicable Laws.

SCHEDULE F
(See Clause 9.1)
PERFORMANCE SECURITY

To
Chief Executive Officer
Jabalpur Smart City Limited
Jabalpur

WHEREAS:

A. **** (the "**Developer**") which has been accepted by Director, Directorate of Tourism, Government of Madhya Pradesh (the "**Authority**") vide letter No. _____ dated _____ shall be signing the Project Development and Management Agreement (the "**Agreement**") with the Authority within 30 days from the date of issue of Letter of Award (the "**LOA**") to the Successful Bidder for undertaking the Development of Passenger Ropeway System at Sangram Sagar to Madan Mahal fort in Jabalpur on Design, Build, Finance, Operate and Transfer Basis under PPP Model, subject to and in accordance with the provisions of the Agreement.

B. The Agreement requires the Developer to furnish a Construction Period Performance Security to the Authority in a sum of Rs _____ (**Rupees in words**) (the "**Guarantee Amount**") as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Construction Period (as defined in the Agreement).

C. We, ***** through our Branch at ***** (the "**Bank**") have agreed to furnish this Bank

Guarantee by way of Construction Period Performance Security.

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

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Developer's obligations during the Construction Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Developer, such sum or sums up to an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.

2. A letter from the Authority, under the hand of an officer not below the rank of Director, in the Directorate of Tourism, Government of Madhya Pradesh, that the Developer has committed default in the due and faithful performance of all or any of its obligations under

and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Developer is in default in due and faithful performance of its obligations during the Construction Period under the Agreement and its decision that the Developer is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Developer, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Developer for any reason whatsoever.

3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Developer and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.

4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Developer before presenting to the Bank its demand under this Guarantee.

5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfillment and/ or performance of all or any of the obligations of the Developer contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Developer, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Developer or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.

6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfillment, compliance and/or performance of all or any of the obligations of the Developer under the Agreement.

7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force until the expiry of 6 (six) months beyond the Commercial Operation Date and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, not later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.

8. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.

9. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorized to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.

10. This Guarantee shall come into force with immediate effect and shall remain in force and effect up to or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

Signed and sealed this ** day of ***, 20** at ***. SIGNED, SEALED AND DELIVERED

For and on behalf of the BANK by:

(Signature) (Name) (Designation)

(Code Number) (Address)

NOTES:

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

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

SCHEDULE G

(See Clause 12.1)

PROJECT COMPLETION SCHEDULE

1. Project Completion Schedule

During Construction Period, the Developer shall comply with the requirements set forth in this Schedule G for each of the Project Milestones and the Schedule D Completion Date (the "Project Completion Schedule"). Within 15 (fifteen) days of the date of each Project Milestone, the Developer shall notify the Authority of such compliance along with necessary particulars thereof.

2. Project Milestone I

Project Milestone I shall occur on the date falling on the 300th (three hundred) day from the Appointed Date (the "Project Milestone I").

2.1 Prior to the occurrence of Project Milestone I, the Developer shall have completed the construction of upper terminal station, lower terminal station and foundation work for towers along the ropeway alignment.

3. Project Milestone II

3.1 Project Milestone I shall occur on the date falling on the 480th (four hundred and eighty) day

from the Appointed Date (the "Project Milestone I").

3.2 Prior to the occurrence of Project Milestone I, the Developer shall have erected the towers along the ropeway alignment.

4. Project Milestone III

4.1 Project Milestone III shall occur on the date falling on the 660th (six hundred and sixty) day from

the Appointed Date (the "Project Milestone III").

4.2 Prior to the occurrence of Project Milestone III, the Developer shall have installed the wire rope and other equipment, cabins, bull wheels and motors.

5. Schedule D Completion Date

5.1 The Schedule D Completion Date shall occur on the 730th (seven hundred and thirty) day from the Appointed Date.

5.2 On or before the Schedule D Completion Date, the Developer shall have completed the construction, installation, testing and commissioning of the entire ropeway system in accordance with this Agreement.

**The milestones listed above are tentative and may be amended according to the detailed project report (DPR) as shall be submitted by the Developer and approved by the Authority.*

6. Extension of period

Upon extension of any or all of the aforesaid Project Milestones or the Schedule D 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.

DRAWINGS

1. Drawings

In compliance of the obligations set forth in Clause 12.3 of this Agreement, the Developer shall furnish to the Independent Engineer, free of cost, all Drawings listed in Annex I of this Schedule H.

2. Additional drawings

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

Annex I

(Schedule H)

List of Drawings

1. At the design stage, the Developer shall provide
 - a) Ropeway Plane Diagram along with detailed survey
 - b) Geo Technical Report of the proposed locations of Towers and Stations
 - c) Concept drawings of LTP, UTP and towers d) Final Ropeway profile drawing
2. Before commencement of construction, the Developer shall provide
 - a) Design Calculations
 - b) Designed detailed drawings with explanations of Load Calculations (factor of safety, theoretical and actual)
 - c) Civil drawings of LTP, UTP and towers foundations d) Ropeway E/M components and their details
 - d) Service and Emergency brakes
3. Before testing and commissioning, the Developer shall provide
 - a) Final design details b) As-built drawings
 - c) Civil foundation details
 - d) Safety and rescue details
 - e) Environment Management Plan

SCHEDULE I

(See Clause 14.1.2)

1. Schedule for Tests

TESTS

- 1.1 The Developer shall, not later than 45 (forty-five) days prior to the likely completion of construction, notify the Independent Engineer and the Authority of its intent to subject the Project 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 the Project.
- 1.2 The Developer shall notify the Independent Engineer of its readiness to subject the Project 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 Developer, determine the date and time for each Test and notify the same to the Authority who may designate its representative to witness the Tests. The Independent Engineer shall thereupon conduct the Tests itself or cause any of the Tests to be conducted in accordance with Article 14 and this schedule I.

2. Tests

- a) Before the ropeway is commissioned, it shall be submitted to installation tests to check that it meets the requirements of the approved plans and specifications.
- b) Full load tests for continuous 24 hours in which each cabin is ballasted with equivalent weight of seating capacity with weight of each passenger to be considered as 80 kg as per relevant IS code
- c) Full-up empty down and Full-down empty up for 2 hours of time and will calculate that the ropeway can be stopped using service or emergency brakes in stipulated manner.
- d) The installation, routine and periodic tests shall be carried out in line with the BIS standards and specifications. In case of absence of BIS standards, suitable / applicable international Standards for Ropeway and other relevant standards for other project components shall be followed. The Developer shall be allowed to operate / run ropeway system only after obtaining completion certificate from designated authority.

3. Agency for conducting Tests

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

4. Tests for Safety Certification

Tests for determining the conformity of the Project with the Safety Requirements shall be conducted in accordance with Good Industry Practice and in conformity with Applicable Laws.

5. Completion/Provisional Certificate

Upon successful completion of Tests, the Independent Engineer shall issue the Completion Certificate or the Provisional Certificate, as the case may be, in accordance with the provisions of Article 14.

SCHEDULE J

(See Clauses 14.2 & 14.3)

COMPLETION CERTIFICATE

1. I, **** (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Project Development and Management Agreement dated *** (the "**Agreement**"), for construction and development of "Development of Passenger Ropeway System at Sangram Sagar to Madan Mahal fort in Jabalpur on Design, Build, Finance, Operate and Transfer Basis under PPP Model" (the "**Project**"), through **** (Name of Developer), hereby certify that the Tests specified in Article 14 and schedule I of the Agreement have been successfully undertaken to determine compliance of the Mandatory Project and Mandatory Project Facilities with the provisions of the Agreement, and I am satisfied that the Mandatory Project and Mandatory Project Facilities can be safely and reliably placed in commercial service of the Users thereof.
2. It is certified that, in terms of the aforesaid Agreement, all works forming part of Mandatory Project and Mandatory Project Facilities have been completed, and the Mandatory Project and Mandatory Project Facilities are hereby declared fit for entry into commercial operation on this the *** day of *** 20**.

SIGNED, SEALED AND DELIVERED

For and on behalf of INDEPENDENT ENGINEER by: (Signature)

(Name) (Designation) (Address)

PROVISIONAL CERTIFICATE

1. I, **** (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Project Development and Management Agreement dated *** (the "Agreement"), for construction and development of "Development of Passenger Ropeway System at Sangram Sagar to Madan Mahal fort in Jabalpur on Design, Build, Finance, Operate and Transfer Basis under PPP Model" (the "Project") through **** (Name of Developer), hereby certify that the Tests specified in Article 14 and schedule I of the Agreement have been undertaken to determine compliance of the Mandatory Project and Mandatory Project Facilities with the provisions of the Agreement.

2. Construction Works that were found to be incomplete and/or deficient have been specified in

the Punch List appended hereto, and the Developer has agreed and accepted that it shall complete and/or rectify all such works in the time and manner set forth in the Agreement. Some of the incomplete works have been delayed as a result of reasons attributable to the Authority or due to Force Majeure and the Provisional Certificate cannot be withheld on this account. Though the remaining incomplete works have been delayed as a result of reasons attributable to the Developer, I am satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the Project Facilities, pending completion thereof.

3. In view of the foregoing, I am satisfied that the Mandatory Project and Mandatory Project

Facilities can be safely and reliably placed in commercial service of the Users thereof, and in terms of the Agreement, the Mandatory Project and Mandatory Project Facilities are hereby provisionally declared fit for entry into commercial operation on this the *** day of *** 20**.

SIGNED, SEALED AND DELIVERED

For and on behalf of Developer
by: (Signature)

(Name)

(Designation) (Address)

For and on behalf of INDEPENDENT ENGINEER
by: (Signature)

(Name)

(Designation) (Address)

SCHEDULE K

(See Clause 17.2)

MAINTENANCE REQUIREMENTS

1. Maintenance Requirements

1.1 The Developer shall, at all times, operate and maintain the Project Facilities in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits. In particular, the Developer shall, at all times during the Operation Period, conform to the maintenance requirements set forth in this Schedule K (the "Maintenance Requirements").

1.2 In respect of any defect or deficiency, the Independent Engineer may, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards, and any deviation or deterioration beyond the permissible limit shall be repaired or rectified by the Developer within the time limit specified by the Independent Engineer.

2. Repair/rectification of defects and deficiencies

The obligations of the Developer in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies specified in Annex I of this Schedule K.

3. Extension of time limit

Notwithstanding anything to the contrary specified in this Schedule K, if the nature and extent of any defect or deficiency justifies more time for its repair or rectification, the Developer shall be entitled to additional time in conformity with Good Industry Practice. Such additional time shall be determined by the Independent Engineer and conveyed to the Developer and the Authority with reasons thereof.

4. Emergency repairs/restoration

Notwithstanding anything to the contrary contained in this Schedule K, if any defect, deficiency or deterioration in the Project and Project Facilities poses danger to the life or property of the Users thereof, the Developer shall promptly take all reasonable measures for eliminating or minimizing such danger.

5. Daily Inspection by the Developer

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

6. Divestment Requirements

All defects and deficiencies specified in this Schedule K shall be repaired and rectified by the developer so that the Project conforms to the Maintenance Requirements on the Transfer Date.

7. Display of Schedule K

The Developer shall display a copy of this **Schedule K** at the Terminal Stations of the Ropeway Facility along with the Complaint Register stipulated in Article 38.

Annex I

(Schedule K)

Repair/rectification of defects and deficiencies

Ropeways are liable to suffer from environmentally induced threats, risks and hazards as well as human -caused occurrences. Disasters due to technical failures and natural causes should be identified. Natural disasters include earthquakes, landslides, rock falls, storms, avalanches, lightening, etc. and technical failures may include rope with broken wires in service, drive / return sheave shaft failure / tension system failure, mount assembly parts failure, over speeding of ropeway / brake failure, rollback, slippage / fall of cabin, entanglement of cabin, swinging of cabin resulting in fall of passengers outside cabin, cabin derailment at station etc. while accidents include fire in fuel storage areas.

Personnel for disaster containment need to identified and properly documented in the disaster management plan. The various cells - technical, team for rescue (trained and skilled operators) are to be clearly indicated.

Risk Assessment:

- conduct Quantitative Risk Assessment to assess the associated risk and express the risks in both individual and societal terms;
- identify practicable and cost effective risk mitigation measures if required.

Reason	Prevention	Action required to be taken
Socketing failure	Proper material & pouring used in the design of socket and periodic inspection	Maintenance guidelines to be followed regularly
Splicing failure	Periodic inspection	Splicing specialist to be called Immediately
Fall / slippage of cabin (Grip failure, Hanger failure, failure of joints, overloading)	Components to be replaced as per life cycles & annual NDT	Replacement at proper time intervals to be done & NDT
Cabin door opening (collisions, jerking, component failure)	Simple precaution like testing of lock before leaving cabin	Grill fitment on open window & installation of inverted window system
Mount assembly parts failure, tower failure (rusting, over-usage, deterioration, natural	Continuous monitoring, life cycle of components to be ascertained & NDT	Life cycle monitoring & annual NDT

Fatigue or corrosion of the anchor bolts	Rated loading of plant & regular cleaning & painting	Prevent water retention and resultant corrosion & use of electro galvanized or hot dip
Hitting of cabin (Improper demarcation of area, improper passenger management)	Proper signage, proper demarcation and cordoning of cabin, training of operators	Training of operators and cabin guides
Electrocution (Lighting)	Proper rope earthing	Periodic monitoring & testing of resistance

Reason	Prevention	Action required to be taken
Entanglement of cabin (High wind, breakage of catenary wire)	Install and monitor Wind speed and incorporate with PLC of drive system,	Periodic inspection of catenary wire, monitoring condition of wires & testing
Natural causes like earthquakes, landslides, wind storm, hailstorm, flood, jungle fire	Earthquake resistant constructions, proper retention of landslide prone areas, early warning systems	Detailed regular inspection & Monitoring

Safety Issues:

Activities associated with aerial ropeway construction and operations; also give rise to associated hazards and accidents. It is therefore desirable that based on the categories of hazards prevailing at the project site, risk assessment may be carried out by specialists in the field and recommendations may be implemented.

Risk assessment should be carried out for seismicity, slope stability, soil erosion, and flood hazard (depending on the site). Disaster Management Plan must include emergency planning, emergency procedures, and details on safety measures adopted for the ropeway.

Maintenance of the ropeway for all structural, mechanical, and electrical components has to be done regularly and kept in a state of good repair. A systematic maintenance needs to be followed. Procedures for maintenance and specific frequencies for periodic lubrication, inspection and adjustment are to be clearly mentioned.

The ropeway designer, wire rope or strand manufacturer should mention the frequency and methods for maintenance or inspections of wire rope or strand in the specification.

These may include, but not be limited to, the following:

- a) tension system

- b) braking systems;
- c) electrical control systems;
- d) communications systems; e) structures.

Maintenance Personnel:

Ropeways need to be maintained by trained and competent personnel, and the owner shall be responsible for the supervision and training of such personnel, and such training shall be documented. All personnel need to practice good housekeeping, with particular emphasis on avoiding the development of any condition that might contribute to personal injury. Personnel must also comply with the operational rules and safety regulations of the specific ropeway.

The ropeway system shall be inspected annually or certain specified hours of operation, whichever comes first, by a ropeway specialist, independent of the owner. The inspection need to verify preservation of the original design integrity and cover the requirements of standard for maintenance, operation, required self-inspections, and record keeping. Items found either deficient or in noncompliance need to be noted and action taken by the competent authority.

Operational log needs to be maintained for the ropeway system. Daily entries should be made giving the following minimum information:

- date;
- names and work position of operating personnel;
- operating hours and purpose of operations; temperature, wind, and weather conditions;
- record of compliance with daily operational inspection including signs, loading and unloading zones;
- accidents, malfunctions, or abnormal occurrences during operation;
- spares consumed;
- signature of the operator.

Maintenance log should be maintained wherein the actual execution of maintenance work shall be recorded. The log will state the components serviced, and the condition of the components. A record shall be kept of replacement of components.

SCHEDULE L

(See Clause 18.1.1)

SAFETY REQUIREMENTS

1. Guiding principles

1.1 Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on the Project, irrespective of the person(s) at fault.

1.2 Users of the project include staff of the Developer and its contractors working at the Project Site.

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 Developer

The Developer 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 ropeway components' suppliers and/or by the Authority;
- c) Provisions of this Agreement; and d) Good Industry Practice.

3. Safety measures during Condition Precedent Period

3.1 Independent Engineer shall carry out safety audit at the design stage of the Project.

3.2 The Developer shall provide to the Independent Engineer, in four copies, the relevant drawings containing the design details that have a bearing on safety of Users (the "Safety Drawings"). The Independent Engineer shall review the design details and forward three copies of the Safety Drawings with its recommendations, if any, to the Independent Engineer who shall record its comments, if any, and forward one copy each to the Authority and the Developer.

3.3 The Independent Engineer shall provide a package of recommendations consisting of safety related measures for the 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 Authority, in five copies. One copy each of the Safety Report shall be forwarded by the Authority to the Developer and the Independent Engineer forthwith.

3.4 The Developer shall endeavor to incorporate the recommendations of the Safety

Report in the design of the Project, as may reasonably be required in accordance with Applicable Laws, Applicable Permits, Manuals and Guidelines, Specifications and Standards, and Good Industry Practice. If the Developer does not agree with any or all of such recommendations, it shall state the reasons thereof and convey them to the Authority forthwith. In the event that any or all of the works and services recommended in the Safety Report fall beyond the scope of Schedule B or Schedule C, the Developer shall make a report thereon and seek the instructions of the Authority for funding such works in accordance with the provisions of Article 18.

3.5 Without prejudice to the provisions of Paragraph 4.4, the Developer and the Independent Engineer shall, within 15 (fifteen) days of receiving the Safety Report, send their respective comments thereon to the Authority, and not later than 15 (fifteen) days of receiving such comments, the Authority shall review the same along with the Safety Report and by notice direct the Developer to carry out any or all of the recommendations contained therein with such modifications as the Authority may specify; provided that any works or services required to be undertaken hereunder shall be governed by the provisions of Article 18.

4. Safety measures during Construction Period

4.1 Independent Engineer shall be appointed by the Authority as per clause 23.1 of this Agreement for carrying out a safety audit of the completed Construction Works.

4.2 Independent Engineer shall study the Safety Report for the Condition Precedent Period and inspect the Project to assess the adequacy of safety measures. The Independent Engineer 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 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.

4.3 The Developer shall make adequate arrangements during the Construction Period for the safety of workers and notify the Authority and the Independent Engineer about such arrangements.

5. Safety measures during Operation Period

5.1 The Developer 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.

5.2 The Developer 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 and traffic engineering by having attended a course conducted by a reputed organization on the subject.

5.3 The Developer shall keep a copy of every FIR recorded by the Police with respect to any accident occurring on the Project. In addition, the Developer shall also collect data for all cases of accidents not recorded by the Police. The aforesaid data shall be submitted to the Authority at the conclusion of every quarter and to the Independent Engineer as and when appointed.

5.4 The Developer shall submit to the Authority before the 31st (thirty first) May of each year, an annual report (in ten copies) containing, without limitation, a detailed listing and analysis of all accidents of the preceding Accounting Year and the measures taken by the Developer pursuant to the provisions of Paragraph 6.1 of this Schedule for averting or minimizing such accidents in future.

5.5 Once in every Accounting Year, a safety audit shall be carried out by the Independent Engineer to be appointed by the Authority. It shall review and analyses the annual report and accident data of the preceding year, and undertake an inspection of the Project. The Independent Engineer shall complete the safety audit within a period of 1 (one) month and submit a Safety Report recommending specific improvements, if any. 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.

6. Costs and expenses

Costs and expenses incurred in connection with the Safety Requirements set forth herein, including the provisions of Paragraph 2 of this Schedule L, shall be met in accordance with Article 18.

Annex I

(Schedule)

Safety Guidelines

1. SAFETY PLAN

1.1 The ropeway system to be installed should conform to best engineering standards in accordance with the relevant Indian and International standard codes. As the proposed ropeway is located in Sub Zero Climatic conditions, the entire ropeway shall be constructed with special steel suitable for sub-zero condition, duly tested. As the ropeway shall face very harsh weather conditions, entire ropeway shall be hot dip galvanized to protect against corrosion and long layoff period during the year.

2. SAFETY MEASURES

2.1 The automatic lock system will be such that it cannot be opened by the passengers.

2.2 Cabin shall be provided with dual fixed grip per cabin wherein each grip will be capable of taking the entire laden weight of the cabin with passengers.

2.3 The ropeway system will be provided with minimum of two braking system; Emergency Brake

and Service Brake. Both brakes should be capable of functioning automatically as per operational and program logic of control system OR manually, in case the need arises.

2.4 The ropeway system machine configuration shall comply with following minimum requirement:

a) In event of main power supply failure, the system should have full rated Diesel Generator to carry on the commercial operation. The Diesel Generator should be de-rated by 30% or as recommended by the manufacturer to meet full load requirement of location altitude.

b) In the event of main motor/ main gearbox failure, the emergency drive should be capable of bringing the stranded cabins on the line to Ropeway Terminals. The emergency drive can be in the form of gasoline/diesel engine or Hydraulic motor or Electric Motor. In case of Hydraulic or Electric Motor as emergency drive, the ropeway company is to ensure fitment of an additional Diesel Generator; over and above the Main Diesel Generator.

c) Standard electrical safety and indicating devices shall be provided on ropeway. Special emphasis shall be paid to line de-ropement switches with independent control circuit to pin point the defect shall be used. As the ropeway terrain is difficult, each tower and sensitive location will be provided with pan/tilt/zoom type wired cameras to monitor the line status before starting the plant each day. As the plant is located in remoteness and nearest town is far away, enough stock of such small electrical and safety items will be made by the ropeway company so as to resolve the defects to operate the plant without bypassing the safety

circuit.

d) Rope catcher will be provided on mount beams on line trestle, P.F. and Stations to arrest/support the hauling rope in case of de-ropement. Both drive and return bull wheel shall be provided with catcher device as well bull wheel arrestor device.

e) Emergency push buttons will be provided at stations to stop the ropeway, if required. The ropeway shall also be provided with 50% station speed switches to reduce the speed of cabins in case of continuously circulating system.

f) The ropeway shall be provided with 4 anemometers to monitor the wind speed. One at each station and two on the mid-section towers. The anemometers shall be integrated with control panel to reduce operation speed to 50% in case wind velocity exceeds 50 km/h and stop the plant if the wind velocity exceeds 65-70 km/h.

g) Lightening arrestors shall be provided at all towers and stations to protect the plant and associated electronics. Adequate number of coal plus salt or chemical earth pits shall be provided at both stations and tower foundations.

h) All safety devices will be as per relevant Indian standard for passenger ropeway.

3. RESCUE ARRANGEMENT

3.1 The proposed ropeway is development fee terrain and all given time the cabins are within the specific height limit as per national and international norm. At the same time the rope under fully loaded condition, cabin bottom should maintain 2.5 meters of clearance from the given ground profile to maintain necessary large safe distance from the ground. The proposed rescue system for the plant is standard vertical rescue in case of an extreme emergency where cabin is stopped on line due to any unforeseen eventuality.

3.2 The alignment incline permits launch of rescue personnel from Upper Terminal towards Lower Terminal on Recue Chair. The rescuer upon reaching the stranded cabin lowers himself on top of the cabins. The rescuer then opens the cabin door from outside and lowers the stranded passengers one by one using the rescue chair by manual rope reeling down method or by using auto retarder lowering mechanism. The rescued passengers are attended at ground by the ground crew and can be made to travel back to Upper or Lower Terminal Point as the case may be, on foot or on pony. On such rescue system, it is essential that the cabin be equipped with one strong fixing hook of minimum 150 kg capacity near the door.

3.3 The tending of rescue chair is either controlled by hand or by small manual winch located on Upper Terminal. If winch is provided, then the number of winches will be two so as to carry rescue operation independently on both sides of the rope. As standard practice of working on high ground, the rescuers, the attending team and all rescued passengers are required to wear full body harness, women having problem with full body harness can be provided with half body harness.

SCHEDULE M
(See clause 19.5)
MONTHLY FEE STATEMENT

Project:

Month:

	For Corresponding Month of Previous Year		For Preceding Month		For the month reported upon	
	No. of Users	Fee Collected (in lakh Rs.)	No. of Users	Fee Collected (in lakh Rs.)	No. of Users	Fee Collected (in lakh Rs.)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Ropeway						
Others						
Grand Total						

Remarks, if any:

SCHEDULE N

(See Clause 21.7)

PASSENGER CHARTER

Sangram Sagar to Madan Mahal fort Aerial Passenger Ropeway Facility

At your service

Our Passenger Charter explains our commitments to you and sets out the targets that are based upon concessions awarded to us by Directorate of Tourism, Government of Madhya Pradesh. It is not legally binding and does not affect your legal rights, which are set under the law. Copies of the Conditions can be obtained from all the staffed stations or from our Customer Service Centers. They can also be viewed online at _____.

Contents

1. Introduction
2. Our standards for Service Performance
3. Information and planning for your journey
4. Passengers who require assistance
5. Buying a ticket
6. Your journey
7. Claims for delay and cancellations
8. Listening to your views
- 1. Introduction**

We want to give our passengers excellent service.

This is a bold statement but its intention is to focus the mind of every employee of the Passenger

Ropeway Facility on what is important – our passengers. We aim to provide you with:

- i. Safe, clean, reliable and punctual services
- ii. Clean, safe and eco-friendly Project Facility
- iii. Reliable, timely and easy to understand information
- iv. Polite, friendly, helpful and professional staff

2. Our standards for Passenger Service

We will continue to work hard at improving our performance to provide you with a constantly reliable and comfortable service.

2.1 Punctuality

Our target is that 95% of the cable car will arrive at their final destination within one minute of the schedule time.

2.2 Reliability

Our target is that 99% of all Schedule D services will run. This is measured from Monday to Friday around the year.

You can view our performance results for the previous four weeks on 'Track Record' posters displayed at terminal stations of the project. The results are also available for inspection on request, at Terminal Stations.

The method of monitoring our performance is independently audited annually. We do not include disruption caused by matters out of our control such as trespass, vandalism and terrorism.

3. Information and planning for your journey

We will provide you with accurate and impartial information about the services, fares and facilities to help you plan your journey. You can obtain this information in a number of ways.

- i. Sangram Sagar & Madan Mahal Facility Enquiries telephone (___hours). Sangram Sagar to Madan Mahal Ropeway Facility Enquiries offers you impartial information on ropeway timings, fares, etc.

*Calls are charged at a local rate and may be monitored.

You can also obtain online Information about ropeway timings and fares by visiting website

- ii. Customer Service Centre telephone:

In addition to the Ropeway Facility Enquiries, Customer Service Centre also provides information on how our ropeway services are running. The Customer Service Centre is open 24 hours a day except on national holidays.

* Calls are charged at a local rate and may be monitored.

3.1 At Stations

Staff in our ticket offices can provide you with information to help you plan your journey. We will display our up-to-date timetable posters at all Terminal Stations.

Timetables and pocket timetables are available in advance of timetable changes.

3.2 Our Website

We aim to provide as much useful and relevant information as possible on our website to help

you plan your journey. This includes pocket timetables to download.

3.3 Engineering Work

3.3.1 Planned Engineering work

From time to time, our Ropeway Facility has to carry out planned engineering and improvement work to maintain the rope, electro-mechanical equipment, etc. This can cause alterations to our services, especially on weekends and public holidays.

When alterations take place, we will advise you in advance where possible through our published timetables at terminal stations.

For weekend and public holiday engineering work affecting our services, a poster will be displayed at terminal stations.

Information will also be available from:

- Ropeway Facility Enquiries
- Customer Service Centre

We will always aim to provide information at least four weeks in advance through these channels.

3.3.2 Unplanned engineering work

Occasionally, Sangram Sagar to Madan Mahal ropeway Facility has to carry out emergency engineering work at very short notice. When this happens we aim to inform you through Enquiries, our Customer Service Centre, and Terminal Station public address system, posters, Tele text and local radio stations.

3.3.3 Help and advice during your journey

We understand that alterations to services due to engineering work can cause extra problems for customers. Our terminal station staff can help you if you need advice and you can also contact our Customer Service Centre.

4. Passenger who require assistance

We are committed to meeting the travelling needs of our disabled passengers. We recognize that many of our passengers may have special needs which require us to adjust the way we provide our service.

4.1 Advance information and assistance for disabled passengers

We advise passengers who would like assistance to contact our Customer Service Centre in advance.

- Telephone (24 hours):
- Fax:
- Text phone:
- Ropeway Enquiries text phone.....

4.2 Station access

Our terminal stations may not be fully accessible to passengers with disabilities, either because of the way these stations are constructed or because there are times of the day when there are no station staffs available. Both during and outside these hours, our staff is also available to help you board and leave the ropeway.

4.3 Ropeway Cabins

All Cable Cars on our network are fully accessible to disabled passengers.

4.4 Reservations of wheelchair spaces

Reservations are available to disabled passengers on all of our services that have priority seats.

4.5 Disability awareness training

All our frontline staff and managers receive training in disability awareness.

5. Buying a ticket

To purchase a ticket, visit any of our staffed terminal stations or telephone our Customer Service Centre or book online through our **website** _____. Passenger should always insist for a computerized ticket or e-ticket and in case the same is not available, they can report the matter to the Customer Service Centre.

5.1 At stations

- Our ticket office opening hours are displayed at every Terminal Station. They are also
- available from our website or by telephoning our Customer Service Centre.
- You can pay by cash or major credit and debit cards.
- We will try to ensure that you do not need to queue for more than five minutes at busy times and no more than three minutes during less busy times. Details of busy times are displayed at each Terminal Station.

5.2 By telephone

Tickets can also be purchased over the telephone by calling our Customer Service Centre. We accept most of the major credit and debit cards. Please allow at least five working days for delivery of your tickets.

5.3 Tickets online

You can also buy your tickets online.

5.4 Penalty fares

Sangram Sagar to Madan Mahal Ropeway Facility has a duty to its fare-paying passengers to

ensure that no-one travels for free. To help us achieve this, we operate a penalty fares scheme across our network.

If you travel without a valid ticket you may be liable to a penalty of three times of the single fare between the Terminal Stations.

6. Your Journey

6.1 Getting a seat

We operate a 'walk-on' service, which means that you can board any Cabin provided you have a valid ticket. We guarantee to provide a seat for you.

6.2 Security

We work very closely with the local authorities to improve security at our Stations.

We aim to reduce levels of crime, trespass and vandalism and we are investing to achieve this. Initiatives include:

- Teams of Travel Safe Officers, trained and coordinated by the Police
- Installation of CCTV at Terminal Stations
- Installation of CCTV inside the Cabins
- Lighting at Terminal Stations and intermediate points
- Information Signage
- Help points at our Stations
- Security guards at key locations

More information can be found in the Safety and security section of our website.

6.3 Smoking / Alcohol

Smoking or alcohol intake is strictly prohibited at our Terminal Stations and inside the Cabins. Strict penal action against the offenders shall be taken by the concerned authorities.

6.4 Lost Property

Our Lost Property office at is open from <insert timings and days>. Telephone the office on All property found on our services and at our Terminal Stations is forwarded to our Lost Property office. To make an enquiry, complete our Lost Property online form.

6.5 Service disruption

Unfortunately, things do sometimes go wrong, causing disruption that cannot always be foreseen or avoided. In these circumstances, we may have to introduce emergency timetables. We will aim to inform you in advance before these timetables come into operation, with notices at Terminal Stations and by other appropriate media.

Other causes of disruption include:

- Emergency engineering work
- Trespass and vandalism
- Breakdowns
- Accidents
- Security alerts

Under such circumstances, we may have to make changes to our services without giving prior warning to protect your safety and that of our staff. We will always try to minimize disruption, keep you informed.

If a problem occurs after your journey has started, we will work hard to get you to Lower Terminal Station.

7. Claims for delays and cancellations

7.1 'Void' day refunds

As a holder of a valid Ticket, we may provide you with the appropriate refund for exceptional days when there has been widespread serious, extended disruption and when no alternative has been provided. This is known as a 'Void' day. In these cases, the period of disruption will be excluded from our performance statistics.

When we have declared a 'void' day we will tell you through 'Track Record' posters displayed at Terminal Stations.

When you renew your Ticket you will be advised by staff at ticket office to apply for 'Void' day refunds if they have been declared. You will be given a 'Void' day refund application form, which you can complete and submit along with your expired Ticket.

7.2 Punctuality and reliability discounts for Tickets

We have certain performance standards for punctuality and reliability. If we fail to meet these standards, we will offer you a discount from the cost of your Ticket renewal. Discounts will be paid automatically at the time of renewal.

Delays and cancellations that are caused by incidents beyond the control are excluded from our performance results. Incidents that are beyond our control include security alerts, vandalism and trespass. We will display it on posters at terminal stations and also on our website.

- 5% discount:** We will offer you a 5% discount if, on average, over the previous 2 months either punctuality has been more than 10% below the standard or reliability has been more than 5% below the standard.
- 10% discount:** We will offer you a 10% discount if both punctuality and reliability are below these discount threshold levels.

To obtain your discount, you must renew your ticket within four weeks of the previous ticket's expiry.

7.3 Cancellation

If due to any reason an unexpectedly delay or cancellation of ropeway system has happened, we will give you an immediate full refund.

If you decide for other reasons not to make your journey, you may apply for a refund **within days** of the ticket's expiry. In most cases you will receive your refund immediately; however, this does depend on the method of payment, value of the refund. We may also charge a reasonable administration fee for such refunds.

How to make your claim: Claim forms are available at our website, all ticket offices or by contacting our Customer Service Centre. Please send us your travel tickets to support your claim. This will also help to speed up your claim. Completed claims should be sent to our Customer Service Centre.

8. Listening to your views

We carry out and analyses passenger survey research to provide information about what you think of different aspects of our service.

We hold regular Meet the Manager events, which enable you to speak directly to managers to put your views to them or ask them questions. Details of Meet the Manager events will be advertised on the terminal station posters, through our Customer Service Centre and also online.

We will listen to your views and communicate through correspondence and by telephone. We have a specially trained Customer Service Centre team able to respond to you and we also liaise with passenger representative bodies and user groups that exist to protect your interests.

8.1 Making a comment or complaint

We welcome your comments, suggestions, complaints and praise about any aspect of our service. We also welcome comments about our Charter.

Senior managers monitor the number and type of complaints and comments that you make. They are also responsible for delivering continuous improvement to customer service. Your feedback can therefore help us to achieve this.

If you are commenting on a journey, please remember to include your tickets and any other details, as this will help us to provide you with a quicker response.

8.2 Further information:

We have a full Customer Comment and Complaints Handling Procedure (CCCHP). Copies of our CCCHP can be obtained from our Customer Service Centre or from our

website.....

8.3 Contacting our Customer Service Centre

Please visit our Contact us section for details.

8.4 Our promised response times

If you write to us, you should hear from us within five working days of us receiving your communication.

However, it may take longer to provide a full reply (e.g. if an investigation is required) and if this happens we will send you an acknowledgement within five working days and reply within 20 working days.

If a full reply cannot be made within 20 working days, we will contact you again to update you.

8.5 If you are unhappy with our reply

We will work hard to deal with your concerns to your satisfaction but if you are unhappy with our response please let us know.

Alternatively, you can approach the consumer courts or other similar set up under Applicable Laws.

SCHEDULE O

(See Clause 22.1)

MONTHLY TRAFFIC CENSUS

Project:

Month ending:

No. of Users using the Ropeway Facility during		
Corresponding month /last	Preceding month	Month of report
(1)	(2)	(3)

Remarks, if any:

SCHEDULE P

(See Clause 23.1)

SELECTION OF INDEPENDENT ENGINEER

1. Selection of Independent Engineer

1.1 The Authority shall invite expressions of interest from consulting engineering firms or bodies corporate to undertake and perform the duties and functions set forth in Schedule Q and thereupon shortlist up to 6 (six) qualified firms in accordance with pre-determined criteria. The Authority shall convey the aforesaid list of firms to the Developer for scrutiny and comments, if any. The Developer shall send its comments, if any to the Authority within 15 (fifteen) days of receiving the aforesaid list of firms. Upon receipt of such comments, if any, the Authority shall, after considering all relevant factors, finalize and constitute a panel of shortlisted firms (the "Panel of Firms") and convey its decision to the Developer.

1.2 The Authority shall invite the aforesaid firms in the Panel of Firms to submit their technical and financial offers, each in a separate sealed cover. All the technical bids so received shall be opened and pursuant to the evaluation thereof, the Authority shall shortlist 3 (three) eligible firms on the basis of their technical scores. The financial bids in respect of such 3 (three) firms shall be opened and the order of priority as among these firms shall be determined on the basis of a weighted evaluation when technical and financial scores shall be assigned respective weights of 80:20.

1.3 In the event that the Authority wishes to follow any other selection process as per Applicable Laws, the selection process specified in this Schedule P shall be deemed to be substituted by the said selection process.

2. Fee and expenses

2.1 All the payments shall be borne entirely by the Authority in accordance with the provisions of this Agreement.

3. Constitution of fresh panel

No later than 3 (three) years from the Effective Date, and every three years thereafter, the Authority shall prepare a fresh panel of firms in accordance with the criteria set forth in this Schedule Q; provided that the Authority may, at any time, prepare a fresh panel with prior written consent of the Developer.

SCHEDULE Q

(See Clause 23.2.1)

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 Project Development and Management Agreement dated *** (the "Agreement"), which has been entered into between the Authority and **** (the "Developer") for Development of Passenger Ropeway System at Sangram Sagar to Madan Mahal in Jabalpur on Design, Build, Finance, Operate and Transfer Basis under PPP Model ("Project"), and a copy of which is annexed hereto and marked as Annex A to form part of this TOR.

1.2 This TOR shall apply to only construction, supervision and monitoring of the 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 Schedule S in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedule S 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 Clauses 1.2, 1.3 and 1.4 of the Agreement shall apply, mutatis mutandis, to this TOR.

3. Role and functions of the Independent Engineer

3.1 The role and functions of the Independent Engineer shall include the following:

- i. review of the Drawings and Documents as set forth in Paragraph 4;
- ii. review, inspection and monitoring of Construction Works as set forth in Paragraph 5;
- iii. conducting Tests on completion of construction and issuing

Completion/Provisional Certificate as set forth in Paragraph 5;

- iv. undertaking all other duties and functions in accordance with the Agreement.

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. Condition Precedent Period

4.1 During the Condition Precedent Period, the Independent Engineer shall undertake a detailed review of the Drawings to be furnished by the Developer along with supporting data, including the geo-technical and other investigations; characteristics of materials from borrow areas and quarry sites, topographical surveys and traffic surveys. The Independent Engineer shall complete such review and send its comments/observations to the Authority and the Developer 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 Developer and furnish its comments within 7 (seven) days of receiving such Drawings or Documents.

4.3 The Independent Engineer shall review the Drawings sent to it by the Developer in accordance with Schedule and furnish its comments thereon to the Authority and the Developer within 7 (seven) days of receiving such Drawings. The Independent Engineer shall also review the Safety Report and furnish its comments thereon to the Authority within 15 (fifteen) days of receiving such report.

4.4 The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Developer and furnish its comments within 15 (fifteen) days of receipt thereof.

4.5 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 Project Facilities, and furnish its comments within 7 (seven) days from receipt of such reference from the Authority.

5. Construction Period

5.1 In respect of the Drawings, Documents and Safety Report received by the Independent Engineer for its review and comments during the Construction Period, the provisions of Paragraph 4 shall apply, mutatis mutandis.

5.2 The Independent Engineer shall review the monthly progress report furnished by the Developer and send its comments thereon to the Authority and the Developer within 7 (seven) days of receipt of such report.

5.3 The Independent Engineer shall inspect the Construction Works and the Project once every month, preferably after receipt of the monthly progress report from the Developer, 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 Project. The Inspection Report shall also contain a review of the maintenance of the Project in conformity with the provisions of the Agreement. The Independent Engineer shall send a copy of its Inspection Report to the Authority and the Developer within 7 (seven) days of the inspection.

5.4 The Independent Engineer may inspect the Project 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 Developer 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.

5.6 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 Developer for its own quality assurance in accordance with Good Industry Practice.

5.7 In the event that the Developer carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Developer 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.

5.8 In the event that the Developer 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 Project is not feasible within the time specified in the Agreement, it shall require the Developer 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 Developer, the Independent Engineer shall review the same and send its comments to the Authority and the Developer forthwith.

5.9 If at any time during the Construction Period, the Independent Engineer determines that the Developer has not made adequate arrangements for the safety of workers and Users in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers and the Users, it shall make a recommendation to the Authority forthwith, identifying the whole or part of the Construction Works that should be suspended

for ensuring safety in respect thereof.

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

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

5.12 The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in schedule I and issue a Completion Certificate or Provisional Certificate, as the case may be. For carrying out its functions under this Paragraph 5.12 and all matters incidental thereto, the Independent Engineer shall act under and in accordance with the provisions of Article 14 and schedule I.

5.13 Upon reference from the Authority, the Independent Engineer shall make a fair and reasonable assessment of the costs of providing information, works and services as set forth in Article 16 and certify the reasonableness of such costs for payment by the Authority to the Developer.

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

6. Operation Period

6.1 In respect of the Drawings, Documents and Safety Report received by the Independent Engineer for its review and comments during the Operation Period, the provisions of Paragraph 4 shall apply, mutatis mutandis.

6.2 The Independent Engineer shall review the annual Maintenance Programme furnished by the Developer and send its comments thereon to the Authority and the Developer within 15 (fifteen) days of receipt of the Maintenance Programme.

7. Determination of costs and time

7.1 The Independent Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.

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

8. Assistance in Dispute resolution

8.1 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.

8.2 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.

9. Other duties and functions

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

10. Miscellaneous

10.1 The Independent Engineer shall notify its programme of inspection to the Authority and to the Developer, who may, in their discretion, depute their respective representatives to be present during the inspection.

10.2 A copy of all communications, comments, instructions, Drawings or Documents sent by the Independent Engineer to the Developer 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.

10.3 The Independent Engineer shall obtain, and the Developer shall furnish in two copies thereof, all communications and reports required to be submitted, under this Agreement, by the Developer to the Independent Engineer, whereupon the Independent Engineer shall send one of the copies to the Authority along with its comments thereon.

10.4 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.

10.5 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.

SCHEDULE R

(See Clause 32.4)

VESTING CERTIFICATE

1. The Director, Directorate of Tourism (the "**Authority**") refers to the Project Development and Management Agreement dated *** (the "**Agreement**") entered into between the Authority and **** (the "**Developer**") for Development of Passenger Ropeway System at **Sangram Sagar to Madan Mahal in Jabalpur** on Design, Build, Finance, Operate and Transfer Basis under PPP Model (the "**Project**").
2. The Authority hereby acknowledges compliance and fulfillment by the Developer of the Divestment Requirements set forth in Clause 32.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Developer 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 Developer to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Developer in any manner of the same.

Signed this *** day of ***, 20** at Jabalpur .

AGREED, ACCEPTED AND SIGNED SIGNED, SEALED AND DELIVERED For and on behalf of For and on behalf of

DEVELOPER by: Jabalpur Smart City Limited by:

(Signature) (Signature) (Name) (Name) (Designation) (Designation) (Address)
(Address)

(e-mail address) (e-mail address)

In the presence of:

1.

2.

SCHEDULE S

(See Clause 33.3.1)

SUBSTITUTION AGREEMENT

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

1. Directorate of Tourism on behalf of Government of Jharkhand, represented by its Director having its head office at Office of Jabalpur Smart City Limited, At Manas Bhawan, Wright Town, Jabalpur 482001, hereinafter referred to as the "**Authority**" which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);

2. [**** LIMITED], a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at ****, (hereinafter referred to as the "**Developer**" 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 Lenders as their duly authorized agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "Lenders", which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

A. The Authority has entered into a Project Development and Management Agreement dated

*** with the Developer (the "**Project Development and Management Agreement**") for Development of Passenger Ropeway System at Sangram Sagar to Madan Mahal fort in Jabalpur on Design, Build, Finance, Operate and Transfer Basis under PPP Model, and a copy of which is annexed hereto and marked as Annex A to form part of this Agreement.

B. Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.

C. 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 Project Development and Management 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 Project Development and Management 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 Developer for a minimum period of 3 (three) months;

"Lenders' Representative" means the person referred to as the Lenders' Representative in the foregoing Recitals;

"Nominated Company" means a company, incorporated under the provisions of the Companies Act,

1956, selected by the Lenders' Representative, on behalf of 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 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 Project Development and Management Agreement shall, unless repugnant to the context, have the meaning ascribed there to in the Project Development and Management Agreement.

1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Project Development and

Management Agreement shall apply, mutatis mutandis, to this Agreement.

2. ASSIGNMENT

2.1 Assignment of rights and title

The Developer 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 Project Development and Management Agreement by way of security in respect of financing by the Lenders under the Financing Agreements.

3. SUBSTITUTION OF THE DEVELOPER

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 Developer by a Nominated Company under and in accordance with the provisions of this Agreement and the Project Development and Management Agreement.

3.1.2 The Authority hereby agrees to substitute the Developer by endorsement on the Project

Development and Management Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. (For the avoidance of doubt, the Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project as Developer 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 Developer (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 Developer 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 Developer 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 Developer and undertake the operation and maintenance of the Project in accordance with the provisions of

Article 30 of the Project Development and Management Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Project Development and Management Agreement. The aforesaid Suspension shall be revoked upon substitution of the Developer 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 Project Development and Management Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Project Development and Management Agreement; provided that upon written request from the Lenders' Representative and the Developer, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

3.3 Substitution upon occurrence of Developer Default

3.3.1 Upon occurrence of a Developer 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 Developer 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 Developer by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Developer 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 Developer, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

3.4 Procedure for substitution

3.4.1 The Authority and the Developer 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 Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the takeover and transfer of the Project including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Developer towards the Authority under the Project Development and Management Agreement and towards the Lenders under the Financing Agreements.

3.4.2 To be eligible for substitution in place of the Developer, the Nominated Company shall

be required to fulfill the eligibility criteria that were laid down by the Authority for shortlisting the bidders for award of the Concession; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.

3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall request the Authority to:

- a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Project in accordance with the provisions of the Project Development and Management 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 Developer.

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 Developer. The Developer irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Lenders or the Authority taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. The Developer agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Developer'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 Developer 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 Developer 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 Developer in the event of such Nominated Company's assumption of the liabilities and obligations of the Developer under the Project Development and Management Agreement.

5. TERMINATION OF PROJECT DEVELOPMENT AND MANAGEMENT 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 Project Development and Management Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 31 of the Project Development and Management 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 Project Development and Management Agreement forthwith in accordance with the provisions thereof.

5.3 Realization of Debt Due

The Authority and the Developer hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Developer, without any further reference to or consent of the Developer, the Debt Due upon Termination of the Project Development and Management 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 Lenders, under the Financing Agreements.

7. INDEMNITY

7.1 General indemnity

7.1.1 The Developer 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 Developer of any of its obligations under this Agreement or on account of failure of the Developer to comply with Applicable Laws and Applicable Permits.

7.1.2 The Authority will indemnify, defend and hold the Developer 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 Developer's obligations under the Project Development and Management 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 Developer 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 Developer's obligations under the Project Development and Management 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, Developer 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 Ranchi 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 Ranchi 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 Project Development and Management Agreement and this Agreement, the provisions contained in the Project Development and Management

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 authorized 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 authorized representative of the Party; and
- c) shall not affect the validity or enforceability of this Agreement in any manner.

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

9.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

9.7 Survival

9.7.1 Termination of this Agreement

- a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

9.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such

termination or expiry of this Agreement.

9.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

9.9 Successors and assigns

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

9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile. 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 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. 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 Authorized representatives

Each of the Parties shall by notice in writing designate their respective authorized 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 authorized representative by similar notice.

9.13 Original Document

This Agreement may be executed in three counterparts, each of which when executed and

delivered shall constitute an original of this Agreement.

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of
Jabalpur Smart City Limited
("Authority") by:

For and on behalf of
("Developer") by:

For and on behalf of
("Selected Bidder") by:

Sign and Seal:
Name:
Designation: CEO,
Jabalpur Smart City Limited

Sign and Seal:
Name:
Designation:

Sign and Seal:
Name:
Designation:

In the presence of:

1.

2.

SCHEDULE T

(See Clause 27.1.2)

COMPENSATION AMOUNT

During the Operation Period, the Developer shall ensure that user of the ropeway facility is insured as per provisions of Section 27 **“Insurance”** of this Project Development and Management Agreement and in case of accident, provide the victim with the compensation, not less than the amount specified below:

No.	Event	Compensation
1.	Death	Rs. 10,00,000/-
2.	Permanent disability	Rs. 10,00,000/-
3.	Permanent partial disability	Rs. 7,50,000/-
4.	Hospitalization expenses	Up to Rs. 2,00,000/-
5.	Transportation of mortal remains in the event of death or injury from a ropeway accident or other untoward incident including terrorist attacks, dacoity, rioting, shoot-out or arson	Up to Rs. 1,00,000/-

ⁱ To be filled as per the bid quoted by the Selected Bidder.