Development, Operation & Maintenance of Ropeway and Glass Bridge Skywalk at Bhadrakali Lake, Warangal on DBFOT mode for a period of 30 years

CONCESSION AGREEMENT

(DRAFT)

Kakatiya Urban Development Authority (KUDA)
Government of Telangana

Development, Operation & Maintenance of Ropeway and Glass Bridge Skywalk at Bhadrakali Lake, Warangal on DBFOT mode for a period of 30 years

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CONCESSION AGREEMENT

THIS AGREEMENT[1]is entered into on this the ……... day of ……, 20…...

BETWEEN

1 **Kakatiya Urban Development Authority (KUDA)**, Government of Telangana with its office located at H. No. 6-1-240, KUDA Road, Hanumakonda, Warangal – 506001, hereinafter referred to as the "**Authority**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;

AND

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

WHEREAS:

(A) Kakatiya Urban Development Authority, Government of Telangana has decided to Development, Operation & Maintenance of Ropeway and Glass Bridge Skywalk at Bhadrakali Lake in Warangal on DBFOT mode in the state of Telangana for a period of 30 years on PPP basis.

(B) The Authority had accordingly adopted a single stage two envelope bidding process and accordingly invited proposals by its Request for Proposal dated *** (the "Request for Proposal" or "RFP") for qualification and short listing of bidders for construction, operation and maintenance of the **Ropeway and Glass Bridge Skywalk** on DBFOT basis in the State of Telangana. The Authority had prescribed the technical and commercial terms and conditions, and invited bids from the bidders for undertaking the Project.

(C) After evaluation of the bids received, the Authority had technically qualified certain bidders including, inter alia, the {the selected bidder/ consortium comprising ……., ……., ……., and ….…….. (collectively the "Consortium") with as its Lead Member} and accepted the financial bid of the {selected bidder/ Consortium} and issued its Letter of Award No. dated …… (hereinafter called the "LOA") to the {selected bidder/ Consortium} requiring, inter alia, the execution of this Concession Agreement within 45 (forty-five) days of the date of issue

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

thereof.

(D) {The selected bidder/ Consortium has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 2013, and has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder/ Consortium under the LOA,} including the obligation to enter into this Concession Agreement pursuant to the LOA for executing the Project.

(E) {By its letter dated , the Concessionaire has also joined in the said request of the selected bidder/ Consortium to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder/ Consortium including the obligation to enter into this Concession Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the selected bidder/ Consortium for the purposes hereof.}

(F) The Authority has agreed to the said request of the {selected bidder/Consortium and the} Concessionaire and has accordingly agreed to enter into this Concession Agreement with the Concessionaire for execution of the Project on DBFOT basis, subject to and on the terms and conditions set forth hereinafter.

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

PART I: PRELIMINARY

ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 49) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

(a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;

(b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;

(c) references to a "**person**" and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;

(d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;

(e) the words "**include**" and "**including**" are to be construed without limitation and shall be deemed to be followed by **"without limitation"** or **"but not limited to"** whether or not they are followed by such phrases;

(f) references to "**construction**" or **"building"** include, unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and "**construct**" or **"build"** shall be construed accordingly;

(g) references to "**development**" include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and "**develop**" shall be construed accordingly;

(h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;

(i) any reference to day shall mean a reference to a calendar day;

(j) references to a "**business day**" shall be construed as a reference to a day (other than a

Sunday) on which banks in Delhi are generally open for business;

(k) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;

(l) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;

(m) any reference to any period commencing "**from**" a specified day or date and "**till**" or "**until**" a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;

(n) the words importing singular shall include plural and vice versa;

(o) references to any gender shall include the other and the neutral gender;

(p) "**lakh**" means a hundred thousand (100,000) and "**crore**" means ten million (10,000,000);

(q) "**indebtedness**" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;

(r) references to the "**winding-up**", "**dissolution**", "**insolvency**", or "**reorganisation**" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;

(s) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;

(t) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Independent Engineer, as the case may be, in this behalf and not otherwise;

(u) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;

(v) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement

shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;

(w) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on *per diem* basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "**Damages**"); and

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

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

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

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

1.3 Measurements and arithmetic conventions

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

1.4 Priority of agreements, clauses and schedules

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

(a) this Agreement; and

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

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

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

(a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;

(b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;

(c) between any two Schedules, the Schedule relevant to the issue shall prevail;

(d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;

(e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and

(f) between any value written in numerals and that in words, the latter shall prevail.

PART II: THE CONCESSION

ARTICLE 2: SCOPE OF THE PROJECT

2.1 Scope of the Project

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

(a) Design, and construction of the Project on the Site set forth in Schedule-A and as specified in Schedule-B together with provision of Project Facilities as specified in Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D;

(b) operation and maintenance of the Project in accordance with the provisions of this Agreement; and

(c) performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

ARTICLE 3: GRANT OF CONCESSION

3.1 The Concession

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

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

(a) Right of Way, access and licence to the Site for the purpose of and to the extent conferred by the provisions of this Agreement;

(b) Finance, design and construct the Project;

(c) manage, operate and maintain the Project and regulate the use thereof by third parties, wherever applicable;

(d) demand, collect and appropriate Fee from Users liable for payment of Fee for using the Project or any part thereof and refuse usage if the Fee due is not paid;

(e) perform and fulfil all of the Concessionaire's obligations including, but not limited to, the safety trials, Safety audits, Rescue Services etc. under and in accordance with this Agreement;

(f) to let out on license basis any portion of the built up space at the Terminal Stations, subject to terms of this Agreement, for commercial use in consonance with the terms of this Agreement and for duration which shall always be conterminous with this Agreement;

(g) [Deleted]

(h) bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement; and

(i) neither assign, transfer or sublet or create any lien or encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement.

(j) Appoint Sub-contractors on its behalf, to the extent permissible in terms hereof, to

assist the Concessionaire in fulfilling its obligation in relation to the Project;

(k) Hand over the Project and the Project Assets, including the land, if any, owned by the Concessionaire and related to the operations and maintenance of the Project to the Authority or its nominated agency on the Transfer Date;

3.2 Actions in Support of Concession

(a) The Authority accepts and agrees that the route alignment of the aerial Ropeway, the Lower Terminal Point (LTP), and Upper Terminal Point (UTP) specified in Schedule - B, forms the basic core of the Project and agrees and undertakes not to change it in any manner whatsoever during the term of this Agreement, including extension thereof, if any, unless in exceptional scenarios wherein the alignment needs to be changed considering the safety aspect / statutory requirement

(b) The Authority acknowledges that the location of the total Project Area (as defined in Schedule B) is of fundamental importance to the Project and agrees that the same shall not be changed during the Concession Period.

(c) The Authority shall maintain / caused to be maintained the approach roads, as defined under the terms of this Agreement, to the Project Area and to keep the roads open throughout the year on a best effort basis

(d) The Authority shall render such assistance to the Concessionaire as may be reasonable and feasible for the Authority or the State Government, from time to time, for availing of formal permissions & approvals for completion of formalities relating to the Project, however the sole responsibility and obligation for obtaining and maintaining all required permissions and approvals as mentioned in Schedule E shall be of the Concessionaire alone. However, the approvals / clearances mentioned in Clause 4.1.2 shall be obtained by Authority.

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

ARTICLE 4: CONDITIONS PRECEDENT

4.1 Conditions Precedent

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

4.1.2 The Concessionaire may, upon providing the Performance Security to the Authority in accordance with Article 9, at any time after [90 (ninety)] days from the date of this Agreement or on an earlier day acceptable to the Authority, by notice require the Authority to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 90 (ninety) days of the notice, or such longer period not exceeding 120 (one hundred and twenty) days as may be specified therein, and the Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:

(a) procured for the Concessionaire the Right of Way to the Site in accordance with the provisions of Clause 10.3.2;

(b) [Deleted]

(c) [Deleted]

(d) procured all Applicable Permits relating to environmental protection, and conservation in respect land forming part of the Right of Way under Clause 10.3.1 and 10.3.2;]

(e) [Deleted]

(f) [Deleted]

(g) appointed the Independent Engineer within 90 (ninety) days of this Agreement.

Provided that the Authority, in consultation with Concessionaire, may provide the extension for Condition Precedent in Clause 4.1.2 (e) for a maximum additional period of 90 days. All other Condition Precedents shall have to be satisfied prior to declaration of Appointed Date.

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

(a) provided Performance Security to the Authority;

(b) executed and procured execution of the Escrow Agreement;

(c) executed and procured execution of the Substitution Agreement;

(d) procured all the Applicable Permits specified in Schedule-E unconditionally or if subject to conditions, then all such conditions required to be fulfilled by the date

specified therein shall have been satisfied in full and such Applicable Permits are in full force and effect;

(e) executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;

(f) delivered to the Authority 3 (three) true copies of the Financial Package and the Financial Model duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model, which is workable, formulae linked and interactive, in MS Excel version or any substitute thereof, which is acceptable to the Authority containing financials as appraised and adopted by Senior Lenders;

(g) delivered to the Authority from {the Consortium Members, their respective} confirmation, in original, of the correctness of their representations and warranties set forth in Sub clauses (k), (l) and (m) of Clause 7.1 of this Agreement; and

(h) delivered to the Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof:

(i) satisfy himself about the availability of minimum 90% of the Construction Zone as per joint memorandum signed in accordance with clause 10.3.1 and 10.3.2, subject to the condition that the available Construction Zone shall be sufficient for achievement of COD

(j) [Deleted]

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

4.1.4 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.

4.1.5 The Parties shall notify each other in writing at least once a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

4.2 Damages for delay by the Authority

In the event that (i) the Authority does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Authority shall pay to the Concessionaire Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20%

(twenty percent) of the Performance Security.

4.3 Damages for delay by the Concessionaire

In the event that (i) the Concessionaire does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.3 within a period of 180 (One hundred eighty) days from the date of this Agreement, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.2 or other breach of this Agreement by the Authority, or due to Force Majeure, the Concessionaire shall pay to the Authority Damages in an amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty per cent) of the Performance Security, provided further that such Damages for delay by the Concessionaire for non-fulfilment of Conditions Precedent shall be payable within 15 (fifteen) days of achievement of fulfilment of Conditions Precedent.

4.4 Deemed Termination upon Delay

Without prejudice to the provisions of Clause 4.2 and 4.3, and subject to the provisions of Clause 9.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, before the 1st (first) anniversary of the date of this Agreement or the extended period provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

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

ARTICLE 5: OBLIGATIONS OF THE CONCESSIONAIRE

5.1 Obligations of the Concessionaire

5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Project and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.

5.1.2 The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.

5.1.3 Save and except as otherwise provided in this Agreement or Applicable Laws, as the case may be, the Concessionaire shall, in discharge of all its obligations under this Agreement, conform with and adhere to Good Industry Practice at all times.

5.1.4 The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:

(a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits (other than those set forth in Clause 4.1.2), and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;

(b) submit a detailed Project construction completion schedule with clearly defined milestones, construction methodology and technology proposed to be deployed to the Authority on or before the Appointed Date. However, the Authority upon written request from the Concessionaire may allow the Concessionaire, subject to such terms and conditions as it specify, submission of detailed completion schedule later than the Appointed Date but not later than 60 days from the Appointed Date, in any case;

(c) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project ;

(d) perform and fulfil its obligations under the Financing Agreements;

(e) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;

(f) upon written request from the Authority, make reasonable efforts to facilitate the acquisition of land and procuring of environmental and forest clearances required for the purposes of the Agreement;

(g) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's

obligations under this Agreement;

(h) In implementing the Project, the Concessionaire shall ensure compliance by itself and Persons claiming through or under it with all Applicable Laws, including environmental laws and laws relating to pollution, and the terms of Applicable Permits and the Concessionaire shall be entirely liable for any violations or breaches thereof and indemnify and keep indemnified the Authority from and against all liabilities and costs in this behalf

(i) always act in a manner consistent with the provisions of this Agreement and not cause or fail to not do or omit to do any act, deed or thing, whether intentionally or otherwise, which may in any manner be violative of any of the provisions of this Agreement;

(j) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement; and

(k) procure that all facilities and amenities within the Project are operated and maintained in accordance with Good Industry Practice and the Users have non-discriminatory access for use of the same;

(l) design, construct, operate and maintain the Ropeway and Glass Bridge Skywalk System considering operations for the entire year, unless the Authority explicitly directs the Concessionaire to design the Ropeway and Glass Bridge System considering a fixed operation period, i.e., months in which the Ropeway and Glass Bridge Skywalk System shall remain functional and a fixed duration of operation, i.e., number of hours of operation per day;

(m) support, assist, cooperate with and facilitate the Authority and other Government Instrumentality in the implementation and operation of the Project in accordance with the provisions of this Agreement including securing full and complete compliance with directives & guidelines issued by the Authority / State Government of Telangana or any other authority having jurisdiction in the matter relating to the directives & guidelines issued;

(n) transfer the Project to the Authority upon Termination of this Agreement, in accordance with the provisions thereof.

(o) propagate, advertise, publicize the Project in compliance with Clause 5.7

(p) facilitate for enabling of mobile connectivity along the Project to the Project Users including Wi-Fi at Terminal Stations ensuring full coverage at the station premises.

(q) conduct regular and timely audit to ensure safety of passengers as detailed in Clause 5.1.11 and Clause 5.1.12 and audits of passenger convenience as detailed in Clause 19.7.1

(r) [Deleted]

(s) The Concessionaire is required to keep a provision of minimum of 1 hr for storage of fuel at any point of time to cater peak and average hours. However, the developer shall ensure such that the operations of the ropeway and glass bridge skywalk system is not affected due to the shortage of supply of fuel.

(t) ensure that the Concessionaire and its Sub-contractors comply with the safety and welfare measures for labour in accordance with the Applicable Laws and Good Industry Practice;

(u) keep, on Site, a copy of this Agreement, publications named in this Agreement, the Drawings, Documents relating to the Project, and Change of Scope orders and other communications given under this Agreement. The Independent Engineer and its authorised personnel shall have the right of access to all these documents at all reasonable times;

(v) cooperate with other contractors employed by the Authority and personnel of any public authority; and

(w) not interfere unnecessarily or improperly with the convenience of the public, or the access to and use and occupation of all roads and footpaths, irrespective of whether they are public or in the possession of the Authority or of others.

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

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

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

5.1.7 The Concessionaire shall provide the documents of the Concessionaire specified in the Agreement, and all Contractors' personnel; Goods, consumables and other things and services, whether of a temporary or permanent nature, required in and for the execution, completion of Works and remedying defects.

5.1.8 The Concessionaire shall perform the Works in conformity with the Project requirements and other requirements and standards prescribed under or pursuant to the Agreement.

5.1.9 The Concessionaire shall carry out such work incidental and contingent to the original Scope of the Project to comply with Good Industry Practices.

5.1.10 The Concessionaire shall maintain required staff and necessary Contractor's equipment and materials within the reach of the Site during the Concession Period so that any defects arising are promptly attended.

5.1.11 The Concessionaire shall throughout the Concession Period, on a regular basis, carry out and undertake regular inspection of the Site to secure and prevent against any encroachment's or any deterioration of land condition and ensure safety of the Project by taking preventive measures. The scope, protocol and schedule of inspection, maintenance and the remedial measures, if any required to be undertaken, shall be discussed and finalized by the Concessionaire with the Authority each year in advance. For avoidance of doubt, the onus of regular inspection of the Site and undertaking preventive measures shall lie with the Concessionaire;

5.1.12 During the Concession Period, the Concessionaire shall ensure that the safety of the passengers shall not be compromised in any manner by taking all precautionary measures to prevent any breakdowns of the cable propelled system, effects from adverse climatic condition, protection from landslides, rock-sliding, floods, earthquakes, cyclones/ tornedos/storms, etc.

5.1.13 The Concessionaire shall, at least 30 days prior to the COD or [Partial COD, wherever applicable] of the Project in consultation with the Authority decide and finalize the operating schedule of the Ropeway and Glass Bridge Skywalk Project and shall revise the same, as and when required, only in consultation with the Authority. The Concessionaire agrees and acknowledges that the recommendations of the Authority in this regard shall be binding on the Concessionaire.

5.1.14 The Concessionaire shall comply with all requirements of the Escrow Bank in order to provide to the Authority the facility for online viewing and downloading the account statement of Escrow Account at all times during the Concession Period.

5.2 Obligations relating to Project Agreements

5.2.1 It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Concessionaire from its obligations or liability hereunder.

5.2.2 The Concessionaire shall submit to the Authority the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 30 (thirty) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director

of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that no review and/or observation of the Authority and/or its failure to review and/or convey its observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.

5.2.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire.

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

5.2.5 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that selection or replacement of an EPC Contractor and an O&M Contractor and execution of the EPC Contract and O&M Contract shall be subject to the prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such selection or contract without prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire or its Contractors from any liability or obligation under this Agreement.

5.3 Obligations relating to Change in Ownership

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

(i) no objections from the Senior Lenders.

(ii) The eligibility condition for Change in Ownership request will be issuance of COD and completion of Punch List items excluding the Punch List items pending due to the reasons attributable to the Authority.

(iii)The concessionaire shall not be in default of

a. Paying Concession Fee to the Authority, if applicable
b. O&M obligations

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

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

(ii) acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him;

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

For the purposes of this Clause 5.3.2:

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

(b) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and

(c) power to appoint, whether by contract or by virtue of control or acquisition of shares

of any company, holding directly or through one or more companies (whether situated in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of not less than 25% (twenty five per cent) of the Equity of the Concessionaire, shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.

5.4 Employment of foreign nationals

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

5.5 Employment of trained personnel

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

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

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

5.6 Sole purpose of the Concessionaire

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

5.7 Branding of Project

The Project or any part thereof shall not be branded in any manner to advertise, display or

reflect the name or identity of the Concessionaire or its shareholders. The Concessionaire undertakes that it shall not, in any manner, use the name or entity of the Project to advertise or display its own identity, brand equity or business interests, including those of its shareholders, save and except as may be necessary in the normal course of business. For the avoidance of doubt, it is agreed that the Concessionaire may display its own name at a spot where other public notices are displayed for the Users. It is further agreed that the Project shall be known, promoted, displayed and advertised by the name of **"Development, Operation & Maintenance of Ropeway and Glass Bridge Skywalk at Bhadrakali Lake in Warangal on DBFOT Mode in the State of Telangana ".**

5.8 Facilities for physically challenged and elderly persons

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

5.9 Obligations relating to operations of Stations & Ropeway:

The obligations relating to design, construction, operation and maintenance of the Stations shall be, including but not limited to, in compliance with Article 48:

(a) The Concessionaire shall provide adequate number of ticket vending machines and ticket counters to handle the traffic volumes as detailed in Schedule B, such that waiting time[3] for the Users shall not exceed 5 (five) minutes and shall ensure usage of such design and modern technology which would enable efficient and comfortable boarding / de-boarding of passengers;

(b) in case of Emergency, evacuation from any point on the platform of Station to a point of safety in an open space within or outside the Station shall not exceed 200 (two hundred) meters;

[3] waiting time for the User will vary depending on the peak and non-peak hours, capacity of the cable cars, lag time, headway, etc.

(c) make arrangements for the public announcements system at the platforms and communication facility between the Station control room and ropeway cable cars for use including Emergency;

(d) deploy trained marshals at the Project Facilities to guide and assist the Users and visitors to the Project Facility or any part of the Site

(e) The Concessionaire shall establish a cloak room at the terminal buildings station areas with adequate number of lockers for visitors and tourists who avail the ropeway

facilities. The notification of locker fee shall be issued by the Concessionaire itself and fixed and modified by the Concessionaire according to market demand and the locker fee rate (including any revision therein) shall be intimated to Authority forthwith. [Additionally, the Concessionaire may also provide mobile charging stations at the cloak rooms for usage visitors and tourists].

(f) The Concessionaire shall itself carry out O&M by their own manpower, provided manpower is certified by OEM to carry out O&M activities or engage O&M contractor having experience of atleast 05 years in carrying out maintenance of Ropeway System of technology adopted in the project. The O&M shall be carried out strictly in accordance with codal provisions throughout the Concession Period;

(g) The Concessionaire shall deploy suitable instrumentations and equipment to measure the efficiency as detailed in Schedule - D and any fault in the entire cable propelled system round-the-clock during the operational and non-operational hours during the entire Concession Period;

(h) Provide space for setting up and maintaining tourist information and assistance kiosks to be manned by certified tourist agencies of State and / or Central Government;

(i) The Concessionaire shall ensure that the Project Facilities are primarily meant for the use of the public and their accompanying luggage permitted as detailed in Schedule - D, wherever applicable, for transit between the originating and destination station and shall not be allowed to be used for transportation of goods and materials on commercial basis (except where expressly provided and only in the manner specified), save and except for in the case of emergency situations requiring speedy transportation of relief materials, evacuation & rescue materials and equipment including medical aid supplies;

(j) The Concessionaire shall not make or permit any alterations or additions to the approved designs and drawings relating to the Project, without obtaining the previous consent, in writing, of the Authority.

(k) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement.

5.10 Obligations relating to medical aid

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

5.11 Obligations relating to basic amenities

The Concessionaire shall install necessary fixtures, furnishing and equipment, through development of warm-shells for installation of basic amenities, in adequate numbers in

accordance with Good Industry Practice for non- discriminatory use by the Users of the Project. These amenities shall include drinking water facilities, sanitation facilities, toilets, telephone and communication facilities, eateries and canteens as per Schedule - D.

5.12 Obligations relating to noise control

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

5.13 Obligations relating to aesthetic quality of the Project

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

5.14 Obligations relating to fulfilling Key Performance Indicators

The Concessionaire shall operate the Project such that it achieves or exceeds the performance indicators specified in this Article 48 (the "Key Performance Indicators") and the Project is always operated and maintained as per best industry standards and safety measures.

5.15 Obligation relating to environmental safety

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

5.16 Obligation relating to lighting and signages

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

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

5.17 Encumbrances and Encroachments

(a) Not place or create nor permit or suffer any Contractor or other Person claiming

through or under the Concessionaire to create or place any Encumbrance over all or any part of the Project Assets or the Project area, or on any rights of the Concessionaire therein, save and except as expressly set forth in this Agreement.

(b) Ensure that the Project area remains free from all encroachments during the Concession Period and subject to Applicable Laws take all steps necessary to remove encroachments, if any.

5.18 Development of Commercial Space:

(a) The Concessionaire shall be entitled to, as a part of the development program, to plan, design, construct and operate or grant on license any portion of the built up space only within or at the Terminal Station for the purpose of undertaking commercial activity relating to or incidental to the Project activities or for the convenience of the Users (including for setting up of counters, vending machines and kiosks for sale of eatables, beverages, travel accessories, books and periodicals, tourist guidance desk etc.).

(b) [Deleted]

(c) The commercial activities may be undertaken or performed by the Concessionaire itself or by any third party appointed for this purpose by the Concessionaire on license basis and the Concessionaire shall at all times be liable and responsible for the conduct, operation, maintenance and adherence to the terms of this Agreement by the operator(s) of such commercial activities and the same shall be undertaken, performed and conducted in such manner that the operation and maintenance of the ropeway operations is not hindered or obstructed or the free movement of the Users is in any manner impaired. The Concessionaire further agrees and acknowledges that any and all arrangements with respect to the commercial activities shall be in compliance with this Agreement and as per the local bylaws and rules of the State Govt.;

(d) All contractual arrangements made or entered into by the Concessionaire for the operation, performance, and maintenance of the commercial activities at the Project with any third-party entities, a copy of the same duly authenticated by the authorized officer of the Concessionaire shall be provided to the Authority by the Concessionaire forthwith upon the execution thereof. The Concessionaire shall also ensure that no covenant of any such arrangement shall contain any condition or obligation which is, or can be, construed to be inconsistent with the terms of this Agreement or in any manner, by implication or otherwise, puts any responsibility, liability or obligation on the Authority;

In case where any utilities or facilities, for the Project, are procured and provided at no cost basis to the Concessionaire by the Authority or in respect of any utility or facility the cost and charges in respect of the same are in any manner reimbursed or subsidized by the Authority then to the extent such utility or facility is utilized by the Concessionaire / third party operator for the performance of the commercial activity

the same shall be duly metered and proportionate cost thereof, on actual consumption basis, or on fixed slab basis depending on the area covered by the commercial activity, as may be decided by the Authority in its sole discretion, shall be reimbursed by the Concessionaire to the Authority on periodical basis at such intervals as instructed by the Authority;

(e) The entire pre-tax gross revenue (including any non-refundable deposits or advances or premiums etc.) earned by the Concessionaire from the commercial activities undertaken at the Project shall be properly accounted and audited and a statement in respect of the same shall be provided by the Concessionaire to the Authority on half yearly basis.

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

ARTICLE 6: OBLIGATIONS OF THE AUTHORITY

6.1 Obligations of the Authority

6.1.1 The Authority shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.

6.1.2 The Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:

(a) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project;

(b) upon written request from the Concessionaire, provide reasonable assistance to the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;

(c) procure that, during the Operation period, no barriers are erected or placed by any Government Instrumentality on the project area, except for reasons of Emergency, national security, law and order or collection of inter-state taxes. The Authority shall also make best endeavors to procure that no Government Instrumentality shall undertake or cause to be undertaken, except for reasons of Emergency, national security or law and order, any diversions of traffic from, or closing down of approach roads to the Project that may cause a material adverse effect on the flow of traffic to and from the Project.

(d) [Deleted]

(e) subject to and in accordance with the Applicable Laws, grant to the Concessionaire the authority to regulate traffic on the Project, use of project and related associated facilities and amenities provided by Concessionaire.

(f) assist the Concessionaire in procuring Police assistance for regulation of traffic, removal of trespassers and security on or at the Project;

(g) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;

(h) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement; and

(i) upon written request from the Concessionaire and subject to the provisions of Clause 5.4, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits

for the purposes of discharging their respective obligations by the Concessionaire or its Contractors under this Agreement and the Project Agreements respectively.

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

(k) undertake rehabilitation and resettlement of persons affected by construction of the Project and bear all costs and expense in respect thereof, save and except as otherwise provided in this Agreement.

6.2 Maintenance obligations prior to Appointed Date

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

6.3 [Deleted]

6.4 Obligations relating to refinancing

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

6.5 [Deleted]

ARTICLE 7: REPRESENTATIONS AND WARRANTIES

7.1 Representations and warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

(a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;

(b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;

(c) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;

(d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;

(e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;

(f) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;

(g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association {or those of any member of the Consortium} or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;

(h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;

(i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

(j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;

(k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3 and that the {selected bidder/ Consortium Members}, together with {its/ their} Associates, hold not less than 51% (fifty-one percent) of its issued and paid up Equity as on the date of this Agreement; and that each Consortium Member whose technical and financial capacity was evaluated for the purposes of pre-qualification and short-listing in response to the Request for Proposal shall hold at least 26% (twenty six per cent) of such Equity, which shall also be not less than 5% (five per cent) of the Total Project Cost during the Construction Period and one year thereafter. The period of 1 year will be reckoned from date of completion of Punch List excluding the Punch List items pending due to the reasons attributable to the Authority.

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

(l) the selected bidder/ Consortium Members and its/their} Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;

(m) {the selected bidder/ each Consortium Member} is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Authority to enter into this Agreement with the Concessionaire pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;

(n) all its rights and interests in the Project shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;

(o) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;

(p) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith; and

(q) all information provided by the {selected bidder/ Consortium Members} in response to the Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects.

(r) all undertakings and obligations of the Concessionaire arising from the Request for Proposals or otherwise shall be binding on the Concessionaire as if they form part of this Agreement

7.2 Representations and warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

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

(b) it has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Agreement;

(c) it has the financial standing and capacity to perform its obligations under this Agreement;

(d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;

(e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on the Authority's ability to perform its obligations under this Agreement;

(f) it has complied with Applicable Laws in all material respects;

(g) it has the right, power and authority to manage and operate the Project up to the Appointed Date; and

(h) it has good and valid right to the Site and has power and authority to grant a licence in respect thereto to the Concessionaire.

7.3 Disclosure

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

ARTICLE 8: DISCLAIMER

8.1 Disclaimer

8.1.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Proposals, Scope of the Project, Specifications and Standards, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, traffic volumes and all information provided by the Authority or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Authority in this regard.

8.1.2 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, {the Consortium Members and their} Associates or any person claiming through or under any of them.

8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement or render it voidable.

8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the Authority contained in Clause 8.1.1 and shall not in any manner shift to the Authority any risks assumed by the Concessionaire pursuant to this Agreement.

8.1.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Authority shall not be liable in any manner for such risks or the consequences thereof.

PART III: DEVELOPMENT AND OPERATIONS

ARTICLE 9: PERFORMANCE SECURITY

9.1 Performance Security

9.1.1 The Concessionaire shall, for the performance of its obligations hereunder during the Construction Period, provide to the Authority no later than 30 (thirty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs. ***** crore (Rupees ***** crore)[7] in the form set forth in Schedule-F (the "**Performance Security**"). Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Concessionaire.

9.1.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Concessionaire within a period of 30 (thirty) days from the date of this Agreement, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

9.2 Appropriation of Performance Security

Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such Concessionaire Default or failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Concessionaire shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 37. Provided that upon appropriation on account of Concessionaire's Default the Concessionaire shall replenish the Performance Security. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Concessionaire shall be entitled to an additional Cure Period of 120 (one hundred and twenty) days for remedying the Concessionaire Default or to meet any Condition Precedent, save and except as provided in Clause 4.5 of this Agreement, and in the event of the Concessionaire not curing its default or meeting such Condition Precedent within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 38.

[7] Calculated @ 5% (five per cent) of the amount specified in the definition of Total Project Cost

9.3 Release of Performance Security

The Performance Security shall remain in force and effect for a period of [one year] from the Appointed Date, but shall be released earlier upon the Concessionaire expending on Project construction an aggregate sum that is not less than 30% (thirty per cent) of the Total Project Cost; however, that the Performance Security shall not be released if the Concessionaire is in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars which establish satisfaction of the requirements specified under this Clause 9.3, the Authority shall release the Performance Security forthwith.

ARTICLE 10: RIGHT OF WAY

10.1 The Site

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

10.2 Licence, Access and Right of Way

10.2.1 The Authority hereby grants to the Concessionaire access to the Site for carrying out any surveys, investigations and soil tests that the Concessionaire may deem necessary during the Development Period, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Concessionaire on or about the Site pursuant hereto in the event of Termination or otherwise.

10.2.2 In consideration of the Concession Fee, this Agreement and the covenants and warranties on the part of the Concessionaire herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from the Appointed Date, leave and licence rights in respect of all the land (along with any buildings, constructions or immovable assets, if any, thereon) comprising the Site which is described, delineated and shown in Schedule-A hereto (the "**Licensed Premises**"), on an "as is where is" basis, free of any Encumbrances, to develop, operate and maintain the said Licensed Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Licensed Premises, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.

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

10.2.4 It is expressly agreed that the licence granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the licence, upon the Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Site by the Concessionaire or its sub-licensees, the licence in respect of the Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.

10.2.5 The Concessionaire hereby irrevocably appoints the Authority (acting directly or through a nominee) to be its true and lawful attorney, to execute and sign in the name of the

Concessionaire a transfer or surrender of the licence granted hereunder at any time after the Concession Period has expired or has been terminated earlier in terms hereof, a sufficient proof of which will be the declaration of any duly authorised officer of the Authority, and the Concessionaire consents to it being registered for this purpose.

10.2.6 It is expressly agreed that trees on the Site are property of the Authority except that the Concessionaire shall be entitled to exercise usufructuary rights thereon during the Concession Period.

10.3 Procurement of the Site

10.3.1 Pursuant to the notice specified in Clause 4.1.2, the Authority Representative and the Concessionaire shall, on a mutually agreed date and time, inspect the Site and prepare a memorandum containing an inventory of the Site including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Site. Such memorandum shall have appended thereto an appendix (the "**Appendix**") specifying in reasonable detail those parts of the Site to which vacant access and Right of Way has not been granted to the Concessionaire. Signing of the memorandum, in two counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall, subject to the provisions of Clause 10.2.2, be deemed to constitute a valid licence and Right of Way to the Concessionaire for free and unrestricted use and development of the vacant and unencumbered Site during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For the avoidance of doubt, it is agreed that valid licence and Right of Way with respect to the parts of the Site as set forth in the Appendix shall be deemed to have been granted to the Concessionaire upon vacant access thereto being provided by the Authority to the Concessionaire.

10.3.2 Without prejudice to the provisions of Clause 10.3.1, the Parties hereto agree that on or prior to the Appointed Date, the Authority shall have granted vacant access and Right of Way for minimum 90% of the Construction Zone, so that on completion of work in this granted RoW access shall be sufficient to construct and achieve COD of the Project. The Appendix shall not include more than 10% (ten per cent) of the remaining parts of the Construction Zone required and necessary for construction. Further, in the event Financial Close is delayed solely on account of delay in grant of such vacant access and balance Construction Zone, the Authority shall be liable to payment of Damages under and in accordance with the provisions of Clause 4.2.

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

10.3.4 The Authority shall make best efforts to procure and grant, no later than 180 (one hundred eighty) days from the Appointed Date, the Right of Way to the Concessionaire in respect of all land included in the Appendix, and in the event of delay for any reason beyond 180 days, the works corresponding to RoW in the Appendix not provided shall be deemed to be removed from the Scope of the Project and provisions of Clause 16.6.1 shall apply in case of such works.

10.3.5 Upon receiving Right of Way in respect of any land included in the Appendix, the Concessionaire shall complete the Construction Works thereon within a reasonable period, to be determined by the Independent Engineer, in accordance with Good Industry Practice; provided that the issue of Provisional Certificate shall not be affected or delayed on account of vacant access to any part of the Site not being granted to the Concessionaire or any construction on such part of the Site remaining incomplete on the date of Tests on account of the delay or denial of such access thereto. For the avoidance of doubt, it is expressly agreed that Construction Works on all lands, for which Right of Way is granted within 180 (One hundred and eighty) days of the Appointed Date, shall be completed before the Project Completion Date.

10.3.6 The Concessionaire shall, if so required by the Authority, procure on behalf of the Authority, on the terms and to the extent specified by the Authority, the additional land required for [Stations, ancillary buildings, maintenance depots and electric sub-stations or for] construction of works specified in Change of Scope Order issues under Article 16, in accordance with this Agreement and upon procurement, such land shall form part of the Site and vest in the Authority; provided that the Concessionaire may, by notice given to the Authority no later than 60 (sixty) days from [the Appointed Date or the date of Change of Scope Order, as the case may be,] require the Authority to initiate and undertake proceedings for acquisition of such land under the provisions of the Applicable Laws and the Authority shall take all such steps as may be reasonably necessary for such land acquisition forthwith; provided further that the cost of land acquired under this Clause 10.3.6 shall be borne by the Authority in accordance with the Act [; provided also that the land to be acquired by the Authority hereunder as a part of the Site shall be seemed to be included in the Appendix referred to in this Clause 10.3 and dealt with in accordance with the provisions thereof]. [For the avoidance of doubt, it is agreed that the minimum area of land to be acquired for the Stations, ancillary buildings, maintenance depots, electric sub-stations, and approach road thereof shall conform to the provisions of Schedule – B and Schedule – C. It is further agreed that the Authority may, at any time after such Bid Date, *suo moto* acquire the land required hereunder.

10.3.7 The Concessionaire may procure at its cost and expense and on its own the land that may be required by it for Additional Facilities and the Authority shall have no obligation or liability in respect thereof. For the avoidance of doubt, the Concessionaire shall seek prior consent of the Authority to connect any Additional Facility to the Project and such consent shall not be unreasonably withheld. Provided that cost of procuring such land for construction of additional facilities shall not be the part of Financial Package and the Financial Model.

10.4 Site to be free from Encumbrances

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

and all risks arising out of the inadequacy or physical condition of the Site.

10.5 Protection of Site from encroachments

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

10.6 Special/temporary right of way and disposal of Construction waste

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

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

10.7 Access to the Authority and Independent Engineer

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

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

10.8 Geological and archaeological finds

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

be reimbursed by the Authority. It is also agreed that the Authority shall ensure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period.

ARTICLE 11: UTILITIES, ASSOCIATED ROADS AND TREES

11.1 Existing utilities and roads

Notwithstanding anything to the contrary contained herein, the Concessionaire shall ensure that the respective entities owning the existing roads, right of way, walking trails or utilities on, under or above the Site are enabled by it to keep such utilities in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the authority of the controlling body of that road, right of way, walking trails or utility. In case unidentified utilities, other than the utilities mentioned in the Technical Schedules are encountered by the Concessionaire during the course of execution of project, the Concessionaire shall remove the same and in such case Change of Scope (CoS) shall be allowed to the Concessionaire.

11.2 Shifting of obstructing utilities

11.2.1 The shifting of existing utilities, as mentioned in Schedule B, shall be undertaken by the Authority. The Concessionaire shall, subject to Applicable Laws and with assistance of the Authority, undertake shifting of any utility (including electric lines, water pipes and telephone cables), to an appropriate location or alignment within or outside the Site, if such utility or obstruction adversely affects the Construction, Operations or Maintenance of the Project and is not mentioned in Schedule B and in accordance with applicable standards and specifications of concerned utility owning entity. Cost of shifting utilities not included in the Schedule-B, if any, shall be treated as Change of Scope. The Authority will provide assistance to the Concessionaire for obtaining the estimates for shifting of such utilities from the entity owning such electric lines, water pipes or telephone cables, as the case may be. The Concessionaire shall execute such utility shifting works under the supervision of utility owning agency and Independent Engineer (IE) in accordance with the provision of agreement. The supervision charges only shall be paid by the Authority to the utility owning entity. In the event of any delay in shifting thereof, the Concessionaire shall be responsible for failure to perform any of its obligations here under if such failure is not as a direct consequence of delay on the part of the entity owning such electric lines, water pipes or telephone cables, as the case may be.

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

11.2.2 [Deleted]

11.3 New utilities and roads

11.3.1 The Concessionaire shall allow, subject to such conditions as the Authority may specify, access to, and use of the Site for laying telephone lines, water pipes, electric cables, internet cables, mobile network towers, or other public utilities. However the erection and installation of all mobile service towers or any other similar structure shall be made in such manner that it shall not interfere with the operations, maintenance of the Ropeway Project (including the emergency situations). Where such access or use causes any financial loss to the Concessionaire, it may require the user of the Site to pay compensation or damages as per Applicable Laws. For the avoidance of doubt, it is agreed that use of the Site under this Clause shall not in any manner relieve the Concessionaire of its obligation to maintain the Project in

accordance with this Agreement and any damage caused by such use shall be restored forthwith.

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

11.3.2 [Deleted]

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

11.4 Felling of trees

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

11.5 Dismantling of structures

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

11.6 [Deleted]

ARTICLE 12: CONSTRUCTION OF THE PROJECT

12.1 Obligations prior to commencement of construction

Prior to commencement of Construction Works, the Concessionaire shall:

(a) submit to the Authority and the Independent Engineer its detailed design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in Schedule-G;

(b) appoint its representative duly authorised to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement;

(c) appoint a design director (the "Design Director") who will head the Contractor's design unit and shall be responsible for surveys, investigations, collection of data, and preparation of preliminary and detailed designs;

(d) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, the Applicable Laws and Applicable Permits and Specifications and Standards; and

(e) 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

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

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

12.3 Drawings

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

(a) The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, 3 (three) copies each of all Drawings to the Independent Engineer for review.

(b) By submitting the Drawings for review to the Independent Engineer, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering, including field construction criteria related thereto, are in conformity with the Scope of the Project and Specifications and Standards.

(c) Within 15 (fifteen) days of the receipt of the Drawings, the Independent Engineer shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and Specifications and Standards. The Concessionaire shall not be obliged to await the observations of the Independent Engineer on the Drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin or continue Construction Works at its own discretion and risk.

(d) If the aforesaid observations of the Independent Engineer indicate that the Drawings are not in conformity with the Scope of the Project or Specifications and Standards, such Drawings shall be revised by the Concessionaire and resubmitted to the Independent Engineer for review. The Independent Engineer shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings.

(e) No review and/or observation of the Independent Engineer and/or its failure to review and/or convey its observations on any Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Engineer or the Authority be liable for the same in any manner.

(f) Without prejudice to the foregoing provisions of this Clause 12.3, the Concessionaire shall submit to the Authority for review and comments, its Drawings relating to alignment of the Projectand the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, within 30 (thirty) days of the receipt of such Drawings. The provisions of this Clause 12.3 shall apply *mutatis mutandis* to the review and comments hereunder.

(g) Within 90 (ninety) days of the Project Completion Date, the Concessionaire shall furnish to the Authority and the Independent Engineer a complete set of as-built Drawings, in 2 (two) hard copies and in its editable digital format or in such other medium as may be acceptable to the Authority, reflecting the Project as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of Project Facilities.

12.4 Construction of the Ropeway and Glass Bridge Skywalk

12.4.1 On or after the Appointed Date, the Concessionaire shall undertake construction of the Project as specified in Schedule-B and Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D. The Concessionaire shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works. The 730th (Seven Hundred Thirtieth) day from the Appointed Date shall be the scheduled date for completion of the project, (the "Scheduled Completion Date") and the Concessionaire agrees and undertakes that the Project shall be completed on or before the Scheduled Completion Date.

The Concessionaire shall design and construct the Ropeway System to handle the traffic volumes, as defined by the Authority in Schedule – B. All equipment procured by the Concessionaire, including cable cars, etc. shall be deployed and maintained considering the traffic volumes, as defined by the Authority in Schedule – B;

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

12.5 [Deleted]

12.6 [Deleted]

12.7 [Deleted]

12.8 [Deleted]

ARTICLE 13: MONITORING OF CONSTRUCTION

13.1 Monthly progress reports

During the Construction Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority, Lenders' Representative and the Independent Engineer a monthly report on physical and financial progress of the Construction Works and shall promptly give such other relevant information as may be required by the Independent Engineer. The Concessionaire shall also submit a detailed report (along with each monthly report) indicating the locations and movements of all construction vehicles by way of installing a functional Global Positioning System (GPS) in each vehicle, which shall include, but not limited to, the following information:

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

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

13.2 Inspection

During the Construction Period, the Independent Engineer shall inspect the Project at least once a month and make a report of such inspection (the "Inspection Report") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Scope of the Project and Specifications and Standards. It shall send a copy of the Inspection Report to the Authority and the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Independent Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever. The Authority on a written request from the Lenders' Representative shall be obliged to provide a copy of such Inspection Report.

13.3 Tests

13.3.1 For determining that the Construction Works conform to the Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the Independent Engineer from time to time, in accordance with Good Industry Practice for quality assurance. The size of sample for such tests shall, to the extent possible, not exceed 10% (ten per cent) of the quantity and/or number of tests prescribed by IRC and/or MORTH for the construction works undertaken by the Authority through their contractors. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the Independent Engineer and furnish the results thereof to the Independent Engineer. One half of the costs incurred on such tests, and to the extent certified by the Independent Engineer as reasonable, shall be reimbursed by the Authority to the Concessionaire. For the avoidance of doubt, the costs to be incurred on any Test which is undertaken for determining the rectification of any defect or deficiency in construction shall be borne solely by the Concessionaire.

13.3.2 In the event that results of any tests conducted under this Clause 13.3 establish any defects or

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

13.4 Delays during construction

Without prejudice to the provisions of Clause 12.4.2, if the Concessionaire does not achieve any of the Project Milestones or the Independent Engineer shall have reasonably determined that the rate of progress of Construction Works is such that the project is not likely to be achieved by the Scheduled Completion Date, it shall notify the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Independent Engineer in reasonable detail about the steps it proposes to take to expedite progress and submit a revised schedule as provided in accordance with Clause 12.1 (a) for achieving the Project Milestones or Project Completion Date, as the case may be.

Further, if the Independent Engineer reports that the progress achieved in any continuous three months is less than 75% as per the revised schedule, the Authority may invoke termination as per Clause 38.1.1 of this Agreement.

13.5 Suspension of unsafe Construction Works

13.5.1 Upon recommendation of the Independent Engineer to this effect, the Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Authority, such work threatens the safety of the Users, workers, surrounding areas and pedestrians. Provided, however, that in case of an emergency, the Authority may suomoto issue the notice referred to hereinabove.

13.5.2 The Concessionaire shall, pursuant to the notice under Clause 13.5.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works and the Users, workers and surrounding area including any affected party / property or structure. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Independent Engineer, the Authority shall either revoke such suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this Clause 13.5 shall be repeated until the suspension hereunder is revoked.

13.5.3 Subject to the provisions of Clause 34.7, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (the "**Preservation Costs**"), shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the Authority, the Preservation

Costs shall be borne by the Authority.

13.5.4 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine any extension of the dates set forth in the Project Completion Schedule to which the Concessionaire is reasonably entitled, and shall notify the Authority accordingly whereupon the Authority shall extend such Project Completion Schedule dates in accordance with the recommendations of the Independent Engineer. In the event that the Scheduled Completion Date is extended pursuant hereto, the Concession Period shall be deemed to be extended by a period equal in length to the period of extension of the Scheduled Completion Date.

13.6 Video recording

During the Construction Period, the Concessionaire shall provide to the Authority for every calendar month, a video recording through drone feed, wherever possible, which will be compiled into a 3 (three) hour digital video disc or any substitute thereof, covering the status and progress of Construction Works in that month. The first such video recording shall be provided to the Authority within 7 (seven) days of the Appointed Date and thereafter, no later than 15 (fifteen) days after the close of each month. Such video recording shall be carried out along with the authorized representative of the Authority. Independent Engineer shall ensure that the features and quality of drone video is acceptable and video is not distorted/tampered with. Independent Engineer shall analyse these drone videos and give their comments in its digital MPRs covering inter-alia but not limited to the encumbrances/lands not available, sites of COS demands, progress of project, mobilisation of plant & equipment, mobilisation of camp sites, progress on rectification of NCRs etc. along with the proposed action plan. Authority shall cross-check drone videos during the monthly physical inspections and notify the discrepancies noticed, if any, between drone video, on Independent Engineer comments and ground reality. The discrepancies shall be examined and addressed through joint site inspections.

Authority should plan biannually drone based video recording during O&M Period in such a manner so that there is no overlap and digital data of O&M Period is available in regular intervals (monthly) through drone videography.

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

ARTICLE 14: COMPLETION CERTIFICATE

14.1 Tests

14.1.1 At least 30 (thirty) days prior to the likely completion of the Project, the Concessionaire shall notify the Independent Engineer of its intent to subject the Project to Tests. The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Concessionaire, and notified to the Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Engineer failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) days notice to the Independent Engineer.

14.1.2 All Tests shall be conducted in accordance with Schedule-J. The Independent Engineer shall observe, monitor and review the results of the Tests to determine compliance of the Project with Specifications and Standards and if it is reasonably anticipated or determined by the Independent Engineer during the course of any Test that the performance of the Project or any part thereof does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Independent Engineer shall provide to the Concessionaire and the Authority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent Engineer may require the Concessionaire to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project with Specifications and Standards and the cost for all these tests shall be borne by the Concessionaire.

14.2 Completion Certificate

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

14.3 Provisional Certificate

14.3.1 Subject to the provisions of Clause 14.3.2, the Independent Engineer may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Schedule-K (the "**Provisional Certificate**") if the Tests are successful and the Project can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. In such an event, the Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire (the "**Punch List**"); provided that the Independent Engineer shall not withhold the Provisional Certificate for reason of any work remaining incomplete if the delay in completion thereof is due to is attributable to the Authority; provided further that the Punch List shall also include the cost of completion for each of the outstanding items. For the avoidance of doubt, the Independent Engineer, within 15 (Fifteen) days of completion of tests, either issue the Provisional Certificate along with the Punch List or share observations with the Concessionaire to comply to.

14.3.2 The Parties hereto expressly agree that a Provisional Certificate under this Clause

14.3 may, upon request of the Concessionaire to this effect, be issued for operating part of the Project, if the Concessionaire has completed construction of 100% (Hundred per cent) of the Site made available to it up to 180 days from the Appointed Date. Upon issue of such Provisional Certificate, the provisions of Article 15 shall apply to such completed part, and the rights and obligations of the Concessionaire for and in respect of such completed part of the Project shall be construed accordingly.

14.3.3 In case the Authority requests the Concessionaire to operationalize different Ropeway and Glass Bridge Skywalk Section of the Project separately, as defined in Schedule – B, a Provisional Certificate under this Clause 14.3 may, upon request of the Concessionaire to this effect, be issued for concerned Ropeway and Glass Bridge Skywalk Section of the Project if the Concessionaire has completed commissioning of the Ropeway and Glass Bridge Skywalk Section. Upon issue of such Provisional Certificate, the provisions of Article 15 shall apply to such completed Ropeway and Glass Bridge Skywalk Section, and the rights and obligations of the Concessionaire for and in respect of such completed Ropeway and Glass Bridge Skywalk Section of the Project shall be construed accordingly.

14.4 Completion of Punch List items

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

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

14.5 Withholding of Provisional Certificate

14.5.1 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 Concessionaire within 15 (fifteen) days of conducting such tests. Upon receipt of such a report from the Independent Engineer and after conducting its own inspection, if the Authority is of the opinion that the Project is not fit and safe for commercial service, it shall, within 30 (thirty) days of receiving the aforesaid report, notify the Concessionaire of the defects and deficiencies in the Project and direct the Independent

Engineer to withhold issuance of the Provisional Certificate or Completion Certificate, as the case may be. Upon receipt of such notice, the Concessionaire shall remedy and rectify such defects or deficiencies and thereupon Tests shall be undertaken in accordance with this Article 14. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.

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

14.6 Rescheduling of Tests

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

ARTICLE 15: ENTRY INTO COMMERCIAL SERVICE

15.1 Commercial Operation Date (COD)

15.1.1 The Project shall be deemed to be complete when the respective Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 14, and accordingly the commercial operation date of the Project shall be the date on which such Completion Certificate or the Provisional Certificate is issued (the "COD"). The Project shall enter into commercial service on COD whereupon the Concessionaire shall be entitled to demand and collect Fee in accordance with the provisions of Article 28. However, that the entry of the Project or any part thereof into commercial service shall always be subject to compliance with the provisions of Clause 18.3.

15.1.2 [Deleted]

15.2 Damages for delay

Subject to the provisions of Clause 12.4, if COD does not occur prior to the 91st (ninety first) day after the Scheduled Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until COD is achieved.

ARTICLE 16: CHANGE OF SCOPE

16.1 Change of Scope

16.1.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the Scope of the Project as contemplated by this Agreement (the "**Change of Scope**"). Any such Change of Scope shall be made in accordance with the provisions of this Article 16 and the costs thereof shall be expended by the Concessionaire and reimbursed to it by the Authority in accordance with Clause 16.3.

16.1.2 If the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved services to the Users, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 60 (sixty) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefor in accordance with this Article 16 or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope.

16.1.3 Any works or services which are provided under and in accordance with this Article 16 shall form part of the Project and the provisions of this Agreement shall apply *mutatis mutandis* to such works or services.

16.2 Procedure for Change of Scope

16.2.1 In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder (the "**Change of Scope Notice**").

16.2.2 Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Authority 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 the following details:

i. break-up of the quantities, unit rates and cost for different items of work; and

ii. proposed design for the Change of Scope;

iii. proposed modifications, if any, to the Scheduled

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

Change of Scope of works of the Project.

(c) The parties agree that costs and time for implementation of the proposed Change of Scope shall be determined as follows: -

(i) For items of works where schedule of rates of state's public works department prevailing on the date of Change of Scope Order are available, the same shall be applicable for determination of costs. In case of non-availability of schedule of rates for year of the prevailing date, the available schedule of rates shall be applied by updating the same based on yearly WPI.

(ii) For item of works not included in schedule of rates as mentioned in sub- para (i) above, the cost shall be derived on the basis of MORTH standard data book and the rates given in applicable schedule of rates failing which the prevailing market rates. For any item in respect of which MORTH standard data book does not provide the requisite details, the Independent Engineer shall determine the rate in accordance with Good Industry Practice.

(iii) The costs of existing works or items, which are being changed/ modified shall also be valued as per above procedure and only net cost shall be considered.

(iv) The design charges shall be considered @ 1% (one per cent) of cost of COS. However, if COS is on net cost basis, the design charges @1% of negative COS shall not be deducted.

(v) The reasonable time for completion of works to be taken under Change of Scope shall be determined by the Independent Engineer on the basis of Good Industry Practice and if such time exceeds the Scheduled Completion Date, the issue of Completion Certificate shall not be affected or delayed on account of construction of Change of Scope items/ works remaining incomplete on the date of Tests.

16.2.3 Upon receipt of information set forth in Clause 16.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Concessionaire, and the Parties shall, with the assistance of the Independent Engineer thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (the "**Change of Scope Order**") requiring the Concessionaire to proceed with the performance thereof. In the event that the Parties are unable to agree, the Authority may, by issuing a Change of Scope Order, require the Concessionaire to proceed with the performance thereof pending resolution of the Dispute, or carry out the works in accordance with Clause 16.5.

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

16.3 Payment for Change of Scope

16.3.1 Within 30 (thirty) days of issuing a **Change of Scope Order**, the Authority shall make an advance payment to the Concessionaire in a sum equal to 20% (twenty per cent) of the cost of Change of Scope as agreed hereunder, and in the event of a Dispute, 20% (twenty per cent)

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

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

16.4 Restrictions on certain works

16.4.1 Notwithstanding anything to the contrary contained in this Article 16, but subject to the provisions of Clause 16.4.2, the Authority shall not require the Concessionaire to undertake any works or services if such works or services are likely to delay completion of the 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 Project and issuing the Provisional Certificate.

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

16.5 Power of the Authority to undertake works

16.5.1 Notwithstanding anything to the contrary contained in Clauses 16.1.1, 16.2 and 16.3, the Authority may, after giving notice to the Concessionaire and considering its reply thereto, award any works or services, contemplated under Clause 16.1.1, to any person on the basis of open competitive bidding; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 2% (two per cent) of the bid amount to the Authority[$], and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not

exceed the first ranked bid by more than 10% (ten percent) thereof. It is also agreed that the Concessionaire shall provide access, assistance and cooperation to the person who undertakes the works or services hereunder.

16.5.2 The works undertaken in accordance with this Clause 16.5 shall conform to the Specifications and Standards and shall be carried out in a manner that minimises the disruption in operation of the Project. The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to the works carried out under this Clause 16.5.

16.6 Reduction in Scope of the Project

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

16.6.2 For determining the obligations of the Concessionaire under this Clause 16.6, the provisions of Clauses 16.1, 16.2 and 16.4 shall apply mutatis mutandis, and upon issue of Scope Order by the Authority hereunder, the Concessionaire shall pay forthwith the sum specified therein

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

ARTICLE 17: OPERATION AND MAINTENANCE

17.1 O&M obligations of the Concessionaire

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

(a) permitting safe, smooth and uninterrupted flow of passengers on the Project during normal operating conditions;

(b) collecting and appropriating the Fee;

(c) minimising disruption to traffic in the event of accidents or other incidents affecting the safety and use of the Project by providing a rapid and effective response and maintaining liaison with emergency services of the State;

(d) carrying out periodic preventive maintenance of the Project;

(e) undertaking routine maintenance of the Development, Operation & Maintenance of Ropeway and Glass Bridge Skywalk at Bhadarakali Lake, Warangal on DBFOT basis for a period of 30 years; undertaking routine maintenance including prompt repairs of Ropeway and Glass Bridge Skywalk system, structures, markings, lighting, signages and other traffic control devices;

(f) undertaking the preventive and major maintenance and overhaul works such as repair at the stations, systems and equipment installation, ropeway and passenger cable cars, glass bridge skywalk, rescue and evacuation equipment, safety audits etc.;

(g) preventing, with the assistance of concerned law enforcement agencies, any unauthorised use of the Project or attempt to damage or harm any equipment, system, or structures;

(h) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on or unauthorized entry to the Project or Project Area;

(i) protection of the environment and provision of equipment and materials therefore;

(j) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Project and for providing safe, smooth and uninterrupted use of Project;

(k) maintaining a public relations unit to interface with and attend to suggestions from the Users, government agencies, media and other agencies; and

(l) complying with Safety Requirements in accordance with Article 18.

(m) As a part of the annual operation and maintenance schedule, the Concessionaire shall plan and schedule safety audits of the Project, its plant, machinery and equipment including operating conditions, contingency plans to handle any emergency situations etc. ("Safety Audit"). The Safety Audit shall be conducted at least twice a year with a gap not exceeding six (06) months between any two audits and shall be conducted and undertaken by an independent external agency qualified and equipped to handle such audits and to be selected by the Authority from the list of eligible and competent agencies submitted by the Concessionaire on or before the COD of the Project. The fee payable to the external agency for conducting the Safety Audit shall, initially, be borne by the Concessionaire and 50% (fifty percentage) of the same shall be reimbursed by the Authority to the Concessionaire along with the following installment of the O&M payment. The list of eligible and competent agencies shall be updated periodically, every 03 years, by the Concessionaire. The scope of Safety Audit and the terms of reference thereof shall be jointly settled by the Concessionaire and the Authority, who shall have a right to seek advice from the Independent Engineer or the Safety Consultant (appointed in terms of Article 18) on the same.

(n) Procuring and maintaining throughout the Concession Period satisfactory contractual arrangements with Original Equipment Manufacturer (OEM), for the regular maintenance of critical equipment and for supply of spares including up-gradation and modernization of the systems and equipment installed from time to time;

(o) The Concessionaire shall provide, free of charge and in accordance with Good Industry Practice, office space and other facilities to security and other government agencies, if any, as the case may be, for discharging their statutory functions;

(p) [Deleted]

(q) Provide traffic management to Project Facilities ensuring access to the Project Facilities at all times;

(r) The Concessionaire shall regulate the use of the Station building by third parties and provide non-discriminatory access to all Users in accordance with the provisions of this Agreement

(s) **Signages:** The Concessionaire shall maintain illuminated signage's in accordance with applicable codes and standard;

(t) **Lighting:** Adequate lighting system in the Station, in accordance with applicable standards and codes. The entry and exit areas of the Project shall be provided with auxiliary emergency lighting system

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

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

17.2 Maintenance Requirements

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

17.3 Maintenance Manual

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

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

17.4 Maintenance Programme

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

(a) preventive maintenance schedule;

(b) arrangements and procedures for carrying out urgent repairs;

(c) criteria to be adopted for deciding maintenance needs;

(d) intervals and procedures for carrying out inspection of all elements of the Development, Operation & Maintenance of Ropeway and Glass Bridge Skywalk at Bhadrakali Lake in Warangal on DBFOT mode for a period of 30 years;

(e) intervals at which the Concessionaire shall carry out periodic maintenance;

(f) arrangements and procedures for carrying out safety related measures; and

(g) intervals for major maintenance works and the scope thereof.

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

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

17.5 Safety, breakdowns and accidents

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

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

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

17.6 Stoppage due to Emergency

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

17.6.2 The Concessionaire shall resume the operations of the Project or the affected part thereof as quickly as practicable after the circumstances leading to its stoppage and closure have ceased to exist or have so abated as to enable the Concessionaire to resume the operations of the Project and shall notify the Authority of the same without any delay.

17.6.3 Any stoppage or closure of any part of the Project and the resuming of operations thereof shall, as soon as practicable, be brought to the notice of affected persons by means of public announcements/notice.

17.7 Project closure

17.7.1 The Concessionaire shall not close any part of the Project for undertaking maintenance or repair works not forming part of the Maintenance Program, except with the prior written approval of the Independent Engineer. Such approval shall be sought by the Concessionaire through a written request to be made to the Independent Engineer, and a copy thereof furnished to the Authority, at least 7 (seven) days before the proposed closure of such lane and shall be accompanied by particulars thereof. Within 3 (three) days of receiving such request, the Independent Engineer shall grant permission with such modifications as it may deem reasonable and necessary in conformity with the Maintenance Manual and Maintenance Program and a copy of such permission shall be sent to the Authority.

17.7.2 The provisions of Clause 17.7.1 shall not apply to de-commissioning under Clause 17.6.1 or to closure for a period not exceeding 2 (two) hours in a day at any time of the day and 6 (six) hours in a day at a time specified by the Independent Engineer as off-peak hours when usage of the Project is comparatively lower.

17.7.3 Upon receiving the permission pursuant to Clause 17.7.1, the Concessionaire shall be entitled to close the designated part of the Project for the period specified therein, and in the event of any delay in re-opening such part, the Concessionaire shall pay Damages to the Authority calculated at the rate of 0.1% (zero point one per cent) of the Average Daily Fee for every section of the Project, or part thereof, for each day of delay until the Project has been reopened for Users.

17.8 Damages for breach of maintenance obligations

17.8.1 In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the higher of (a) 0.5% (zero point five per cent) of Average Daily Fee, and (b) 0.1% (zero point one per cent) of the cost of such repair or rectification as estimated by the Independent Engineer.

17.8.2 The Damages set forth in Clause 17.8.1 may be assessed and specified forthwith by the Independent Engineer; provided that the Authority may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Concessionaire is otherwise in compliance with its obligations hereunder. The Concessionaire shall pay such Damages forthwith and, in the event, that it contests such Damages, the Dispute Resolution Procedure shall apply.

17.9 Authority's right to take remedial measures

17.9.1 In the event the Concessionaire does not maintain and/or repair the Project or any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual or the Maintenance Programme, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from the Authority or the Independent Engineer, as the case may be, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Concessionaire to the Authority as Damages. For the avoidance of doubt, the right of the Authority under this Clause 17.9.1 shall

be without prejudice to its rights and remedies provided under Clause 17.8.

17.9.2 The Authority shall have the right, and the Concessionaire hereby expressly grants to the Authority the right, to recover the costs and Damages specified in Clause 17.9.1 directly from the Escrow Account as if such costs and Damages were O&M Expenses, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Authority under this Clause 17.9.2 and debit the same to O&M Expenses under para 4.1.1 (h) and 4.2 (d) of the Escrow Agreement.

17.10 Overriding powers of the Authority

17.10.1 If in the reasonable opinion of the Authority, the Concessionaire is in material breach of its obligations under this Agreement and, in particular, the Maintenance Requirements, and such breach is causing or likely to cause material hardship or danger to the Users, the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.

17.10.2 In the event that the Concessionaire, upon notice under Clause 17.10.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Clause 17.10.2 and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Authority shall be entitled to recover them from the Concessionaire in accordance with the provisions of Clause 17.9 along with the Damages specified therein.

17.10.3 In the event of a national emergency, civil commotion or any other act specified in Clause 35.3, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it or as directed by the Government, and exercise such control over the Project or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 35 It is also agreed that the Concessionaire shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause 17.10, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

17.11 Restoration of loss or damage to the Project

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

loss or damage forthwith so that the Project conforms to the provisions of this Agreement.

17.12 Modifications to the Project

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

17.13 Excuse from performance of obligations

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

(a) an event of Force Majeure;

(b) measures taken to ensure the safe use of the Project except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or

(c) compliance with a request from the Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Project.

Notwithstanding the above, the Concessionaire shall keep all unaffected parts of the Project open to users provided they can be operated safely and notify the Authority and the Independent Engineer of such non-availability of any part of the Project and the particulars thereof without any delay

17.14 Barriers and diversions

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

17.15 Advertising on the Site

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

area of the Project. All advertising on the Project shall also conform to Good Industry Practice. For the avoidance of doubt, it is agreed that the rights of the Concessionaire hereunder shall be subject to Applicable Laws, as in force and effect from time to time, and no compensation shall be claimed on account thereof.

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

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

17.16 Installation and operation of CCTV and Control Center

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

17.17 Operation of Ropeway Cable cars and Glass Bridge Skywalk

The Project shall be operated for 10 hours operation time per day. The start and ending of the operation time shall be intimated to the Concessionaire on or before 30 days of COD in writing by the Authority. Any changes further related to the starting and ending of the daily operation time shall be intimated to the Concessionaire at least 7 days in advance in writing by the Authority. In addition, any increase in daily hours of operation shall be mutually agreed between Authority and Concessionaire.

17.18 Operation of Stations

(i) The Concessionaire shall be entirely responsible for the O&M of the Stations and all the ancillary offices, amenities and facilities during the entirety of the Concession Period, in terms of this Agreement. As mentioned in Article 5, the Concessionaire shall operate and maintain amenities, in adequate numbers in accordance with Good Industry Practice for non-discriminatory use by the Users of the Project. The amenities shall include drinking water facilities, sanitation facilities, toilets, locker facility, and telephone and communication facilities. The Concessionaire shall also ensure that the eateries, canteens, if any, within the premises of the Terminal Stations shall be hygienic and safe, in accordance with Good Industry Practice.

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

(iii) Users who require special assistance:

The Concessionaire shall procure that the Terminal Station shall meet the travelling needs of elderly persons and differently abled Users, including the provision of ramp ways, modified toilets, wheelchairs, and earmarked places slots in conformity with Specifications and Standards and Good Industry Practice, and at no extra cost to such Users. The Concessionaire shall also procure provision of childcare room and facilities within the Terminal Station

building, at no additional cost to User. The Concessionaire shall operate and maintain the Project in accordance with Good Industry Practices, in compliance with safety, environmental and other applicable laws, maintenance manual and Article 42.

ARTICLE 18: SAFETY REQUIREMENTS

18.1 Safety Requirements

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

18.1.2 The Authority shall appoint, at its own cost, an experienced and qualified firm or organisation (the "**Safety Consultant**") for carrying out safety audit of the Project in accordance with the Safety Requirements and shall take all other actions necessary for securing compliance with the Safety Requirements.

18.1.3 Without prejudice to clause 18.2 hereof, the Authority shall, if required under special circumstances at its own cost and expense, provide or cause to be provided security within the limits of the Project for the prevention of terrorism, hijacking, sabotage and/or similar acts or occurrences; provided that the Authority and the Concessionaire may at any time mutually enter into an agreement to jointly provide security services for the Project. Notwithstanding anything to the contrary contained herein the Concessionaire shall be responsible for the security arrangements within the Site in order to maintain orderly conduct of its business and the security thereof;

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

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

18.2 Expenditure on Safety Requirements

All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire to the extent such costs and expenses form part of the works and services included in the Scope of the Project, and works and services, if any, not forming part of the Scope of the Project shall be undertaken in accordance with the provisions of Article 16. Costs and expenses on works and services not covered hitherto before and arising out of Safety

Requirements shall, subject to the provisions of Clause 16.3.2, be borne from out of a dedicated safety fund (the "**Safety Fund**") to be funded, owned and operated by the Authority or a substitute thereof.

18.3 Safety Manual

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

18.4 Enquiry and Investigation

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

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

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

18.4.3 However the Concessionaire further explicitly and unconditionally agrees & acknowledges that all or any liability or responsibility or accountability resulting from or arising out of such accident or mishap, or unusual occurrence shall, subject to Applicable Laws, be the sole responsibility of the Concessionaire and the Concessionaire shall keep the Authority (including its officers and representatives) fully indemnified and protected against any such liability or claim. The Concessionaire shall in accordance with the Good Industry Practice procure and keep in place, at all times during the Concession Period, sufficient insurance cover, from a reputed insurance company, against any claim for damage or loss to property.

ARTICLE 19: MONITORING OF OPERATION AND MAINTENANCE

19.1 Monthly status reports

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

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

(a) key performance indicators achieved in the month, along with an analysis of reasons for failures, if any, and proposals to remedy the same;

(b) key operational hurdles and deliverables anticipated in the succeeding month along with strategies for addressing the same and for otherwise improving the Project's operational performance; and

(c) key financial parameters for the month, as benchmarked against the monthly budget and the reasons for shortfall, if any, and proposals to remedy the same.

19.2 Inspection

The Independent Engineer shall inspect the Project at least fortnightly. It shall make a report of such inspection (**the "O&M Inspection Report"**) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Requirements, Maintenance Manual, the Maintenance Programme and Safety Requirements, and send a copy thereof to the Authority and the Concessionaire within 7 (seven) days of such inspection. The Authority on a written request from the Lenders' Representative shall be obliged to provide a copy of the such O&M Inspection Report

19.3 Tests

For determining that the Project conforms to the Maintenance Requirements, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Independent Engineer and furnish the results of such tests forthwith to the Independent Engineer. One half of the costs incurred on such tests, and to the extent certified by the Independent Engineer as reasonable, shall be reimbursed by the Authority to the Concessionaire.

19.4 Remedial measures

19.4.1 The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the Test results referred to in Clause 19.3 and furnish a report in respect thereof to the Independent Engineer and the Authority within 15 (fifteen) days of receiving the O&M Inspection Report or the Test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen)

days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.

19.4.2 The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out Tests, at its own cost, to determine that such remedial measures have brought the Project into compliance with the Maintenance Requirements and the procedure set forth in this Clause 19.5 shall be repeated until the Project conforms to the Maintenance Requirements. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Damages from the Concessionaire under and in accordance with the provisions of Clause 17.8.

19.5 Monthly Fee Statement

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

19.6 Reports of unusual occurrence

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

(a) death or injury to any person;

(b) damaged or dislodged fixed equipment;

(c) any obstruction on the Project, which results in slow down of the services being provided by the Concessionaire;

(d) disablement of any equipment during operation;

(e) communication failure affecting the operation of Project;

(f) smoke or fire;

(g) project disruption due to natural calamity;

(h) Broken or cracked ropes

(i) Obstruction in opening/closing of doors of doors of a cable car; and

(j) such other relevant information as may be required by the Authority or the Independent Engineer.

ARTICLE 20: TRAFFIC REGULATION AND SECURITY

20.1 Traffic regulation by the Concessionaire

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

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

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

20.2 Security

20.2.1 The Authority acknowledges and agrees that unless otherwise specified in this Agreement it shall, at its own cost and expense, provide or cause to be provided security within the limits of the Project for the prevention of terrorism, hijacking, sabotage and/or similar acts or occurrences; provided that the Authority and the Concessionaire may at any time mutually enter into an agreement to jointly provide security services in the Project.

20.2.2 The Concessionaire shall be responsible for the security arrangements within the Project in order to maintain orderly conduct of its business and the security thereof.

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

20.2.4 Subject to the rights of the Concessionaire under this Clause 20.2, the Authority or any agency duly authorised by it shall be entitled to inspect and search the Project or part thereof and to search any person or vehicle entering the Site or departing there from, without unduly or unreasonably disrupting the operations of the Project.

20.2.5 The Authority agrees that it shall, at the request of the Concessionaire, procure and provide the services of security forces of the Authority on a best effort basis.

20.2.6 The Authority shall ensure and procure that the personnel of the Concessionaire and all its contractors, suppliers, sub-contractors and agents and the Users of the Project are allowed free ingress and egress from the limits of the Project without any unreasonable interference by the personnel of the Authority, including the security personnel employed by or on behalf of the Authority.

20.2.7 The Authority and the Concessionaire shall jointly make best endeavours to ensure that the security of the Project is maintained such that the level of risk premium under insurance covers (if any) that is to be borne by the Concessionaire shall be at the lowest possible rate.

20.3 Buildings for helping / information desks

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

ARTICLE 21: EMERGENCY MEDICAL AID

21.1 Medical Aid Posts

The Concessionaire shall have requisite first aid kits at each Station as well as the basic first aid training to the ropeway operators. For providing emergency medical aid during the Operation Period, as set forth in this Agreement, the Concessionaire shall assist the State Government [or a substitute thereof to be designated by the Authority] in setting up and operating a medical aid post (the "Medical Aid Post") at each of the terminals with round-the-clock ambulance services for victims of accidents on the Project.

ARTICLE 22: KEY PERFORMANCE INDICATORS

21.1 Key Performance Indicators

Without prejudice to the obligations specified in this Agreement, the Concessionaire shall operate the Project such that it achieves or exceeds the performance indicators specified in this Article 22 (the "**Key Performance Indicators**")

21.2 Operation of Ropeway Carriers

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

(a) the ropeway carriers are clean, hygienic and free of odour; and

(b) there is adequate lighting within the carrier and Station in conformity with the Specifications and Standards.

(c) the number of passengers shall not exceed the design capacity of the passenger cable cars

(d) the rope speed is variable and can be adjusted to meet the traffic requirements subject to a maximum of 6 (six) meters/second for monocable systems

(e) design, procure and install and keep in ready operational mode an automatic power back up system to meet any contingency of power failure or malfunction (including any variations in the voltage) for a duration of at least 45 minutes (forty-five) minutes or at least the time necessary to disembark all the in-transit passengers, whichever is longer. The contingency power back system shall include mechanism for load forecast for on next 24 hours basis during the Operations Period.

(f) Install and maintain in good working conditions all required safety measures and facilitators for the safe and convenient boarding and de-boarding of the Users (including minors, senior citizens and persons requiring special assistance);

(g) Concessionaire shall not hold or allow any person to store, bring transport, transfer at Site or allow any person to carry any prohibited material or substance in the ropeway cable cars;

(h) Concessionaire shall ensure and provide, at all times professional, efficient and prompt, polite and courteous services to all Users without discrimination whatsoever and in an honest and business like manner and shall improve the standard of services offered if deemed unsatisfactory by Authority.

(i) Concessionaire shall appoint a functionally qualified and experienced manager who shall represent the Concessionaire on a full-time basis and be available on a full-time basis during the operational and maintenance hours to ensure the safe, smooth and efficient operation of the Project. The concerned manager shall liaise with the Authority to ensure

efficient service delivery.

(j) Concessionaire shall employ only well-trained and healthy persons of good character and integrity after carrying out proper security verification acceptable to Authority and to ensure that they are attired in uniforms, bearing name tags or other identification badges approved by Authority.

21.3 Provisions of Carriers

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

21.4 Operation of Terminal Stations

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

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

(a) a User alighting at the platform should be able to reach a point outside the Station in not more than [10 (ten)] minutes of brisk walking and a User crossing the fee collection point should be able to reach the platform in not more than [5 (five)] minutes of brisk walking; and

(b) in case of Emergency, evacuation from any point on the platform to a point of safety in an open space within or outside the Station shall not exceed [200 (two hundred)] meters.

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

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

21.4.5 The Concessionaire shall at all times ensure that:

(a) the Stations and its toilets are clean, hygienic and free of odour;

(b) there is adequate lighting within the Stations in conformity with the Specifications and Standards;

(c) the temperature in common areas within the Station is maintained in accordance with Maintenance Requirements;

(d) all entry and exit points, passages, circulation areas and vehicular traffic are so managed that they do not have a queue with a waiting time exceeding [5 (five)] minutes;

(e) all lifts, escalators, walkalators, train information systems, public address systems

and lighting systems function efficiently, and their availability is no less than 98% (ninety- eight per cent) in a month; and

(f) 50% (fifty) percent of all phone calls relating to the Project are answered within 30 (thirty) seconds.

(g) Proper security mechanism for the safety and protection of the Users, employees of the Concessionaire / Contractors, visitors to the Project and for the safety and protection of the Project and its assets is set in place on 24x7 basis with CCTV coverage of all vital areas of the Project in place.

(h) The response time to any call for rescue and retrieval or in case of any Emergency of any kind shall be equivalent to the best industry norms and practices with the helpline numbers displayed prominently at prominent locations at the Stations and inside the cable cars.

(i) The Concessionaire shall on regular basis keep a record of all such calls with details of response time and action taken. Such record shall be available for inspection of the Authority and the Independent Engineer.

(j) The Concessionaire shall in collaboration with the concerned authorities on a regular basis, at least once in 06 (six) undertake, undertake security and evacuation drills for the training of its staff.

(k) Concessionaire shall comply with Fire & Safety norms as specified by Authority / concerned department of the State

(l) Concessionaire shall review operational time table of the ropeway cable cars on a regular basis to minimize queuing at the platform or outside the Terminal Station. The Concessionaire on need basis shall deploy additional manpower in order to facilitate smoother movement of Users and vehicles.

(m) Concessionaire shall except for the priority and preferential use that may be authorized in terms of guidelines issued by the relevant authorities / emergency circumstances, manage and operate the Project Facilities and services on a first come - first serve, common-user basis, open to any and all Users, and refrain from indulging in any unfair or discriminatory practice against any user or potential User thereof

(n) maintain the CCTV's for entire Project Area to give an overall view of Project Area, entry and exit points and security systems (if applicable) etc.

(o) create, operate an app where users can rate their experience in terms of hygiene, service quality and safety. The feedback from the customers will be recorded on an online server to be maintained at the authority premise. The Concessionaire shall endeavor to minimize negative feedback through measures to improve service quality. The data on the customer reviews shall be consolidated in the monthly reports to be submitted by the Independent Engineer

21.5 Monthly status report

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

21.6 Penalty for shortfall in performance

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

21.7 ISO certification

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

21.7.2 In the event of default in obtaining the certification specified in Clause 21.7.1, the Concessionaire shall, within 15 (fifteen) days thereof, submit to the Authority an action plan that sets out the actions proposed to be taken by the Concessionaire for rectifying its deficiencies and obtaining such certification for all facilities at the Ropeway.

21.7.3 If the period of default in obtaining the ISO certification under this Clause 21.7 shall exceed a continuous period of 3 (three) months, the Concessionaire shall thereafter pay Damages to the Authority in an amount equal to [2% (two per cent)] of the total monthly revenue from Fee for every 1 (one) month of default.

21.8 Passenger Charter

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

ARTICLE 23: TRAFFIC CENSUS AND SAMPLING

23.1 Traffic census and Train operations

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

23.2 Traffic survey

The Authority may require the Concessionaire to conduct, during each year of the Concession Period, a detailed traffic survey at such frequency and on such days as the Authority may specify, provided that the cumulative period of such survey shall not exceed 7 (seven) days in a year. The Concessionaire shall, at its own cost, carry out or cause to be carried out, the survey in the form and manner reasonably specified by the Authority and furnish a detailed report thereof within 15 (fifteen) days of the completion of each survey. For the avoidance of doubt, the Authority may also conduct traffic surveys, in such manner as it deems fit and at its own cost, through any agency designated by it for this purpose.

23.3 Traffic sampling

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

23.3.2 If the traffic sampling pursuant to this Clause 23.3 demonstrates that the actual traffic is more than the traffic reported by the Concessionaire, the traffic determined by the traffic sampling shall be deemed to be the traffic for purposes of this Agreement and in the event of any Dispute relating to the traffic sampling, the Dispute Resolution Procedure shall apply.

23.4 [Deleted]

ARTICLE 24: INDEPENT ENGINEER

24.1 Appointment of Independent Engineer

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

24.2 Duties and functions

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

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

24.2.3 True copy of all communications sent by the Authority to the Independent Engineer and by the Independent Engineer to the Authority, shall be sent forthwith by the Independent Engineer to the Concessionaire.

24.2.4 True copy of all communications sent by the Independent Engineer to the Concessionaire and by the Concessionaire to the Independent Engineer shall be sent forthwith by the Independent Engineer to the Authority.

24.2.5 Independent Engineer shall periodically submit data on the progress / status of Construction Works, financial progress and other requisite details at such interval, as mentioned in the TOR, which shall enable the Authority for updating the project specific website.

24.3 Remuneration

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

24.4 Termination of appointment

24.4.1 The Authority may, in its discretion, terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer in accordance with Clause 24.1.

24.4.2 If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Authority and seek termination of the appointment of the

IndependentEngineer. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the Independent Engineer is terminated hereunder, the Authority shall appoint forthwith another Independent Engineer in accordance with Clause 24.1.

24.5 Authorised signatories

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

24.6 Dispute resolution

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

24.7 Interim arrangement

In the event that the Authority does not appoint an Independent Engineer, or the Independent Engineer so appointed has relinquished its functions or defaulted in discharge thereof, the Authority may, in the interim, designate and authorize any person to discharge the functions of the Independent Engineer in accordance with the provisions of this Agreement, save and except that such person shall not exercise any functions relating to review, comment, approval or inspection as specified in this Agreement for and in respect of the Independent Engineer, and such functions shall be discharged as and when an Independent Engineer is appointed in accordance with the provisions of this Agreement. Provided, however, that nothing contained in this Clause 24.7 shall in any manner restrict the rights of the Authority to enforce compliance of the provisions of this Agreement.

PART IV: FINANCIAL COVENANTS

ARTICLE 25: FINANCIAL CLOSE

25.1 Financial Close

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

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

25.2 Termination due to failure to achieve Financial Close

25.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 35.6.1 , in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 25.1.1 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. For the avoidance of doubt, it is agreed that in the event the Parties hereto have, by mutual consent, determined the Appointed Date to precede the Financial Close, the provisions of this Clause 25.2.1 shall not apply.

25.2.2 Upon Termination under Clause 25.2.1, the Authority shall be entitled to encash the Bid Security and appropriate the proceeds thereof as Damages; provided, however, that if Financial Close has not occurred solely as a result of the Authority being in default of any of its obligations under Clause 4.2, it shall, upon Termination, return the Bid Security forthwith along with the Damages due and payable under Clause 4.2. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by Performance Security, the Authority shall be entitled to encash therefrom an amount equal to Bid Security.

ARTICLE 26: [Deleted]

ARTICLE 27: CONCESSION FEE

27.1 Annual Concession Fee

27.1.1 In consideration of the grant of Concession, the Concessionaire shall pay to the Authority by way of Annual Concession Fee (the **"Annual Concession Fee"**). The Concessionaire shall pay a sum of Rs……./- (Rupees…….). towards First Year Annual Concession Fee (the **"First Year Annual Concession Fee"**) which should be paid on or before 30 (thirty) days prior to the Scheduled Date. Subsequently, the Annual Concession Fee is payable to the Authority on or before 30 (thirty) days prior to the anniversary of the Scheduled Date throughout the Agreement Period.

27.1.2 The Annual Concession Fee is exclusive of GST and all other applicable taxes; and shall be payable by the Concessionaire at actual over and above the Annual Concession Fee. During the Agreement Period, the Annual Concession Fee shall be increased by 5% (five percent) every year over the previous year's Annual Concession Fee.

27.1.3 The Concessionaire should pay the Annual Concession Fee to the Authority notwithstanding the fact that, the Project facilities is not completed within the Scheduled Date or the Concessionaire has not started the operation of the Project. In other words, the Concessionaire shall not be entitled to seek any reduction of Annual Concession Fee, claim, damages, compensation or any other consideration from the Authority on account of any reason.

27.1.4 Any delay in payment of the Annual Concession Fee shall attract an interest for the delayed period at the rate of SBI PLR plus 5% per annum on the outstanding amount, which shall be due from the date of such payment till the amount is realized by the Concessionaire. In addition to the foregoing, any delay in payment of Annual Concession Fee beyond a period of 60 (sixty) days from the due date of such payment will be construed to be material breach under this Agreement

27.1.5 In case of default of payment of the Annual Concession Fee by the Concessionaire during the Agreement Period, the Authority shall without prejudice to its other rights, deduct the said dues from the Operations Period Performance Security. In such case the Operations Period Performance Security shall be replenished to its original within 30 (thirty) days from date of appropriation of such payment by the Authority.

27.2 [Deleted]

27.3 [Deleted]

27.4 [Deleted]

ARTICLE 28: USER FEE

28.1 Collection and appropriation of Fee

28.1.1 On and from the COD till the Transfer Date, the Concessionaire shall have the sole and exclusive right to demand, collect and appropriate Fee from the Users subject to and in accordance with the Fee Notification as issued by the Authority.

28.1.2 The Concessionaire acknowledges and agrees that upon payment of Fee, any User shall be entitled to use the Project and the Concessionaire shall not place, or cause to be placed, any restriction on such use, except to the extent specified in any Applicable Law, Applicable Permit or the provisions of this Agreement.

28.2 [Deleted]

28.3 [Deleted]

28.4 Fee Contractor

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

28.5 Fee collection points

The Concessionaire shall be entitled to set up at its own risk and cost, its temporary or permanent Fee collection counters and gates, or impose such other restrictions on entry to the Ropeway, as may reasonably be necessary for preventing evasion of Fee. For the avoidance of doubt, the Concessionaire hereby acknowledges and agrees that it shall establish and operate a system of Fee collection in conformity with Good Industry Practice.

28.6 [Deleted]

28.7 [Deleted]

28.8 Display of Fee Rates

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

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

28.8.3 The Concessionaire shall not revise, display or collect any amounts in excess of the rates

of Fee payable under this Agreement. In the event any excess amounts are collected by or on behalf of the Concessionaire, it shall, upon receiving a notice to this effect from the Authority, refund such excess amounts to the Authority along with Damages equal to 100 Percent thereof.

28.9 Fee collection

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

28.10 Real time data for user fee collection

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

ARTICLE 29: [Deleted]

ARTICLE 30: [Deleted]

ARTICLE 31: [Deleted]

ARTICLE 32: ESCROW ACCOUNT

32.1 Escrow Account

32.1.1 The Concessionaire shall, prior to the Appointed Date, open and establish an Escrow Account with a Bank (the "**Escrow Bank**") in accordance with this Agreement read with the Escrow Agreement.

32.1.2 The nature and scope of the Escrow Account are fully described in the agreement (the "**Escrow Agreement**") to be entered into amongst the Concessionaire, the Authority, the Escrow Bank and the Senior Lenders through the Lenders' Representative, which shall be substantially in the form set forth in Schedule-S.

32.2 Deposits into Escrow Account

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

(a) all funds constituting the Financial Package;

(b) all Fee and any other revenues from or in respect of the Project, including the proceeds of any rentals, deposits, capital receipts or insurance claims; or any compensation amount received; and

(c) all payments by the Authority, after deduction of any outstanding Concession Fee:

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

32.3 Withdrawals during Concession Period

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

a) all taxes due and payable by the Concessionaire for and in respect of the Project;

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

(c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;

(d) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;

(e) Concession Fee due and payable to the Authority;

(f) monthly proportionate provision of Debt Service due in an Accounting Year;

(g) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;

(h) Monthly proportionate provision of Debt Service payments due in an Accounting Year in respect of Subordinated Debt;

(i) any reserve requirements set forth in the Financing Agreements; and

(j) balance, if any, in accordance with the instructions of the Concessionaire.

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

32.4 Withdrawals upon Termination

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

(a) all taxes due and payable by the Concessionaire for and in respect of the Ropeway and Glass Bridge Skywalk facility;

(b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt if required to be as per the terms of this Agreement;

(c) outstanding Concession Fee;

(d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire, including {Premium};

(e) retention and payments relating to the liability for defects and deficiencies set forth in Article 43;

(f) outstanding Debt Service including the balance of Debt Due;

(g) incurred or accrued O&M Expenses;

(h) any other payments required to be made under this Agreement; and

(i) balance, if any, in accordance with the instructions of the Concessionaire:

(j) outstanding Subordinated Debt;

Provided that no appropriations shall be made under Sub-clause (j) of this Clause 32.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of Article 39.4.

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

ARTICLE 33: INSURANCE

33.1 Insurance during Concession Period

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

33.1.2 Without prejudice to the provisions contained in Clause 33.1.1, the Concessionaire shall, procure and maintain Insurance Cover including but not limited to the following:

(a) Loss, damage or destruction of the Project Assets including assets handed over the Authority to the Concessionaire, at replacement value;

(b) Machinery break-down insurance policy for insuring critical plant & equipment against any damage;

(c) comprehensive third-party liability insurance including injury to or death of personnel of the Authority or others who may enter the Project;

(d) the Concessionaire's general liability arising out of the Concession;

(e) liability to third parties for goods or property damage;

(f) workmen's compensation insurance, personal accident insurance and medical insurance;

(g) passenger accident insurance for the passengers on-board the ropeway project having a valid ticket; and

(h) any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (a) to (f) above.

33.2 Notice to the Authority

No later than 45 (forty-five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 33. Within 30 (thirty) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of

any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

33.3 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 33 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Authority.

33.4 Remedy for failure to insure

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

33.5 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 33 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, *inter alia*, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

33.6 Concessionaire's waiver

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

33.7 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire by credit to the Escrow Account and it shall, notwithstanding anything to the contrary contained in Clause 32.3 apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Ropeway and Glass Bridge Skywalk facility, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

ARTICLE 34: [Deleted]

PART V: FORCE MAJEURE AND TERMINATION

ARTICLE 35: FORCE MAJEURE

35.1 Force Majeure

As used in this Agreement, the expression "**Force Majeure**" or "**Force Majeure Event**" shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 35.2, 35.3, 35.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "**Affected Party**") of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

35.2 Non-Political Event

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

(a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);

(b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 35.3

(c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;

(d) any delay or failure of an overseas contractor to deliver equipment in India if such delay or failure is caused outside India by any event specified in Sub-clause (a) above and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such contractor;[15]

(e) any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;

(f) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or

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

35.3 Indirect Political Event

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

(a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;

(b) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty-four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;

(c) any civil commotion, boycott or political agitation which prevents collection of Fee by the Concessionaire for an aggregate period exceeding 7 (seven) days in an Accounting Year;

(d) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;

(e) any Indirect Political Event that causes a Non-Political Event; or

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

35.4 Political Event

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

(a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 45 and its effect, in financial terms, exceeds the sum specified in Clause 42.1

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

(c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;

(d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or

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

35.5 Duty to report Force Majeure Event

35.5.1 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

(a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 35 with evidence in support thereof;

(b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;

(c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and

(d) any other information relevant to the Affected Party's claim.

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

35.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 35.5.1 and such other information as the other Party may reasonably request the Affected Party to provide.

35.6 Effect of Force Majeure Event on the Concession

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

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

(a) before COD, the Concession Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or

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

Concessionaire to extension of one day in the Concession Period.

35.7 Allocation of costs arising out of Force Majeure

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

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

(a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;

(b) upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Concessionaire; and

(c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Concessionaire.

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

35.7.3 Save and except as expressly provided in this Article 35, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

35.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 35, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

35.9 Termination Payment for Force Majeure Event

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

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

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

(b) 110% (one hundred and ten per cent) of the Adjusted Equity; and

(c) an amount equivalent to the Additional Termination Payment less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in computation of the amount payable hereunder.

35.9.3 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 39.3.2 as if it were an Authority Default.

35.10 Dispute resolution

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

35.11 Excuse from performance of obligations

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

(a) the Suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;

(b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and

(c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

ARTICLE 36: COMPENSATION FOR BREACH OF AGREEMENT

36.1 Compensation for default by the Concessionaire

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

36.2 Compensation for default by the Authority

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

36.3 Extension of Concession Period

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

36.4 [Deleted]

36.5 Compensation to be in addition

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

36.6 Mitigation of cost and damages

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

ARTICLE 37: SUSPENSION OF CONCESSIONAIRE'S RIGHTS

37.1 Suspension upon Concessionaire Default

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

37.2 Authority to act on behalf of Concessionaire

37.2.1 During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect all Fee and revenues under and in accordance with this Agreement and deposit the same in the Escrow Account. The Authority shall be entitled to make withdrawals from the Escrow Account for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses specified in Clause 32.3

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

37.3 Revocation of Suspension

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

37.3.2 Upon the Concessionaire having cured the Concessionaire Default within a period not exceeding 90 (ninety) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

37.4 Substitution of Concessionaire

At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice thereunder from the Lenders' Representative, the Authority shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 37.1 for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

37.5 Termination

37.5.1 At any time during the period of Suspension under this Article 37, the Concessionaire may by notice require the Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Clause 37.4, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 41.

37.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 37.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, mutatis mutandis, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Concessionaire Default.

ARTICLE 38: TERMINATION

38.1 Termination for Concessionaire Default

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

(a) the Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;

(b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Concessionaire fails to cure, within a Cure Period of 90 (ninety) days, the Concessionaire Default for which whole or part of the Performance Security was appropriated;

(c) the Concessionaire does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule-G and continues to be in default for 120 (one hundred and twenty) days;

(d) the Concessionaire abandons or manifests intention to abandon the construction or operation of the Project without the prior written consent of the Authority;

(e) Project Completion Date does not occur within the period specified in Clause 12.4.3;

(f) the Punch List items have not been completed within the period set forth in Clause 14.4.1;

(g) the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be, or commits repeated default in conforming to the Key Performance Indicators;

(h) the Concessionaire has failed to make any payment to the Authority within the period specified in this Agreement;

(i) an Escrow Default has occurred, and the Concessionaire fails to cure the default within a Cure Period of 15 (fifteen) days;

(j) upon occurrence of a Financial Default, the Lenders' Representative has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;

(k) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;

(l) the Concessionaire creates any Encumbrance in breach of this Agreement;

(m) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;

(n) a Change in Ownership has occurred in breach of the provisions of Clause5.3;

(o) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;

(p) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;

(q) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;

(r) the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;

(s) occurrence of any Insolvency Event;

(t) the Concessionaire has been, or is in the process of being amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:

  (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;

  (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and

  (iii) each of the Project Agreements remains in full force and effect;

(u) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;

(v) the Concessionaire submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;

(w) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement; or

(x) the Concessionaire commits a default in complying with any other provision of this Agreement if such a default causes a Material Adverse Effect on the Authority.

38.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Clause 38.1.3.

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

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

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

38.2 Termination for Authority Default

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

(a) The Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;

(b) the Authority has failed to make any payment to the Concessionaire within the period specified in this Agreement; and

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

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

to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Concessionaire shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Authority to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

38.3 Termination Payment

38.3.1 Upon Termination on account of a Concessionaire Default during the Operation Period, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due.

38.3.2 Notwithstanding the provisions of Clause 38.3.1, upon Termination on account of Concessionaire Default during the Construction Period and after the Appointed Date, no Termination Payment shall be due and payable if Physical Progress is less than 40% (forty per cent), and in the event of Physical Progress exceeding 40% (forty per cent), the provisions of Clause 38.3.1 shall, to the extent applicable to Debt Due, apply in respect of the expenditure exceeding 40% (forty per cent) of Total Project Cost. For the avoidance of doubt and by way of illustration, the Parties agree that if the total expenditure incurred prior to Termination is 90% (ninety per cent) of the Total Project Cost, the expenditure eligible for computation of Termination Payment hereunder shall be 50% (fifty per cent) of the Total Project Cost and the Termination Payment due and payable in such event shall not exceed 45% (forty five per cent) of the Total Project Cost. The Parties further agree that for the purposes of this Clause 38.3.2, Total Project Cost shall mean the amount specified in Sub-clause (c) of the definition of Total Project Cost in Clause 49.1. The Parties also agree that for determining the Termination Payment under this Clause 38.3.2, the expenditure comprising the latest Project Milestone achieved by the Concessionaire shall also be reckoned.

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

(a) Debt Due;

(b) 100% (one hundred per cent) of the Adjusted Equity;

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

constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

38.3.5 The Concessionaire expressly agrees that Termination Payment under this Article 38 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

38.4 Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

(a) be deemed to have taken possession and control of the Project forthwith;

(b) take possession and control of all materials, stores, implements, construction plants and equipment on or about the Site;

(c) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Site or any part of the Project;

(d) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 39.1; and

(e) succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

38.5 Certain limitations on Termination Payment

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

the amount arrived at by subtracting Debt Due from Total Project Cost.

38.5.2 [Deleted]

38.5.3 [Deleted]

38.6 Survival of rights

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

ARTICLE 39: DIVESTMENT OF RIGHTS AND INTEREST

39.1 Divestment Requirements

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

(a) notify to the Authority forthwith the location and particulars of all Project Assets;

(b) deliver forthwith the actual or constructive possession of the Ropeway and Glass Bridge Skywalk facility, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;

(c) cure all Project Assets, including the road, bridges, structures and equipment, of all defects and deficiencies so that the Project is compliant with the Maintenance Requirements; provided that in the event of Termination during the Construction Period, all Project Assets shall be handed over on 'as is where is' basis after bringing them to a safe condition;

(d) deliver and transfer relevant records, reports, Intellectual Property and other licences pertaining to the Project and its design, engineering, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Project and shall be assigned to the Authority free of any encumbrance;

(e) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;

(f) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the project, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and

(g) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the project, free from all Encumbrances, absolutely unto the Authority or to its nominee.

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

39.2 Inspection and cure

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Independent Engineer shall verify, after

giving due notice to the Concessionaire of the time, date and venue of such verification, compliance by the Concessionaire with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 43 shall apply, mutatis mutandis, in relation to curing of defects or deficiencies under this Article 39.

39.3 Cooperation and assistance on transfer of Project

39.3.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Users, other members of the public or the lawful occupiers of any part of the Site.

39.3.2 The Parties shall provide to each other, 9 (nine) months prior to the Transfer Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the Authority, its concessionaire or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.

39.3.3 The Authority shall have the option to purchase or hire from the Concessionaire at a fair market value and free from any encumbrance all or any part of the plant and machinery used in connection with the Project, but which does not form part of the assets specified in Clause 39.1.1 and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.

39.4 Vesting Certificate

The divestment of all rights, title and interest in the 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-N (the "**Vesting Certificate**"), which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Project, and their vesting in the 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 Concessionaire.

39.5 [Deleted]

39.6 Divestment costs etc.

39.6.1 The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project in favour of the Authority upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such divestment shall be borne by the Authority.

39.6.2 In the event of any Dispute relating to matters covered by and under this Article 39, the Dispute Resolution Procedure shall apply.

ARTICLE 40: DEFECTS LIABILITY AFTER TERMINATION

40.1 Liability for defects after Termination

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

40.2 Retention in Escrow Account

40.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 36.2.3 , a sum equal to 5% (five per cent) of the Annual Concession Fee for the year immediately preceding the Transfer Date shall be retained in the Escrow Account for a period of 120 (one hundred and twenty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 40.1

40.2.2 Without prejudice to the provisions of Clause 40.2.1 , the Independent Engineer shall carry out an inspection of the Project at any time between 210 (two hundred and ten) and 180 (one hundred and eighty) days prior to the Termination and if it recommends that the status of the Project is such that a sum larger than the amount stipulated in Clause 40.2. should be retained in the Escrow Account and for a period longer than the aforesaid 120 (one hundred and twenty) days, the amount recommended by the Independent Engineer shall be retained in the Escrow Account for the period specified by it.

40.2.3 The Concessionaire may, for the performance of its obligations under this Article 40, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under Clause 40.2.1 or 40.2.2 as the case may be, and for the period specified therein, substantially in the form set forth in Schedule-F(the "**Performance Guarantee**"), to be modified, mutatis mutandis, for this purpose, and the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at the Concessionaire's risk and cost in accordance with the provisions of this Article 40. Upon furnishing of a Performance Guarantee under this Clause 40.2.3, the retention of funds in the Escrow Account in terms of Clause 40.2.1 or 40.2.2, as the case may be, shall be dispensed with.

PART VI: OTHER PROVISIONS

ARTICLE 41: ASSIGNMENT AND CHARGES

41.1 Restrictions on assignment and charges

41.1.1 Subject to Clauses 41.2 and 41.3 of this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

41.1.2 Subject to the provisions of Clause 41.2 the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

41.2 Permitted assignment and charges

The restraints set forth in Clause 41.1 shall not apply to:

(a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project;

(b) mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title, arising or created in the ordinary course of business of the project, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the project;

(c) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and

(d) liens or encumbrances required by any Applicable Law.

41.3 Substitution Agreement

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

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

41.4 Assignment by the Authority

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

ARTICLE 42: CHANGE IN LAW

42.1 Increase in costs

If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of Rs. 1.0 crore (Rupees one crore)[17]and 0.5% (zero point five percent) of the Annual Concession Fee in any Accounting Year, the Concessionaire may so notify the Authority and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

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

42.2 Reduction in costs

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

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

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

42.3 Protection of NPV

Pursuant to the provisions of Clauses 42.1 and 42.2 and for the purposes of placing the Concessionaire in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall rely on the Financial Model to establish a net present value (the "**NPV**") of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred.

42.4 Restriction on cash compensation

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

42.5 No claim in the event of recovery from Users

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

ARTICLE 43: LIABILITY AND INDEMNITY

43.1 General indemnity

43.1.1 The Concessionaire will indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and Government owned and/or controlled entities/enterprises, (the "**Authority Indemnified Persons**") against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the Concessionaire to any User or from any negligence of the Concessionaire under contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Authority Indemnified Persons.

43.1.2 The Authority will indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (i) defect in title and/or the rights of the Authority in the land comprised in the Site, and/or (ii) breach by the Authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Concessionaire of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Concessionaire, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Concessionaire.

43.2 Indemnity by the Concessionaire

43.2.1 Without limiting the generality of Clause 43.1 the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

(a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;

(b) payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire's contractors, suppliers and representatives; or

(c) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its contractors which are payable by the Concessionaire or any of its contractors.

43.2.2 Without limiting the generality of the provisions of this Article 43, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or

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

43.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 43 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

43.4 Defence of claims

43.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 43, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

43.4.2 If the Indemnifying Party has exercised its rights under Clause 43.3 the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

43.4.3 If the Indemnifying Party exercises its rights under Clause 43.3 the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

(a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or

(b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or

(c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or

(d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:

(i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or

(ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 43.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

43.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 43, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

43.6 Survival on Termination

The provisions of this Article 43 shall survive Termination.

ARTICLE 44: RIGHTS AND TITLE OVER THE SITE

44.1 Licensee rights

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

44.2 Access rights of the Authority and others

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

44.3 Property taxes

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

44.4 Restriction on sub-letting

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

ARTICLE 45: DISPUTE RESOLUTION

45.1 Dispute resolution

45.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "**Dispute**") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 45.2

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

45.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer or without the intervention of the Independent Engineer, either Party may require such Dispute to be referred to the Chairman of the Authority and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 45.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 45.3

45.3 Arbitration

45.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 45.2 2, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 45.3.2 Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "**Rules**"), or such other rules as may be mutually agreed by the Parties and shall be subject to the provisions of the Arbitration Act. The venue of such arbitration shall be Delhi, and the language of arbitration proceedings shall be English.

45.3.2 There shall be a Board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.

45.3.3 The arbitrators shall make a reasoned award (the "**Award**"). Any Award made in any arbitration held pursuant to this Article 45 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.

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

wherever situated.

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

45.4 Adjudication by Regulatory Authority or Commission

In the event of constitution of a statutory Regulatory Authority or Commission with powers to adjudicate upon disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 45.3, be adjudicated upon by such Regulatory Authority or Commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or High Court, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

ARTICLE 46: DISCLOSURE

46.1 Disclosure of Specified Documents

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

46.2 Disclosure of Documents relating to safety

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

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

Explanation:

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

ARTICLE 47: REDRESSAL OF PUBLIC GRIEVANCES

47.1 Complaints Register

47.1.1 The Concessionaire shall maintain a public relations office at each of the terminals where it shall keep a register (the "**Complaint Register**") open to public access at all times for recording of complaints by any person (the "**Complainant**"). Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Concessionaire at each terminal so as to bring it to the attention of all Users.

47.1.2 The Complaint Register shall be securely bound, and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Concessionaire. Immediately after a complaint is registered, the Concessionaire shall give a receipt to the Complainant stating the date and complaint number.

47.1.3 Without prejudice to the provisions of Clauses 47.1.1 and 47.1.2, the Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

47.2 Redressal of complaints

47.2.1 The Concessionaire shall inspect the Complaint Register every day and take prompt and reasonable action for redressal of each complaint. The action taken shall be briefly noted in the Complaint Register and a reply stating the particulars thereof shall be sent by the Concessionaire to the Complainant under a certificate of posting.

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

ARTICLE 48: MISCELLANEOUS

48.1 Governing law and jurisdiction

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

48.2 Waiver of immunity

Each Party unconditionally and irrevocably:

(a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;

(b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;

(c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

(d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

48.3 Depreciation and Interest

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

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

48.4 Delayed payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 5% (five per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

48.5 Waiver

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

(a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

(b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and

(c) shall not affect the validity or enforceability of this Agreement in any manner.

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

48.6 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

(a) no review, comment or approval by the Authority or the Independent Engineer of any Project Agreement, Document or Drawing submitted by the Concessionaire nor any observation or inspection of the construction, operation or maintenance of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and

(b) the Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

48.7 Exclusion of implied warranties etc.

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

48.8 Survival

48.8.1 Termination shall:

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

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

arising out of such Termination.

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

48.9 Entire Agreement

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

48.10 Severability

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

48.11 No partnership

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

48.12 Third parties

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

48.13 Successors and assigns

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

48.14 Notices

Any notice or other communication to be given by any Party to the other Party under or

in connection with the matters contemplated by this Agreement shall be in writing and shall:

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

facsimile or e-mail to the number as the Concessionaire may from time to time designate by notice to the Authority;

Attention:

Designation:

Address:

Fax No:

Email:

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

Address:

Fax No:

Email:

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

48.15 Supplementary Agreement

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

48.16 Language

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

Agreement shall be in writing and in English language.

48.17 Counterparts

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

ARTICLE 49: DEFINITIONS

49.1 Definitions

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

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

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

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

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

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

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

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

(c) after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.42% (zero point four two per cent)[18] thereof at the commencement of each month following the 4th (fourth)

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

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

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

"**Appendix**" shall have the meaning set forth in Clause 10.3.1;

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

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

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

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

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

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

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

"**Authority Default**" shall have the meaning set forth in Clause 38.2.1

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

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

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

provided that the Average Daily Fee for any period prior to completion of the first

Accounting Year following COD shall be a simple average of the Fee collected every day during the period between COD and the last day of the month preceding the date on which the event requiring calculation hereof occurred;

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

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

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

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

"**Bid Security**" means the security provided by the Concessionaire to the Authority along with the Bid in a sum of Rs. ***** crore (Rupees ***** crore)[19], in accordance with the Request for Proposal, and which is to remain in force until substituted by the Performance Security;

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

(a) the enactment of any new Indian law;

(b) the repeal, modification or re-enactment of any existing Indian law;

(c) the commencement of any Indian law which has not entered into effect until the date of Bid;

(d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of Bid; or

(e) any change in the rates of any of the Taxes that have a direct effect on the Project;

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

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

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

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

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

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

"**Completion Certificate**" shall have the meaning set forth in Clause 14.2;

"**Concession**" shall have the meaning set forth in Clause 3.1.1;

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

"**Concession Fee**" shall have the meaning set forth in Clause 27.1

"**Concession Period**" means the period starting on and from the Appointed Date and ending on the Transfer Date;

"**Concessionaire Default**" shall have the meaning set forth in Clause 38.1.1;

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

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

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

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

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

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

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

"**Construction Period**" means the period beginning from the Appointed Date and

ending on the COD;

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

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

"**Covenant**" shall have the meaning set forth in Clause 5.2.4;

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

(a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;

(b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and

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

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

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

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

(a) the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the "principal") but excluding any part of the principal that had fallen due for repayment two years prior to the Transfer Date;

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

(c) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost;

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

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

"**Development Period**" means the period from the date of this Agreement until the Appointed Date;

"**Dispute**" shall have the meaning set forth in Clause 45.1.1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"**Fee**" means the charge levied on and payable for using the Project or a part thereof, in accordance with the Fee Rules and this Agreement;

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

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

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

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

"**Financial Package**" means the financing package indicating the total capital cost of Project and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements, Subordinated Debt and Equity Support, if any;

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

"**Force Majeure**" or "**Force Majeure Event**" shall have the meaning ascribed to it in Clause 35.1

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

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

"**GOI**" or "**Government**" means the Government of India;

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

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

"**Indemnified Party**" means the Party entitled to the benefit of an indemnity pursuant to Article 43;

"**Independent Engineer"** shall have the meaning set forth in Article 24;

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

"**Insolvency Event**" in respect of a Party means:

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

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

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

"**Insurance Cover**" means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 33, and includes all insurances required to be taken out by the Concessionaire under Clause 33.1 but not

actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

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

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

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

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

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

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

"**Maintenance Manual**" shall have the meaning ascribed to it in Clause 17.3;

"**Maintenance Programme**" shall have the meaning ascribed to it in Clause 17.4.1;

"**Maintenance Requirements**" shall have the meaning set forth in Clause 17.2;

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

"**Medical Aid Post** shall have the meaning set forth in Clause 21.1;

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

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

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

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

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

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

of the O&M obligations;

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

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

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

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

"**PHPDT**" or "**Peak Hour Peak Direction Traffic**" shall mean the maximum number of passengers traveling in the busiest direction during the busy hour of the day.

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

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

"**Passenger Charter**" shall have the meaning set forth in Clause 21.8;

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

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

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

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

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

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

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

"**Project Agreements**" means this Agreement, the Financing Agreements, EPC

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

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

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

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

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

"**Project**" means the [Development, Operation & Maintenance of Ropeway and Glass Bridge Skywalk at Bhadrakali Lake in Warangal on DBFOT mode for a period of 30 years] system built, or to be built, and operated on the Site and includes civil, mechanical and electrical works, signaling and telecommunication equipment, and all Project Assets, necessary for and associated with operation of ropeways and Glass Bridge Skywalk on the Site;

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

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

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

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

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

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

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

"**Request for Proposals**" or "**RFP**" shall have the meaning set forth in Recital

(C);

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

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

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

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

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

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

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

"**Scheduled Date**" shall have the meaning set forth in Clause12.4.1;

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

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

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

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

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

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

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

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

"**Statutory Auditors**" means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 1956 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 34.2.1

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

(a) the principal amount of debt provided by lenders or the Concessionaire's shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and

(b) all accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to [5% (five per cent)] above the

Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and [6 (six) month] LIBOR (London Inter-Bank Offer Rate) plus [2% (two per cent)] in case of loans expressed in foreign currency, but does not include any interest that had fallen due [1 (one) year] prior to the Transfer Date;

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

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

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

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

"**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;

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

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

"**Termination Payment**" means the amount payable, under and in accordance with this Agreement, by the Authority to the Concessionaire upon Termination, and includes Additional Termination Payment. For the avoidance of doubt, it is expressly agreed that the amount payable shall be subject to the limitations specified in Clause 38.3.

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

"**Total Project Cost**" means the capital cost incurred on construction and financing of the Project, and shall be limited to lowest of:

(a) the capital cost of the Project, {less Equity Support} as set forth in the Financial Package;

(b) the actual capital cost of the Project upon completion of the Project {less Equity Support}; and

(c) a sum of Rs. ***** crore (Rupees ***** crore), less Equity Support[21];

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

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

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

"**Vesting Certificate**" shall have the meaning set forth in Clause 39.4 and

"**WPI**" means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month, save and except that for the purposes of annual revision of Fee in accordance with the provisions of Clause 28.2.1, the revision due on April 1 of any year shall be computed with reference to WPI as on January 31 of that year.

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

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

SIGNED, SEALED AND DELIVERED
For and on behalf of
THE AUTHORITY by:

(Signature)
(Name)
(Designation)

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

In the presence of:

1.

2.

[$] To be affixed in accordance with the articles of association of the Concessionaire.