



## DIU SMART CITY LIMITED

CIN:U74999DD2018PLC009814

Fort Road, Diu 362520

Contact : +91 2875 252126

Email: [Diudscl@gmail.com](mailto:Diudscl@gmail.com)

NO. DMC/DIU/CONST/SMART CITY/2020-21/1561

Dated: 21-01-2021

Tender No. 27/2020-21/DSCL-Diu

The Chief Technical Officer, invites Proposal for the following work, on behalf of CEO, DSCL:

Sr. No	Name of work and Location	Tender Fee	EMD
1.	Development of Cable Car from Diu to Ghoghla, on Design, Build, Finance, Operate and Transfer (DBFOT) Basis under PPP Framework (3rd Call)	Rs. 10,000/-	Rs. 40,00,000/-

Note All details are available in RFP at [www.ddtender.com](http://www.ddtender.com)

1.	Downloading of RFP Documents	21/01/2021 to 11/02/2021 17:00 hrs
2.	Pre bid meeting	28/01/2021 16:00 hrs
3.	Date of Online submission	11/02/2021 18:00 hrs
4.	Date of Physical document submission	18/02/2021 17:00 hrs
5.	Date of online opening of technical bid	18/02/2021 17:30 hrs
6.	Date of opening of financial bid	To be communicated later
7.	Right to accept or reject any or the bids without assigning to any reason thereof is reserved by the undersigned.	

(Mridul Verma)

Chief Technical Officer

DSCL-Diu

Email:- [diudscl@gmail.com](mailto:diudscl@gmail.com)

Phone:- 02875 252126

# Development of Cable Car from Diu to Ghoghla, on Design, Build, Finance, Operate and Transfer (DBFOT) Basis under PPP Framework (3rd Call)

Volume I

## Request for Proposal



Tender No. 27/2020-21/DSCL-Diu

Bid due date: 11-02-2021

up to 18:00 hrs



Diu Smart City Limited  
C/o Diu Municipal Council  
Fort Road, Diu - 362520  
Contact : +91 2875 252126  
Email: [Diudscl@gmail.com](mailto:Diudscl@gmail.com)

# Diu Smart City Limited

Tender No. 27/2020-21/DSCL-Diu

Dated. 21/01/2021

## NOTICE INVITING TENDER

Diu Smart City Limited invites proposals from competent entity(ies) for the Development of Cable Car from Diu to Ghoghla, under Public Private Partnership framework on Design, Build, Finance, Operate and Transfer (DBFOT) Basis for a period of 30 (Thirty) years as per the details given in Bidding Documents.

The Bidding Documents may be downloaded from the website of <https://ddtenders.gov.in/>.

The Pre-Bid meeting for the Project shall be organized at the Office of Diu Smart City Limited, Diu At 1600 hours on 28/01/2021.

OR

Via video conferencing, this conference shall be secured by a password to join, and interested bidders may write to DSCL at diudscl@gmail.com, to obtain the meeting ID and password.

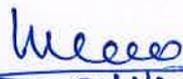
Interested bidders may submit their duly filled proposals in the prescribed format available on e-procurement website no later than 11/02/2021 up to 1800 Hrs.

The last date for submission of proposal in hardcopies shall be 18/02/2020 up to 1700 Hrs at the Office of Diu Smart City Limited, C/o Diu municipal council, Fort Road, Diu -362520.

All notifications, changes and amendments to the Bidding Document will be posted only on the website <https://ddtenders.gov.in/> and shall not be published in the newspapers.

Diu Smart City Limited shall have the right to reject one or all proposals and also cancel the bid process at any stage without assigning any reason whatsoever.

In case of any queries / clarifications on the project / documents please contact Diu Smart City Limited.

  
Chief Technical Officer  
Diu Smart City Limited

## DISCLAIMER

The information contained in this Request for Proposal document (the “RFP”) or subsequently provided to Bidder(s), whether verbally or in documentary or any other form, by or on behalf of the Transaction Authority or any of its employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

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

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

The Transaction Authority, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Bidder, under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way with selection of Bidders for participation in the Bidding Process.

The Transaction Authority also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP.

The Transaction Authority may, in its absolute discretion but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP.

The issue of this RFP does not imply that the Transaction Authority is bound to select and short-list Bids for Financial Bid Opening Stage or to appoint the selected Bidder or Concessionaire, as the case may be, for the Project and the Transaction Authority reserves the right to reject all or any of the Bids without assigning any reasons whatsoever.

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

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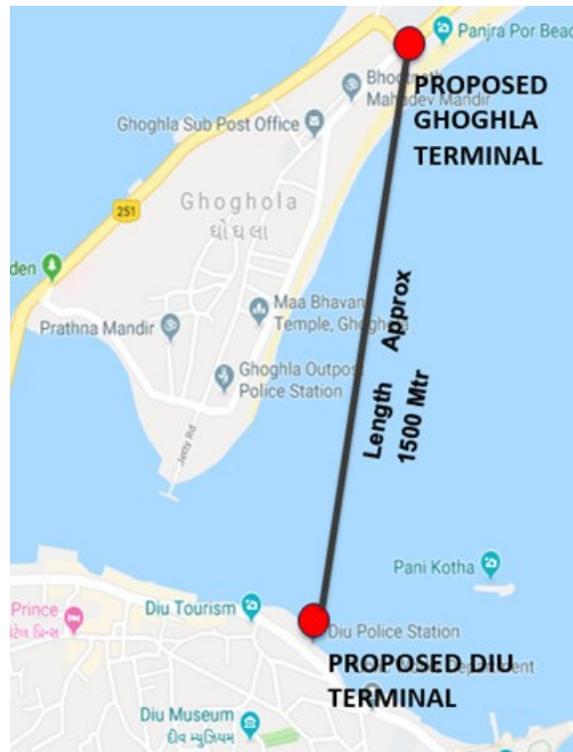
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# 1 Introduction

## 1.1 Background

The Diu Smart City Limited (“DSCL” or the “Transaction Authority”) is the nodal agency formed by the UT Administration of Daman and Diu for implementing Smart City proposal in Diu city. DSCL is engaged in the conceptualizing and development of infrastructure in the city of Diu through various development models. DSCL, as part of this endeavour is in the process of selection of a private developer to undertake development and operation & maintenance of the Cable Car System between Diu to Ghoghla (the “Project”) through Public-Private Partnership (PPP), and has, therefore, decided to carry out the bidding process for selection of the bidder to whom the Project may be awarded. A brief description of the Project may be seen in the Information Memorandum (the “Information Memorandum”) of the Project that is attached as Appendix XI of the RFP document.

As part of this endeavour, the Authority has decided to undertake the Development of Cable Car From Diu to Ghoghla, Diu, (the “Project Site”) on Design, Build, Finance, Operate and Transfer (the "DBFOT") basis under an appropriate Public Private Partnership framework for a period of 30 (Thirty) years (the “Project”).



Brief particulars of the Project are as follows:

Name of the Project	Length of Cable Car
<i>Development of Cable Car from Diu to Ghoghla, Diu Design, Build, Finance, Operate and Transfer Basis under PPP Framework.</i>	1500 meters (approx.)

The Authority intends to qualify and select suitable Bidders (the “**Bidder**”, which expression shall, unless repugnant to the context, include the Members of the Consortium/Joint Venture (JV)) through an open competitive bidding process in accordance with the procedure set out in this RFP document.

- 1.1.1 The selected Bidder, who is either a company (the “**Single Entity**”) or a group of Companies (the “**Consortium/JV**”) incorporated under the Companies Act, 1956/2013 undertakes to incorporate a Special Purpose Vehicle (“**SPV**”/ “**Concessionaire**”) under the Companies Act, 2013, prior to execution of the Concession Agreement (“**Concession Agreement**”). The SPV shall be responsible for Design, finance, construction and operation & maintenance of the project under and in accordance with the provisions of the concession agreement (the “**Concession Agreement**”) to be entered into between the Concessionaire and the Authority in the form provided by the Authority as part of the Bidding Documents pursuant hereto.
- 1.1.2 The Intended work is to provide connectivity through Cable Car from Diu to Ghoghla.

**The scope of works will be as follows:**

1. The Selected bidder has to prepare the concept plan for the development of Cable Car system as per their own design based on the alignment provided by DSCL, which includes the development of terminal station at both the locations i.e. Diu and Ghoghla and necessary columns/pillar.
2. The firm has to develop the Mono Cable Detachable Gondola System Ropeway as per BIS Standard or CEN (European) standards. In case of CEN (European) standards Manufacturing of Ropeway and associated support structure should be done in India as per the guideline of Niti Aayog.
3. The work includes development of terminal station at Diu and Ghoghla on the area allotted by DSCL (2,000 Sqm (1000 for each Terminal Station) or the actual area given), as per their own concept according to the development rules applicable in the DMC/ area. However bidder has to submit the plan and design of the terminals to DSCL for its approval.
4. The firm has to develop all the necessary infrastructure, required for the effective operation of Cable Car, dispersal of traffic, parking, cloak room, evacuation of people, maintenance/workshop area etc.
5. The Concessionaire has to provide necessary infrastructure for smooth passage between the proposed terminal stations for tourist to embark/ disembark.
6. The Concessionaire has to plan Cable Car system to connect between two terminal stations by fixing the span between two columns, number of columns and height of columns at all point as per their own concept and design. However Concessionaire has to submit the plan and design of the same to DSCL for its approval.
7. The alignment of the Cable Car is crossing over the navigational channel in Diu Harbour, where ship/Boat movement is frequent which has to be considered during the development of the Cable Car. The Concessionaire has to provide clearance of minimum 30 m between water (high tide level) and the bottom of Gondola after considering the sag as per the standards. The Concessionaire has to confirm the span considered in the channel and maximum sag considered by anticipating maximum traffic, the future load and clearance between cable car and ship and provide the same to DSCL for approval.
8. The Concessionaire has to design entire Cable Car system including civil design of terminal, columns, any other structure required as per their concept on their own cost. However it has to be approved by DSCL before implementation and execution.
9. The Concessionaire has to get final approval from DSCL for the entire Cable Car system after its development before the operation. The operation of the Cable Car system has to be carried out as per the BIS standards and safety standards rules approved by the government time to time till the concession period.

10. The terminal station developed at Diu and Ghoghla will have to be maintained properly to meet need of tourist as per the prevailing laws and regulation of the government.
11. The maintenance of entire Cable Car system has to be carried out as per the BIS standards and prevailing rules for safety and security laid down by the government time to time for entire concession period.
12. The Concessionaire has to provide safety mechanism (as per BIS Standards) in the entire Cable Car system to prevent any accident and mishaps during operation for entire concession period. Accordingly bidder has to submit the safety mechanism plan to DSCL in advance prior to start of operation.
13. The Concessionaire has to provide necessary security system (as per BIS Standards) from the terminal at Diu to terminal at Ghoghla to prevent any breach in the security. To achieve this the bidder has to plan security mechanisms such as, deployment of specialised personal at vantage points, CCTV security system, PA system, alarm system or any other system which he seems suitable at their own cost.
14. The Concessionaire has to plan for provision of evacuation system in case of stoppage of Cable Car in midway, breaking of wire rope, any failure in the column structure, failure in machinery, any problems in the cable car, etc. during the operation of Cable Car. The plan of evacuation system has to be submitted to DSCL for its approval.
15. The Concessionaire has to develop the entire Cable Car system in a way considering earthquake factor, so that any mishaps and accidents to public and damages to infrastructure are prevented during the operations.
16. As this Cable Car system is being developed in the sea area; equipment, cable cars, ropes are likely to corrode fast, hence the design should be adopted considering this factor and operation and maintenance should also be done considering the same.
17. The Concessionaire will have freedom for the pricing of tickets, however they have to take insurance for the tourist, insurance of the machinery, equipment, civil structures, etc.
18. The Concessionaire has to provide medical aid system at both the terminal stations by deploying ambulances, first aid, etc.
19. The Concessionaire has to provide efficient firefighting system for the entire Cable Car including terminals.
20. The Concessionaire has to submit operational manual, standard operating procedure, maintenance manual, overhauling system of the Cable Car, traffic dispersal system at Diu and Ghoghla, evacuation plan of people for both the terminal, firefighting system, medical aid system, security system, etc. for the approval of DSCL before the operation.
21. All the necessary statutory approvals needed for construction and operation have to be taken by the Concessionaire prior to the sanction of plan, during the construction period and operation of services, etc.
22. The Concessionaire has to take power connection directly from source, as required for the entire Cable Car system including both the terminal stations. DSCL may provide support to get power connection.
23. The Concessionaire has to provide alternate power source for existing system in case of emergency, with adequate numbers of generators at both the stations.
24. The Concessionaire has to arrange at their own cost- Information Network system, including telephone line, OFC cables, etc. as per their requirement.
25. The Concessionaire has to implement and execute any other works related to smooth operation and maintenance of entire Cable Car system during concession period as and when directed by DSCL on its own cost.

26. The Concessionaire has to arrange and develop a system to monitor weather (wind speed, rainfall, etc.) by liaising with Meteorological Department to ensure safe services.
  27. The Cable Car system should be mounted with modern cabins. The design and look of the cabins has to be presented to DSCL and the same shall be approved by DSCL for implementation.
  28. Advertisements for promoting the cable car system shall be undertaken by the Concessionaire and for the same DSCL may assist wherever required.
  29. Regular check-ups, safety audits and repairing of the necessary components of the cable car system are to be ensured on a periodic basis. The records of the same needs to be maintained for future assessments.
  30. The number of cabins for the cable car system to be more in couple of units to ensure smooth functioning of the service and also to ensure good quality cabins for customers. To achieve the same, regular checkups of the cabins are necessary.
- 
- 1.1.3 For the estimation of actual costs and technical and financial viability of the Project, the Bidder(s) may undertake a technical and financial feasibility study on their own. The cost and reliability of such study shall be the sole responsibility of the Bidder. The Selected Bidder (“**Concessionaire**”), shall be responsible for the design, construction, finance, operations and maintenance and transfer of the Project under and in accordance with the provisions of a Concession Agreement to be executed by the Concessionaire with the Authority. The Concession Agreement forms the Volume 2 of this RFP (the “**Concession Agreement**”) and shall be issued by the Authority as mentioned in the section 1.3. The assessment of actual costs will have to be made by the Bidders.
  - 1.1.4 The Authority shall receive Bids pursuant to this RFP in accordance with the terms set forth herein as modified, altered, amended and clarified from time to time by the Authority, and all Bids shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 for submission of Bids (the “**Bid Due Date**”).

- 1.1.5 The statements and explanations contained in this RFP are intended to provide a better understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of the performance obligations of the Concessionaire set forth in the Concession Agreement or the Authority's rights to amend, alter, change, supplement or clarify the scope of work or the Concession to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on such account shall be entertained by the Authority.

## 1.2 Brief description of Bidding Process

- 1.2.1 The Authority has adopted a single-stage two-cover system (collectively referred to as the "**Bidding Process**") for selection of the bidder for award of the Project which expression shall, unless repugnant to the context include the members of the Consortium/JV for the Project in accordance with the terms of this RFP. The first stage (the "**Qualification Stage**") of the process involves qualification (the "**Qualification**") of interested parties/ consortia that make a Bid in accordance with the provisions of this RFP (the "**Bidders**"). At the end of this stage, the Authority intends to announce a list of Qualified Bidders who shall be eligible for the second stage of the Bidding Process (the "**Bid Stage**") comprising the price Bid (the "**Price Bid**").

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

- 1.2.2 In the Bidding Stage, Bidders would be required to furnish all the information specified in this RFP. The Bid shall be valid for a period of not less than 180 (one hundred and Eighty) days from the Bid Due Date.
- 1.2.3 Under Submission 1 (the "**Qualification**"), the Bidders would be required to furnish the information for qualification specified in this RFP for the purpose of this project. Submission 2: Commercial Proposals will entail the '**Financial Offer**' to be quoted by bidders. Commercial Proposal of only those Bidders who are qualified by the Authority as per the criteria prescribed in accordance with Clause 3.4 of this RFP document will be evaluated, remaining Commercial Proposals of Bidders will be returned unopened.

- 1.2.4 In terms of the RFP, a Bidder will be required to deposit, along with its Bid, a bid security of Rs. 40,00,000/- (Rupees Forty Lakh only) (the “**Bid Security**”), which shall be refundable, except in the case of the selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the Concession Agreement. The Bidders will have an option to provide Bid Security in the form of a FDR or a bank guarantee acceptable to the Authority. Its validity period shall not be less than 240 (two hundred and forty) days from the Bid Due Date, and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.
- 1.2.5 During the Bid Stage, Bidders are invited to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the concession including implementation of the Project. As part of the Bidding Documents, the Authority will provide a draft Concession Agreement and other information pertaining/ relevant to the Project available with it.
- 1.2.6 Bids are invited for the Project on the basis of Annual Concession Fee payable to the Concessions Authority for award of the Concession (the “**Concession Fee**”). The Concession Fee shall be paid yearly throughout the Concession Period by way of in advance commencing from 2 (two) years from Effective Date or COD, whichever is earlier for the entire Concession Period in accordance with the terms of Concession Agreement. The Annual Concession Fee shall be increased by 5% yearly over the previous year’s Annual Concession Fee. The mode and manner of payment of Annual Concession Fee is specified in the draft Concession Agreement. The Concession Fee amount shall constitute the sole criteria for evaluation of Financial Bids.
- 1.2.7 In this RFP, the term “**Highest Bidder**” shall mean the Bidder who is offering the Concession Fee.
- 1.2.8 Generally, the Highest Bidder shall be the preferred Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in Section 3 of this RFP, be invited to match the Bid submitted by the Highest Bidder in case such Highest Bidder withdraws or is not selected for any reason. In the event that none of the other Bidders match the Bid of the Highest Bidder, the Authority may, in its discretion, either invite fresh Bids from the remaining Bidders or annul the Bidding Process.
- 1.2.9 Details of the process to be followed at the Bid Stage and the terms thereof are spelt out in this RFP.
- 1.2.10 Any queries or request for additional information concerning this RFP shall be submitted in writing by speed post/ courier/ special messenger and by e-mail so as to reach the officer designated in Clause 2.11 by the specified date. The envelopes/ communications shall clearly bear the following identification/ title:

Queries/ Request for Additional Information: RFP for “**Development of Cable Car from Diu to**

**Ghoghla, on Design, Build, Finance, Operate and Transfer Basis under PPP Framework”.**

**1.3 Schedule of bidding process**

The Authority shall endeavor to adhere to the following schedule:

Sr. No	Particular	Timeline
1.	Availability of Bid Documents at online portal	21/01/2021
2.	Last date for receiving queries	27/01/2021
3.	Pre-Bid meeting	28/01/2021
4.	Last date for submission of e Bids (“Bid Due Date”)	11/02/2021 up to 1800 hours
5.	Date and time of opening of Technical e Bids	18/02/2021 at 1730 hours Venue: Diu Smart City Ltd. C/o Diu Municipal council Fort Road, Diu-362520
6.	Date and time of opening of Price Bids	To be intimated
7.	Address for communication to the Authority	Address: Chief Technical Officer Diu Smart City Ltd. C/o Diu Municipal council Fort Road, Diu-362520
8.	Validity of Bids	180 days from the Bid Due Date
9.	Issuance of Letter of Award (LOA)	30 days from the from the date of declaration of the Selected Bidder
10.	Signing of Concession Agreement	Within 45 days from the date of award of LOA to the Selected Bidder

**1.4 Pre-Bid Conference**

The date, time and venue of the Pre-Bid Conference shall be:

Date: 28/01/2021 Time: 16:00 hrs

Address: Diu Smart City Ltd.

C/o Diu Municipal council

Fort Road, Diu-362520

OR

Via video conferencing, this conference shall be secured by a password to join, and interested bidders may write to DSCL at diudscl@gmail.com, to obtain the meeting ID and password.

## 2 Instruction to Bidders

### GENERAL

#### 2.1 General terms of Bidding

- 2.1.1 No Bidder shall submit more than one Bid for the Project. A Bidder applying individually or as a Member of a Consortium/JV shall not be entitled to submit another Bid either individually or as a Member of any Consortium/JV, as the case may be.
- 2.1.2 The Bidders are expected to carry out their own surveys, investigations and other detailed examination of the Project before submitting their Bids. Nothing contained in the Bidding Documents shall be binding on the Authority nor confer any right on the Bidders, and the Authority shall have no liability whatsoever in relation to or arising out of any or all contents of the Bidding Documents.
- 2.1.3 Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the draft Concession Agreement shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the draft Concession Agreement.
- 2.1.4 The Bid should be furnished in the formats as specified in the RFP and signed by the Bidder's authorized signatory. The Successful Bidder may be subsequently invited for award of the Concession. The Bidders should note that the formats specified in the RFP have been provided for the convenience of the Bidders and may not exhaustively enumerate or describe various information required to be provided by the Bidders under the Bidding Documents. The Bidders should ensure that all the information required to be provided by it in terms of the Bidding Documents is included in its Bid whether or not a particular format specified herein makes provision for submission of such information and/or whether or not a format for submission of such information is incorporated in the Bidding Documents.
- 2.1.5 The Bidder shall transfer a Bid security of Rs. 40,00,000/- (Rupees Forty Lakh only) in accordance with the provisions of this RFP for the Bid submitted ("**Bid Security**").
- 2.1.6 The Bidder in case of Single Entity should submit a Power of Attorney as per the format at Appendix-II, authorizing the signatory of the Bid to commit the Bidder.
- 2.1.7 In case the Bidder is a Consortium, the Members thereof should furnish a Power of Attorney in favour of the Lead Member in the format at Appendix-III.

- 2.1.8 Any condition or qualification or any other stipulation contained in the Bid which is inconsistent with the terms of the Bidding Documents shall render the Bid liable to rejection as a non-responsive Bid.
- 2.1.9 The Bid and all communications in relation to or concerning the Bidding Documents and the Bid shall be in English language. Supporting documents and printed literature furnished by the Bidder with the Bid may be in any other language provided that they are accompanied by appropriate translations of the pertinent passages in the English language, duly authenticated and certified by the Bidder. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Bid, the English language translation shall prevail.
- 2.1.10 The Bidding Documents including this RFP, draft Concession Agreement and other documents which may be issued at a later stage including replies to queries, addendum etc., provided by the Authority are and shall remain or become the property of the Authority and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance with the Bidding Documents. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause 2.1.10 shall also apply *mutatis mutandis* to Bids and all other documents submitted by the Bidders, and the Authority will not return to the Bidders any Bid, document or any information provided along therewith.
- 2.1.11 A Bidder shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. Any Single Entity found to have a Conflict of Interest shall be disqualified and in case of a Consortium/JV, refer to Clause 2.2.3 for replacing Consortium/JV Member suffering from Conflict of Interest. In case of Consortium/JV, if the Bidder is not able to replace the Consortium/JV Member suffering from Conflict of Interest as per Clause 2.2.3, then the Bidder shall be disqualified. In the event of disqualification, the Authority shall be entitled to forfeit and appropriate the Bid Security and/or Performance Security, as the case may be, as liquidated damages( “the Damages”), without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/or the Concession Agreement or otherwise. Without limiting the generality of the above, determining the Conflict of Interest shall be the prerogative of the Authority.
- 2.1.12 Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
- i. the Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Member or an Associate

- thereof (or any shareholder thereof having a shareholding of more than 5% (five per cent) of the paid up and subscribed share capital of such Bidder, Member or Associate, as the case may be) in the other Bidder, its Member or Associate, is less than 5% (five per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in section 2(72) of the Companies Act, 2013. For the purposes of this Clause 2.1.12, indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “**Subject Person**”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% (twenty six percent) of the subscribed and paid up equity shareholding of such intermediary; or
- ii. a constituent of such Bidder is also a constituent of another Bidder;
  - iii. such Bidder, its Member or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, its Member or Associate, or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Associate thereof;
  - iv. such Bidder has the same legal representative for purposes of this Bid as any other Bidder;
  - v. such Bidder, or any Associate thereof, has a relationship with another Bidder, or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each other’s’ information about, or to influence the Bid of either or each other; or
  - vi. Such Bidder or any Associate thereof has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.

*Explanation:*

In case a Bidder is a Consortium/JV, then the term Bidder as used in this Clause 2.1.12, shall include each Member of such Consortium/JV. For purposes of this RFP, Associate means, in relation to the Bidder/Member, a person who controls, is controlled by, or is under the common control with such Bidder/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, or the power to appoint majority of the directors on the board of directors of such company or corporation and/or the power to direct the management and policies of such person by operation of law, agreement or otherwise and with respect to a person which is not a company or corporation, the power to

direct the management and policies of such person by operation of law, agreement or otherwise.

- 2.1.13 A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical advisor of the Authority in relation to the Project is engaged by the Bidder, its Members or any Associate thereof, as the case may be, in any manner for matters related to or incidental to such Project during the Bidding Process or subsequent to the (i) issue of the LOA or (ii) execution of the Concession Agreement. In the event any such advisor is engaged by the Selected Bidder or Concessionaire, as the case may be, after issue of the LOA or execution of the Concession Agreement for matters related or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LOA or the Concession Agreement and without prejudice to any other right or remedy of the Authority, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which the Authority may have thereunder or otherwise, the LOA or the Concession Agreement, as the case may be, shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Selected Bidder or Concessionaire for the same. For the avoidance of doubt, this disqualification shall not apply where such advisor was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of RFP for the Project. Nor will this disqualification apply where such advisor is engaged after a period of 3 (three) years from the date of signing of this Concession Agreement.

## **2.2 Composition of the Consortium/JV**

- 2.2.1 The Consortium can have a maximum of 2 (Two) members. This clause 2.1.1 shall be applicable throughout the Concession Period.
- 2.2.2 Change in the composition of a Consortium/JV will not be permitted after submission of the Bids;
- 2.2.3 A Bidder may, within 10 (ten) days after the Bid Due Date, remove from its Consortium/JV any Member who suffers from a Conflict of Interest, and such removal shall be deemed to cure the Conflict of Interest arising in respect thereof. The Bidder shall ensure the substitute is at least equal, in terms of Technical Capacity, to the Consortium/JV Member who is sought to be substituted and the modified Consortium/JV shall continue to meet the qualification and short-listing criteria for Bidders. The modified/ reconstituted Consortium/JV shall submit a revised Jt. Bidding Agreement within 10 (ten) days after removal of Consortium/JV Member who suffers from a Conflict of Interest, substantially in the form at Appendix-IV.

- 2.2.4 Approval for change in the composition of a Consortium/JV shall be at the sole discretion of the Authority and must be approved by the Authority in writing.
- 2.2.5 The Consortium/JV shall submit a Power of Attorney and, a Joint Bidding Agreement substantially in the form at Appendix-III and Appendix-IV respectively along with the Bid, prior to the Bid Due Date. Except as provided under this RFP and the Bidding Documents, there shall not be any amendment to the Joint Bidding Agreement without prior written consent of the Authority. The Joint Bidding Agreement, to be submitted along with the Bid, shall, inter alia:
- a) convey the intent to form an SPV with shareholding/ownership equity commitment(s) in accordance with this RFP, which would enter into the Concession Agreement and subsequently carry out all the responsibilities as Concessionaire in terms of the Concession Agreement, in case the right to undertake the Project is awarded to the Consortium/JV;
  - b) clearly outline the proposed roles and responsibilities, if any, of each Member;
  - c) commit the minimum equity stake to be held by each Member;
  - d) Minimum 26% equity is must in Consortium/JV to be considered for experience;
  - e) no member of Consortium/JV whose technical and financial capacity was evaluated for the purpose of qualifications in response to Request for Proposal shall hold until expiry of 2 years after COD less than
    - i. 26% of subscribed and paid up equity of the SPV;
    - ii. 5% of the Total Project Cost specified in the Concession Agreement.
  - f) the Lead Member shall hold equity share capital not less than 51% (fifty one percent) of the subscribed and paid up equity share capital of the SPV until expiry of two (2) years after COD;
  - g) lead member of the Consortium/JV undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity of the SPV at all times until the completion of commercial operation of the Project; and
  - h) Include a statement to the effect that all Members of the Consortium/JV shall, be liable jointly and severally for all obligations of the Concessionaire in relation to the Project until the expiry of the Concession Agreement.

## 2.3 Lock in period and Change in Ownership

- 2.3.1 By submitting the Bid, the Bidder acknowledges that, in case the Bidder is a single entity, it shall be required to form the SPV, to execute the Concession Agreement and implement the Project and shall ensure that the Bidder holds at least 51% (fifty one percent) of the subscribed and paid up equity of the SPV until expiry of two (2) years after COD.
- 2.3.2 By submitting the Bid, the Bidder acknowledges that, in case the Bidder is a Consortium/JV it shall, in addition to forming a SPV, comply with the following additional requirements:
- a) the Lead Member, as defined in the RFP, ("**Lead Member**"), who shall have an equity share holding of at least 51% (fifty one percent) of the paid up and subscribed equity of the SPV until

- expiry of two (2) years after COD. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix IV, signed by all the other members of the Consortium/JV;
- b) each of the members, whose experience has been evaluated for Technical Capacity and the Financial Capacity for the purposes of this Bid, shall individually subscribe to 26% (twenty six percent) or more of the paid up and subscribed equity of the SPV until expiry of two (2) years after COD
  - c) The Concessionaire shall ensure that the Bidder/ members of the Consortium/JV maintain Management Control at least until expiry of the two (2) years after COD as also maintain their equity holding in the Concessionaire such that:
    - a. Selected Bidder/Consortium Members together with its/their Associates hold not less than 51% (Fifty One Percent) of its issued and paid up equity and that no member of Consortium whose technical and financial capacity was evaluated for the purposes of qualifications in response to Request for Proposal shall hold less than 26% (Twenty Six Percent) of such equity until expiry of two (2) years after COD. At any time, after expiry of the aforesaid share holding period, lead member can approach Authority for approval proposing a new entity/ consortium. Authority may at its sole discretion consider and approve it subject to the entity/consortium meeting the eligibility criteria as prescribed in Bid Document for the Project; and
    - b. **“Lead Member”** of the Consortium/JV (original or new as the case may be) legally and beneficially holds at any time not less than 51% (fifty one percent) of the Consortium’s holding in the paid up equity capital of the Concessionaire. Any Transfer of shareholding in the Concessionaire and/or direct or indirect change in the Management Control of the Concessionaire, including by way of a restructuring or amalgamation, shall only be with the prior written approval of the Concessioneing Authority which consent shall not be withheld except (i) for reasons of national security; or (ii) [if the Person proposed for assuming such Management Control would by virtue of the restrictions imposed under the Applicable Law or the conditions of bidding (including restrictions to avoid anti-competitive and monopolistic practice) and/or public policy be disqualified from undertaking the Project.]

2.3.3 By submitting the Bid, the Bidder shall also be deemed to have acknowledged and agreed that in the event of a change in control of a Consortium Member or an Associate whose Technical Capacity, Financial Capacity and/ or the O&M Experience was taken into consideration for the purposes of qualification under and in accordance with the RFP, the Bidder shall be deemed to have knowledge of the same and shall be required to inform the Authority forthwith along with all relevant particulars about the same and the Authority may, in its sole discretion, disqualify the Bidder or withdraw the LOA from the Selected Bidder, as the case may be. In the event such change in control occurs after signing of the Concession Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement, and the same shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Concessionaire. In such an event, notwithstanding anything to the contrary contained in the Concession Agreement, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement or otherwise.

## **2.4 Cost of Bidding**

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

## **2.5 Site visit and verification of information**

2.5.1 Bidders are encouraged to submit their respective Bids after visiting the Project site and ascertaining for themselves the site conditions, baseline of assets, location, surroundings, climate, availability of power, handling and storage of materials, applicable laws and regulations, and any other matter considered relevant by them.

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

- a. made a complete and careful examination of the Bidding Documents;
- b. received all relevant information requested from the Authority;
- c. accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Authority relating to any of the matters referred to in Clause 2.5.1 above;
- d. satisfied itself about all matters, things and information including matters referred to in Clause 2.5.1 hereinabove necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations thereunder;

- e. acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.5.1 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Authority, or a ground for termination of the Concession Agreement by the Concessionaire;
  - f. acknowledged that it does not have a Conflict of Interest; and
  - g. agreed to be bound by the undertakings provided by it under and in terms hereof.
- 2.5.3 The Authority shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to RFP, the Bidding Documents or the Bidding Process, including any error or mistake therein or in any information or data provided by the Authority.
- 2.5.4 The Bidder shall continue to be responsible for all claims and declarations made under its Bid for the entire Bidding Process and if selected under the Bid Process as Successful Bidder, throughout the Concession Period.

## **2.6 Verification and Disqualification**

- 2.6.1 The Authority reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP or the Bidding Documents and the Bidder shall, when so required by the Authority, make available all such information, evidence and documents as may be necessary for such verification. Any such verification or lack of such verification by the Authority shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Authority thereunder.
- 2.6.2 Without prejudice to Clause 2.24.4, the Authority reserves the right to reject any Bid and appropriate the Bid Security if:
- a. at any time, a material misrepresentation is made or uncovered, or
  - b. the Bidder does not provide, within the time specified by the Authority, the supplemental information sought by them for evaluation of the Bid.

Such misrepresentation/ improper response shall lead to the disqualification of the Bidder. If the Bidder is a Consortium/JV, then the entire Consortium/JV and each Member may be disqualified/ rejected. If such disqualification/ rejection occurs after the Bids have been opened and the Successful Bidder gets disqualified/ rejected, then the Authority reserves the right to invite a Bidder amongst the qualified Bidders in order of their rank in accordance with Clause 3.5.

- 2.6.3 In case it is found during the evaluation or at any time before signing of the Concession Agreement or after their execution and during the period of subsistence thereof, including the Concession thereby granted by the Authority, that one or more of the qualification conditions have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Concessionaire either by issue of the LOA or entering into of the Concession Agreement, and if the Successful Bidder has already been issued the LOA or has entered into the Concession Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Authority to the Successful Bidder or the Concessionaire, as the case may be, without the Authority being liable in any manner whatsoever to the Successful Bidder or Concessionaire. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as liquidated damages, without prejudice to any other right or remedy that may be available to it under the Bidding Documents and/or the Concession Agreement, or otherwise.
- 2.6.4 The Bidder acknowledges and agrees that provisions of this RFP which by their nature or subject matter are intended to survive the completion of the Bidding or to apply throughout the Concession Period shall continue to survive and bind the Bidders throughout the Concession Period.

## **2.7 Other Provisions**

- 2.7.1 Notwithstanding anything to the contrary contained herein, in the event that the Bid Due Date falls within three months of the closing of the latest financial year of a Bidder, it shall ignore such financial year for the purposes of its Bid and furnish all its information and certification with reference to the 1 (one) year, preceding its latest financial year. For the avoidance of doubt, financial year shall, for the purposes of a Bid hereunder, mean the accounting year followed by the Bidder in the course of its normal business.
- 2.7.2 Any entity which has been barred by the Central/ State/UT Government, or any entity controlled by it, from participating in any project (PPP or otherwise), and the bar subsists as on the date of Bid, would not be eligible to submit a Bid, either individually or as member of a Consortium/JV.

- 2.7.3 A Bidder including any Consortium/JV Member or Associate should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder, Consortium/JV Member or Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder, Consortium/JV Member or Associate. Provided, however, that where a Bidder claims that its disqualification arising on account of any cause or event specified in this Clause 2.7.3 is such that it does not reflect (a) any malfeasance on its part in relation to such cause or event; (b) any willful default or patent breach of the material terms of the relevant contract; (c) any fraud, deceit or misrepresentation in relation to such contract; or (d) any rescinding or abandoning of such contract, it may make a representation to this effect to the Authority for seeking a waiver from the disqualification hereunder and the Authority may, in its sole discretion and for reasons to be recorded in writing, grant such waiver if it is satisfied with the grounds of such representation and is further satisfied that such waiver is not in any manner likely to cause a material adverse impact on the Bidding Process or on the implementation of the Project.
- 2.7.4 This RFP is not transferable.
- 2.7.5 Any award of Concession pursuant to this RFP shall be subject to the terms of the Bidding Documents.

## **2.8 Appointment of Independent Engineer**

- 2.8.1 The Authority shall appoint a consulting engineering firm, 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 2 (Two) 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 2 (two) years, and such procedure may be repeated after expiry of each appointment. The Independent engineer during project implementation/ construction phase shall be the PMC already engaged by DSCL for Diu Smart City project.

If desired, by the Independent Engineer for monitoring the quality of works which is executed as per Indian standards, he may assign this work on his behalf to the reputed firms locally to carry out inspection, testing in accordance with Indian Codes.

## **2.9 Appointment of Independent Auditor**

- 2.9.1 Irrespective of auditor appointment by Concessionaire, separate Independent Auditor may be appointed by the Authority to check the books of accounts of the Concessionaire. The Concessionaire has to allow and permit to check all the transactions details, fees received, expenses, costs, realizations, which the auditors are required to do, undertake or certify. All fees and expenses of the Independent Auditor shall be borne by the Authority.
- 2.9.2 Safety Guarantee Audit – The Concessionaire should carry out safety guarantee audit every 6 months and submit Safety Certificates to the Authority. If not, it will be considered as an event of default. Safety Auditor will be appointed as per Schedule I of DCA but the firm/ individual appointed as an Independent Engineer for this project should not be appointed as Safety Auditor.

## **DOCUMENTS**

### **2.10 Contents of the RFP**

- 2.10.1 This RFP comprises the disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.12 and any clarifications and interpretations issued in accordance with Clause 2.11.

Notice Inviting Tenders

Disclaimer

Section 1. Introduction

Section 2. Instructions to Bidders

Section 3. Evaluation of Bids

Section 4. Fraud & Corrupt Practices

Section 5. Pre Bid Conference

Section 6. Miscellaneous

#### **Appendices**

- I. Appendix I: Annex I : Letter for Bid  
Appendix I: Annex II: Details of Bidder  
Appendix I: Annex III: Statement of Legal Capacity  
Appendix I: Annex IV: Bank Guarantee for Bid Security
- II. Appendix II: Power of Attorney for signing of Bid
- III. Appendix III: Power of Attorney for Lead Member of Consortium

- IV. Appendix IV: Joint Bidding Agreement for Consortium
- V. Appendix V: Anti-Collusion Certificate
- VI. Appendix VI: Annex I: Format of Financial Capacity for purpose of evaluation  
Appendix VI: Annex II: Format of Technical Capacity for purpose of evaluation  
Appendix VI: Annex III: Details of Eligible Projects
- VII. Appendix VII: Format of Commercial Proposal
- VIII. Appendix VIII: Guidelines of the Department of Disinvestment
- IX. Appendix XI: Project Information Memorandum

2.10.2 Draft Concession Agreement.

## 2.11 Clarifications

2.11.1 Bidders requiring any clarification on the RFP may notify the Authority in writing in accordance with below given table. They should send in their queries on or before the date mentioned in the Schedule of Bidding Process specified in Clause 1.3.

Sl. No	Clause No.	Existing Provision	Clarification Required	Suggested Text for Amendment

2.11.2 Any queries or request for additional information concerning this RFP shall be submitted through speed post/courier/special messenger and by e-mail ([diudscl@gmail.com](mailto:diudscl@gmail.com)) to the officer by the specified date. The envelopes/ communications shall clearly bear the following identification/title: “Queries/Request for Additional Information: **“Development of Cable Car from Diu to Ghoghla on Design, Build, Finance, Operate and Transfer Basis under PPP Framework”**” The queries should be sent to:

The Chief Technical Officer, Diu Smart City Ltd, C/o Diu Municipal council, Fort Road, Diu, - 362520, e-mail - [diudscl@gmail.com](mailto:diudscl@gmail.com)

- 2.11.3 The Authority shall endeavor to respond to the questions raised or clarifications sought by the Bidders. However, the Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Authority to respond to any question or to provide any clarification including within any specified time limit. All the queries and its responses thereto, shall be hoisted on the website.
- 2.11.4 The Authority however reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Authority to respond to any question or to provide any clarification.
- 2.11.5 The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by the Authority or its employees or representatives shall not in any way or manner be binding on the Authority.

## **2.12 Amendment of RFP**

- 2.12.1 At any time prior to the Bid Due Date, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of an addendum to the RFP.
- 2.12.2 Any addendum issued hereunder will be published on the e-procure website.
- 2.12.3 In order to afford the Bidders a reasonable time for taking an addendum into account, or for any other reason, the Authority may, in its sole discretion, extend the Bid Due Date.

## **PREPARATION AND SUBMISSION OF BIDS**

### **2.13 Format and Signing of Bid**

- 2.13.1 The Bidder shall in its Bid provide all the information sought under the Bidding Documents. The Authority will evaluate only those Bids that are received in the required formats and complete in all respects.
- 2.13.2 The Bid shall be typed or written in indelible ink and signed by the authorized signatory of the Bidder who shall also initial each page, in blue ink. In case of printed and published documents, only the cover shall be initialed. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialed by the person(s) signing the Bid. The Bid shall contain page numbers.

- 2.13.3 Bidders should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient.; Alternatively, Bidders may format the prescribed forms making due provision for incorporation of the requested information;
- 2.13.4 The information supplied by a Bidder (or other constituent Member if the Bidder is a Consortium) must apply to the Bidder, Member named in the Bid and not, unless specifically requested, to other associated companies or firms;

## 2.14 Uploading of Bids

- 2.14.1 The interested bidders (“Bidders”) are being called upon to submit their technical and financial capacity details in Cover-1 at the e-tendering website (“Qualification”) as per relevant Appendix mentioned in Clause 2.15 and financial proposals in the format at Appendix-VII in Cover-2 at the e-tendering website (“Commercial Proposal”) (both shall collectively have referred as “Bid”) in accordance with the terms specified in these Bidding Documents. The Bid shall be valid for a period of 180 (one hundred and eighty) days from the Bid Due Date. The Bidders shall submit their respective Bids online at the e procure website (<https://ddtenders.gov.in/>) only. Any bid submitted in physical form shall be rejected by the Authority. For the purpose of submission of the Bid online, a Bidder shall first register itself on the e-tendering website.
- 2.14.2 Each Bid shall have to be prepared and submitted in accordance with provisions of this RFP. Thus the Bid shall comprise of 2 (two) submissions:
- Submission 1: Technical Proposal (Qualification)  
Submission 2: Commercial Proposal  
The Bid shall be in accordance with Clause 2.14.
- 2.14.3 The documents for each Submission as per Clause 2.14.2, should be uploaded by the Bidders in the form of PDF files in the same order as mentioned below, on the e-tendering website during the online Bid Preparation stage. Also two physical copies of technical proposal required to be submitted at Diu Smart City office on or before the Bid Due Date. In case of any discrepancy of information between online and physical submission, then online submission shall be final.

## 2.15 Submission 1: Technical Proposal (Qualification)

- a. A Bidder is required to deposit, along with its Bid, a bid security of Rs. 40,00,000/- (Rupees Forty Lakh only) (the “**Bid Security**”), which is refundable, except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security as mentioned in the Concession Agreement. The Bidders will have to provide Bid Security in the form of a bank guarantee acceptable from the any Scheduled Commercial Bank in India preferably a nationalized Bank to the Authority, in the format specified in Appendix-I Annex IV or the FDR from the any Scheduled Commercial Bank in India preferably a nationalized bank Payable at Diu. The validity

period of bank guarantee shall not be less than 240 (two hundred forty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.

- b. Bid in the prescribed format (Appendix I to Appendix VIII) along with Annexes and supporting documents should be submitted for technical eligibility and Appendix – VII for Commercial proposal to be submitted separately (Online only);
- c. Power of Attorney for signing of Bid in the format at Appendix-II;
- d. If applicable, the Power of Attorney for Lead Member of Consortium in the format at Appendix-III;
- e. If applicable, the Joint Bidding Agreement between the Members of Consortium in the format at Appendix-IV;
- f. Anti-Collusion Certificate in the format at Appendix V;
- g. Certified true copy of the incorporation certificate of the Single Entity Company. In the case of a Consortium, certified true copy of the incorporation certificate of each of the Members of the Consortium companies; and
- h. Bidding Documents signed by the authorized signatory of the Bidder.
- i. If Bidder is willing to add any additional facilities for passengers, tourists or for revenue generation the same may submitted with detailed drawings and brief scheme
- j. Draft Concession Agreement/RFP duly signed on every page by the Bidder should be submitted along with technical proposal.

#### **Submission 2: Commercial Proposal**

- a. The Commercial Proposal shall be submitted in the format specified at Appendix VII.
- b. It may be noted that Bids of Bidders, which do not contain the Commercial Proposal as specified in the RFP, would be considered as invalid and liable for rejection.

2.15.1 All eligible/interested Bidders are required to be enrolled on portal "<https://ddtenders.gov.in/>" before downloading tender documents and participate in e-tendering.

2.15.2 Other instructions can be seen in the tender form. All or any one of the tender may be rejected by competent authority.

2.15.3 Bidders will have to pay cost of Tender Document through Demand Draft of Rs 10,000/- (Rupees Ten thousand only) including all taxes towards the non-refundable Tender Fee. The payment of Tender fee is to be made in favour of "**Chief Executive Officer, DSCL, Diu**" on any Scheduled/Nationalized Bank having its branch at Diu. The same shall be submitted along with the Bid Security prior to the bid due date, failing which the offer of the firm will be left out of consideration. The downloading of the tender documents shall be carried out strictly as provided on the web site. No editing, addition / deletion of matter shall be permitted. If such action is observed at any stage, such offer is liable for outright rejection.

2.15.4 For a bidder, online bidding process consists of following 3 stages:

1. Online Tender Document Download
2. Online Bid Preparation- Technical
3. Online Bid Submission- Commercial

All of 3 stages are mandatory in order for Bidders to successfully complete Online Bidding Process.

## **2.16 Bid Due Date**

2.16.1 Bids should be submitted as per the schedule provided in Clause 1.3 and in the manner provided in Clause 2.13 and Clause 2.14 and in form as detailed in the Bidding Documents.

2.16.2 The Authority may, in its sole discretion, extend the Bid Due Date by issuing an addendum in accordance with Clause 2.12 uniformly for all Bidders.

## **2.17 Late Bids**

2.17.1 Bids will not be accepted by the e-tendering system (or the Authority) after the specified time on the Bid Due Date under any circumstances.

## **2.18 Contents of the Bid (Commercial Proposal)**

2.18.1 Without prejudice to the other provisions of the Bidding Documents, the Bid shall be furnished in the format at Appendix-VII, and shall consist of an Annual Concession Fee, offered to the Authority to be quoted by the Bidder to undertake the Project in accordance with this RFP and the provisions of the Concession Agreement. The Bidder shall pay to the Authority in advance of every Year.

2.18.2 Deleted

2.18.3 Generally, the Project will be awarded to the Highest Bidder.

2.18.4 The opening of Bids and acceptance thereof shall be substantially in accordance with the Bidding Documents.

2.18.5 The draft Concession Agreement enclosed with this RFP shall be deemed to be part of the Bid.

## **2.19 Modifications/Substitution/Withdrawal of Bids**

2.19.1 The Bidder may modify, substitute or withdraw its Bid after submission, provided that written notice of the modification, substitution or withdrawal is received by the Authority prior to the Bid Due Date. No Bid shall be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date.

## **2.20 Rejection of Bids**

2.20.1 Notwithstanding anything contained in this RFP, the Authority reserves the right to reject any Bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

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

## **2.21 Validity of Bids**

2.21.1 The Bids shall be valid for a period of not less than **180 (one hundred and eighty) days from the Bid Due Date**. The validity of Bids may be extended by mutual consent of the respective Bidders and the Authority.

## **2.22 Confidentiality**

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

## **2.23 Correspondence with the Bidder**

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

## **2.24 Bid Security**

- 2.24.1 The Bidder shall furnish as part of its Bid, the Bid Security of Rs. 40,00,000/- (Rupees Forty Lakh only) must be submitted in sealed envelope along with the hard copy of Submission 1: Qualification prior to the bid due date.
- 2.24.2 Any Bid not accompanied by the Bid Security shall be summarily rejected as non-responsive.
- 2.24.3 The Bid Security of the Bidder not qualifying in the Technical eligibility will be returned without any interest as promptly as possible.

The Bid Security of unsuccessful Bidders will be returned, without any interest, as promptly as possible after execution of the LOA by the Selected Bidder or when the Bidding Process is cancelled.

- 2.24.4 The Selected Bidder's Bid Security will be returned, without any interest, upon the signing the Concession Agreement and furnishing the Performance Security. The Authority shall retain the Bid Security of the Selected Bidder until the execution of the Concession Agreement and furnishing of the Performance Security. The Performance Guarantee shall be for a sum of Rs. 1.2 Crore (Rupees One Crore twenty Lakh only) for the initial 24 (Twenty Four) months after COD and thereafter sum of Rs. 60 Lakh (Rupees Sixty Lakh only). Till such time the Concessionaire provides to Concessions Authority the Performance Security pursuant hereto, the Bid Security shall remain in full force and effect.
- 2.24.5 The Authority shall be entitled to forfeit and appropriate the Bid Security as liquidated damages *inter alia* in any of the events specified in Clause 2.24.6 herein below and pursuant to other provisions of this RFP providing for a forfeiture of Bid Security. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the Authority will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid validity as specified in this RFP. No relaxation of any kind on Bid Security shall be given to any Bidder.
- 2.24.6 The Bid Security shall be forfeited as liquidated damages without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or under the Concession Agreement, or otherwise, under the following conditions:
- a. If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Section 4 of this RFP;
  - b. If a Bidder modifies or substitutes (without the prior written approval of the Authority) or withdraws its Bid during the period of Bid validity as specified in this RFP and as extended in accordance with the terms of the Bidding Documents; or
  - c. In the case of Selected Bidder, if within the specified time limit –
    - i. it fails to sign and return the duplicate copy of LOA;
    - ii. it fails to incorporate the SPV or such SPV fails or refuses to sign the Concession Agreement;

- iii. the SPV fails to provide the Performance Security in accordance with the Bidding Document;
- iv. the Successful Bidder fails or refuses to provide any documents required to be provided by it after its selection;
- v. the Successful Bidder, having signed the Concession Agreement, commits any breach thereof prior to furnishing the Performance Security.

## 3 Evaluation of Bids

### 3.1 Opening and Evaluation of Bids

- 3.1.1 The Authority will examine and evaluate the Bids in accordance with the provisions set out in this Section 3.
- 3.1.2 To facilitate evaluation of Bids, the Authority may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid and such Bidder shall provide its response within the time period specified by the Authority in this regard.

### 3.2 Tests of responsiveness

- 3.2.1 Prior to evaluation of Bids, the Authority shall determine whether each Bid is responsive to the requirements of this RFP. A Bid shall be considered responsive only if:
- a. it is received as per the format specified in this document for Technical proposal;
  - b. it is received by the Bid Due Date including any extension thereof pursuant to Clause 2.16.2;
  - c. it is signed, marked and uploaded as stipulated in Clauses 2.13, 2.14 and 2.15;
  - d. the Bid Security and tender fee is paid as specified in Clause 2.1.5 and 2.15.3 respectively;
  - e. it is accompanied by the Power(s) of Attorney as specified in Clauses 2.1.6 and 2.1.7, as the case may be;
  - f. it contains certificates from its statutory auditors/chartered accountant in the formats specified at Appendix VI of the RFP;
  - g. it contains all the information (complete in all respects) as requested in this RFP and/or Bidding Documents (and if formats have been specified, then in those formats);
  - h. it contains the Bidding Documents signed by the authorized signatory of the Bidder;
  - i. it does not contain any condition or qualification; and
  - j. it is not non-responsive or inconsistent in terms of the Bidding Documents.
- 3.2.2 The Authority reserves the right to reject any Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such Bid.

### 3.3 Selection of Bidder

- 3.3.1 Subject to the provisions of Clause 2.20.1, the Bidder whose Bid is adjudged as responsive in terms of Clause 3.2.1, has quoted the highest Concession Fee offered to the Authority, shall be declared as the successful Bidder (the “**Selected Bidder**”).

- 3.3.2 In the event that two or more Bidders quote the same amount of Concession Fee (“Tie Bidders”), the Authority shall identify the Selected Bidder by draw of lots, which shall be conducted, with prior notice, in presence of the Tie Bidders who choose to attend.
- 3.3.3 In the event that the Highest Bidder withdraws or is not selected for any reason whatsoever (“**first round of bidding**”), the Authority may invite all the remaining Bidders to revalidate or extend their respective Bid Security, as necessary, and match the Bid of the aforesaid Highest Bidder (“**second round of bidding**”) within the period notified in such notice of invitation. If in the second round of bidding, only one Bidder matches the Highest Bidder, it shall be the Selected Bidder. If two or more Bidders match the said Highest Bidder in the second round of bidding, then the Bidder whose Bid was higher as compared to other Bidder(s) in the first round of bidding shall be the Selected Bidder. For example, if the third and fifth highest Bidders in the first round of bidding offer to match the said Highest Bidder in the second round of bidding, the said third highest Bidder shall be the Selected Bidder.
- 3.3.4 In the event that no Bidder offers to match the Highest Bidder in the second round of bidding as specified in Clause 3.3.3, the Authority may, in its discretion, invite fresh Bids (“**third round of bidding**”) from all Bidders except the Highest Bidder of the first round of bidding, or annul the Bidding Process, as the case may be. In case the Bidders are invited in the third round of bidding to revalidate or extend their Bid Security, as necessary, and offer fresh Bids, they shall be eligible for submission of fresh Bids provided, however, that in such third round of bidding only such Bids shall be eligible for consideration which are higher than the Bid of the second highest Bidder in the first round of bidding.
- 3.3.5 After selection, a Letter of Award (“**LOA**”) shall be issued, in duplicate, by the Authority to the Selected Bidder and the Selected Bidder shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOA, and the next eligible Bidder may be considered.
- 3.3.6 After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall cause the Concessionaire to execute the Concession Agreement within the period prescribed in Clause 1.3. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the Concession Agreement.
- 3.3.7 The evaluation of Bids shall be undertaken in the following sequence:
1. Evaluation of Submission 1: Qualification;
  2. Evaluation of Submission 2: Commercial Proposal

### 3.4 Evaluation of Submission 1: Qualification

- 3.4.1 For the purpose of qualifying under Submission 1, the Bidder shall have to demonstrate the minimum Technical Capacity as stipulated under clauses 3.4.4 and minimum Financial Capacity as stipulated under Clause 3.4.6 and 3.4.7 of this RFP document.
- 3.4.2 In computing the eligibility under Clauses 3.4.4, 3.4.5, 3.4.6. and 3.4.7 of the Bidder/ Consortium/JV Members, which is a company or a corporation, the Technical Capacity, Financial Capacity of their respective Associates would be eligible hereunder.
- 3.4.3 Deleted
- 3.4.4 Eligibility Criteria – Technical Capacity

The Bidder shall meet the below eligibility criteria for Technical Qualification. Certification in support of qualification criteria shall be submitted along with details in relevant Annexures.

- a. Must have an experience of at least one Ropeway/Cable Car Project of Rs. 32 Crores or Two Ropeway/Cable Car Project of not less than Rs 20 Crore each or three Ropeway/Cable Car Project not less than of Rs 16 Crore each in the last Seven years.

#### Note

- a. The cost of the projects specified in the categories above should be excluding of land cost.
  - b. For the evaluation purpose, the successfully completed projects will only be considered as eligible projects.
  - c. Aerial Passenger Ropeway System would be deemed to include ropeways, cableways, tramways, funiculars and like, pulled by rope and used for carrying passengers.
- 3.4.4.1 The successful completion certificate / other relevant certificate(s) from client / concerned authority should be submitted in support of the eligibility claims along with the Technical Proposal. The abovementioned information is to be submitted as per the relevant Appendix along with the Technical Proposal.
- 3.4.5 Technical capacity for purpose of evaluation
- 3.4.5.1 Experience for any activity relating to an Eligible Project shall not be claimed by two Members of the Consortium/Joint Venture. In other words, no double counting by a Consortium/JV in respect of the same experience for a particular category shall be permitted in any manner whatsoever.

- 3.4.5.2 The Bidder must furnish the details of experience of the Eligible Project for the last 7 (Seven) Financial Years immediately preceding the Bid Due Date. This will include certificate(s) from its statutory auditors<sup>1</sup> or its concerned client stating the payments made/ received or works commissioned, as the case may be, during the past 7 (Seven) years in respect of the project submitted for evaluation of Technical Capacity as per Clause 3.4.4; In case a particular job/ contract has been jointly executed by the Bidder (as part of a consortium/JV), it should further support its claim for the share in work done for that particular job/ contract by producing a certificate from its statutory auditor or from the client.
- 3.4.5.3 The Bidder should furnish the required information and evidence in support of its claim of Technical Capacity, as per format specified at Annex II of Appendix-VI. The information and evidence in support of Technical Capacity as per format at Annex III of Appendix VI shall form part of the Submission I.
- 3.4.5.4 Notwithstanding anything to the contrary contained herein, in the event that the Bid Due Date falls within 3 (three) months of the closing of the latest Financial Year of a Bidder, it shall ignore such Financial Year for the purposes of its Bid and furnish all its information and certification with reference to the 7 (Seven) Financial Years, preceding its latest Financial Year. For the avoidance of doubt, the Financial Year shall, for the purposes of a Bid hereunder, mean accounting year followed by the Bidder in the course of its normal business.
- 3.4.5.5 Deleted.
- 3.4.6 Eligibility Criteria – Financial Capacity
- 3.4.6.1 The Bidder shall have to demonstrate the minimum Average Turnover and positive net worth (the “Financial Capacity”) as;
- a. Minimum Average Annual turnover of Rs 12,00,00,000/- (Rupees Twelve crores) in last 3 year only.
  - b. Positive net worth at the close of preceding financial year

For the purposes of this RFP, Net Worth (the “**Net Worth**”) shall mean the sum of subscribed and paid up equity and reserves from which shall be deducted the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity shareholders.

3.4.7 Financial Information for Purpose of evaluation

- 3.4.7.1 The Bidder shall provide a certificate from its statutory auditor specifying the Average Annual turnover and Net Worth of the Bidder.

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<sup>1</sup> Jurisdictions that do not have statutory auditor, the firm of auditors (Chartered Accountant) which audits the annual accounts of the Bidder may provide the certificates required under this RFP

- 3.4.7.2 The Bid must be accompanied by the audited annual reports of the Bidder (or Members who are to be evaluated for Financial Capacity in case of a Consortium/JV) for the last 3 (three) Financial Years, preceding the year in which the Bid is made.
- 3.4.7.3 In case the annual accounts for the latest Financial Year are not audited and therefore the Bidder could not make it available, the Bidder shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Bidder shall provide the audited annual reports for 3(three) years preceding the year for which the audited annual report is not being provided. Also Income tax returns or copies of 26 AS should be furnished.
- 3.4.7.4 The Bidder must establish an average annual turnover and minimum Net Worth as specified in Clause 3.4.5 and provide details as per format at Annex-I of Appendix-VI.
- 3.4.7.5 Notwithstanding anything to the contrary contained herein, in the event that the Bid Due Date falls within 3 (three) months of the closing of the latest Financial Year of a Bidder, it shall ignore such Financial Year for the purposes of its Bid and furnish all its information and certification with reference to the 5 (five) Financial Years for Technical Capacity or 3 (three) Financial years for Financial Capacity, as the case may be, preceding its latest Financial Year. For the avoidance of doubt, the Financial Year shall, for the purposes of a Bid hereunder, mean accounting year followed by the Bidder in the course of its normal business.
- 3.4.8 Shortlisting of bidders
- 3.4.8.1 The bidders meeting eligibility criteria, Clause 3.4.4, Clause 3.4.5 and Clause 3.4.6 would be deemed eligible.
- 3.4.8.2 Deleted
- 3.4.8.3 Only those bidders who also qualified as per terms mentioned in the RFP will have their Commercial Proposals evaluated.
- 3.4.8.4 If the Bidder does not meet the minimum Technical Capacity and Financial Capacity as specified, then the Bidder shall be disqualified from the Bidding Process and the Bid Security of the Bidder shall be returned as per Clause 2.24.3 and their Commercial Proposals shall not be opened.

### **3.5 Bid Parameter**

- 3.5.1 The Bid shall comprise a Concession Fee, to be quoted by the Bidder in accordance with the provisions of the Concession Agreement. The Bidder who offers the highest Annual Concession Fee for Cable Car project shall ordinarily be the Successful Bidder.
- 3.5.2 The Bid for the Project shall comprise of a Concession Fee that shall be payable by the Bidder to the Authority. The Concession Fee as quoted by the Bidder in the Commercial Proposal shall be payable in advance on yearly basis.

### 3.6 Evaluation of Submission 2: Commercial Proposal

- 3.6.1 The Commercial Proposal evaluation seeks to select the Bidder offering the best commercial terms. The information requirements and guidelines for submission of the Commercial Proposal are detailed in Appendix VII of this RFP document.
- 3.6.2 Subject to the provisions of Clause 2.20, the Bidder whose Bid is adjudged as responsive in terms of Clause 3.2 and is short-listed and who quotes the highest Concession Fee offered to the Authority, shall ordinarily be declared as the successful Bidder (the “**Selected Bidder**”). In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all Bidders to submit fresh Bids hereunder.
- 3.6.3 Bidders are requested to note that the Concession Fee quoted in the Commercial Proposal shall not have any conditionality attached or deviations from the Concession Agreement or RFP. Bids with conditions attached shall be treated as non-responsive.
- 3.6.4 In the event that two or more Bidders quote the same amount of Concession Fee (the “**Tie Bidders**”), the Successful Bidder shall be identified by draw of lots, which shall be conducted, with prior notice, in the presence of the Tie Bidders who choose to attend.
- 3.6.5 In the event that the Highest Bidder withdraws or is not selected for any reason in the first instance (the “**first round of bidding**”), all the remaining Bidders may be invited to revalidate or extend their respective Bid Security, as necessary, and match the Bid of the aforesaid Highest Bidder (the “**second round of bidding**”). If in the second round of bidding, only one Bidder matches the Highest Bidder, it shall be the Successful Bidder. If two or more Bidders match the said Highest Bidder in the second round of bidding, then the Bidder whose Bid was higher as compared to other Bidder(s) in the first round of bidding shall be the Successful Bidder. For example, if the third and fifth lowest Bidders in the first round of bidding offer to match the said Highest Bidder in the second round of bidding, the said third Highest Bidder shall be the Successful Bidder.
- 3.6.6 In the event that no Bidder offers to match the Highest Bidder in the second round of bidding as specified in Clause 3.6.5, the Authority may, in its discretion, invite fresh Bids (the “**third round of bidding**”) from all Bidders except the Highest Bidder of the first round of bidding, or annul the Bidding Process, as the case may be. In case the Bidders are invited in the third round of bidding to revalidate or extend their Bid Security, as necessary, and offer fresh Bids, they shall be eligible for submission of fresh Bids provided, however, that in such third round of bidding only such Bids shall be eligible for consideration which are higher than the Bid of the second highest Bidder in the first round of bidding.

### 3.7 Issue of LOA and execution of the Concession Agreement

3.7.1 Subsequent to the Selection of the Selected Bidder, a letter of award ("LOA" or "Letter of Award") would be issued, in duplicate, to the Selected Bidder, by the Authority. Within 7 (seven) days from the date of issue of the LOA, the Selected Bidder shall sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Successful Bidder is not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOA, and the next eligible Bidder may be considered. After receipt of the acknowledgement from the Selected Bidder, the Authority will promptly notify other Bidders that their Commercial Proposals have been unsuccessful and their Bid Security shall be returned within 30 (thirty) days, without interest, of the receipt of the acknowledgement from the Successful Bidder. The Selected Bidder on the date of signing of the Concession Agreement shall furnish the Performance Security by way of an irrevocable Bank Guarantee issued by a Scheduled/Nationalized bank in favour of the Authority (en-cashable at Diu), as required under the Concession Agreement.

Failure of the Selected Bidder to comply with the requirements mentioned in the above paragraph shall constitute sufficient grounds for the annulment of the LOA, and forfeiture of the Bid Security. In such an event, the Authority reserves the right to select the Successful Bidder as per Clause 3.6 or take any such measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Bidding Process.

### 3.7.2 Special Purpose Company

- a. After the issue of the LOA, the Selected Bidder shall incorporate a special purpose company specifically formed and incorporated in India only for the purpose of undertaking the Project pursuant to the Concession Agreement ("SPV" or the "Special Purpose Company") as a limited liability company under the Companies Act 2013. The Selected Bidder shall ensure that the Special Purpose Company is incorporated and capitalised within thirty (30) days from the date of issue of the LOA and promptly upon such incorporation and capitalisation provide evidence thereof to the Authority.
- b. Subject to the terms of the Concession Agreement, in the event that the Selected Bidder is a Single Entity, the shareholding of the Special Purpose Company shall be owned directly by such Single Entity.
- c. In the event that the Selected Bidder is a Consortium/JV, the shareholding of the Special Purpose Company shall be owned directly by the Members in accordance with the terms of the Bidding Documents including the Concession Agreement and shall comply with the following additional requirements:
  - i. Number of members in a consortium/JV shall not exceed 2 (Two)
  - ii. Subject to this provision of sub-clause (i) above, the Bid should contain the information required for each member of the Consortium/JV;
  - iii. members of the Consortium/JV shall nominate one member as the lead member (the "Lead Member"). The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix-III, signed by all the other members of the Consortium/JV;

- iv. the Bidder should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical obligations;
  - v. an individual Bidder cannot at the same time be member of a Consortium/JV applying for qualification. Further, a member of a particular Consortium/JV cannot be member of any other Consortium/JV applying for qualification;
  - vi. the members of a Consortium/JV shall form an appropriate SPV to execute the Agreement and implement the Project, if awarded to the Consortium/JV. The other shareholders in the SPV should not have been disqualified under the criteria mentioned herein.
  - vii. members of the Consortium/JV shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Appendix-IV (the "Joint Bidding Agreement"), for the purpose of submitting this Bid.
- d. The Special Purpose Company shall execute the Concession Agreement within the period prescribed in concession agreement (unless such period is extended by the Authority). Upon or prior to such execution by the Special Purpose Company it shall submit to the Authority the Performance Security in accordance with the Bidding Documents.
- 3.7.3 The Authority reserves the right to cancel the award in case the Successful Bidder fails to incorporate the Special Purpose Company or the Special Purpose Company fails or refuses to sign the Concession Agreement and/or does not submit the Performance Security and/or the other documents mentioned in the Bidding Documents.

### **3.8 Contacts during Bid Evaluation**

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

## 4 Fraud and Corrupt Practices

4.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Concession Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Concession Agreement, the Authority shall reject a Bid, withdraw the LOA, or terminate the Concession Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder or Developer, as the case may be, if it determines that the Bidder or Developer, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Authority shall forfeit and appropriate the Bid Security or Construction Period Performance Security, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to the Authority towards, inter alia, time, cost and effort of the Authority, without prejudice to any other right or remedy that may be available to the Authority hereunder or otherwise.

4.2 Without prejudice to the rights of the Authority under Clause 4.1 hereinabove and the rights and remedies which the Authority may have under the LOA or the Concession Agreement, if a Bidder or Developer, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOA or the execution of the Concession Agreement, such Bidder or Developer shall not be eligible to participate in any tender or RFP issued by the Authority during a period of 2 (two) years from the date such Bidder or Developer, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.

4.3 For the purposes of this Clause , the following terms shall have the meaning hereinafter respectively assigned to them:

- a. **“corrupt practice”** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly with the Bidding Process or the LOA or has dealt with matters concerning the Concession Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Concession Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Concession Agreement, who

at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Project;

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

## **5 Pre-Bid Conference**

- 5.1 Pre-Bid conferences of the Bidders shall be convened at the designated date, time and place. Only duly authorized representatives of the Bidders shall be allowed to participate in the Pre-Bid conference. A maximum of 2 (two) representatives of each Bidder shall be allowed to participate on production of authority letter from the Bidder.

During the course of Pre-Bid conferences, the Bidders will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

The Bidder is advised to procure & study the Bidding Documents completely, undertake site visits and submit the queries in writing or by email to the Authority. The queries should be sent to the Authority at least 2 (two) working days before the scheduled Pre-Bid meeting.

## 6 Miscellaneous

6.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts of Diu shall have cibsve jurisdiction over all disputes arising under, pursuant to and/or in connection with the Bidding Documents and/or the Bidding Process.

6.2 The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;

- i. suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
- ii. consult with any Bidder in order to receive clarification or further information;
- iii. retain any information and/ or evidence submitted to the Authority by, on behalf of, and/ or in relation to any Bidder; and/ or
- iv. independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.
- v. amend, modify or reissue the Bidding Documents or any part thereof;
- vi. to accept or reject any or all of the Bids; and/or
- vii. include additional evaluation criteria or to modify the eligibility criteria for the further short-listing of person for issue of the Bidding Documents during the Bidding Process.
- viii. to consider any variation in the Bid submitted by the Bidder provided such variation is as per the project scope, project structure and as per the terms and conditions of the RFP.

6.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection herewith and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or future.

6.4 The bidders should note that the authority may provide support only Cable car project related clearances required for commencement of construction. Other clearances required for operation and maintenance and successful completion of the project will be the responsibility of the Concessionaire.

## **APPENDICES**

## Appendix-I Annex I

### Letter for Bid

(To be submitted on the Letterhead of the Bidder/ Lead Member in case of a Consortium)

Date: dd/mm/yyyy

To,

**Chief Technical Officer  
Diu Smart City Limited,  
Diu**

**Sub:** Proposal for Development of Cable Car from Diu to Ghoghla, on Design, Build, Finance, Operate and Transfer Basis under PPP Framework

Dear Madam / Sir,

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

1. I/We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying such Bid for selection of the Bidders for the aforesaid Project and I/we certify that all information provided in the Bid and in Appendices to this Letter of Bid are true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals.
2. The Bid is being submitted and submissions in this letter are being made for the express purpose of our selection as Concessionaire for the aforesaid Project.
3. I/We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the submissions.
4. I/We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive my/our right to challenge the same on any account whatsoever.
5. I/We certify that in the last 3 (three) years, I/we/any of the Members have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.

6. I/ We certify that we are not barred by UT Administration of Dadra & Nagar Haveli and Daman and Diu (UTDNH & DD), any other State Government in India (SG) or Government of India (GOI), or any of the agencies of UTDNH & DD/SG/GOI from participating in similar projects as on .....(Bid Due Date).
7. I/We declare that:
  - a. I/We have examined and have no reservations to the RFP, including any addendum issued by the Authority;
  - b. I/We do not have any Conflict of Interest in accordance with Clauses 2.1.11 and 2.1.12 of the RFP;
  - c. I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Section 4 of the RFP, in respect of any tender or request for proposal issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or UT/State;
  - d. I/We hereby certify that I/we have taken steps to ensure that in conformity with the provisions of Clause 4 of the RFP, no person acting for me/ us or on my/our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice; and
8. I/We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive, without incurring any liability to the Bidders, in accordance with Clause 2.20 of the RFP.
9. I/ We understand that the Authority or its representatives shall have the right to physically verify project facilities that are part of the project experience claimed by us. I/ We agree to abide by the decision of the Authority in this regard and hereby waive my/our right to challenge the same on any account whatsoever.
10. I/We believe that I/we/our Consortium satisfy(s) and meet(s) all the requirements as specified in the RFP and are/is qualified to submit a Bid.
11. I/We declare that I/we/any Member or Associate, am/are not a member of a/any other Consortium applying for the Project.
12. I/We certify that in regard to matters other than security and integrity of the country, I/we or any Member have not been convicted by a court of law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
13. I/We further certify that in regard to matters relating to security and integrity of the country, I/we have not been charge-sheeted by any Government Instrumentality or convicted by a court of law.

14. I/We further certify that no investigation by a regulatory authority is pending either against me/us/any Member or against our chief executive officer or any of my/our directors/managers/employees.
15. I/We undertake that in case due to any change in facts or circumstances during the Bidding Process, I/we am/are attracted by the provisions of disqualification in terms of the provisions of this RFP, I/we shall intimate the Authority of the same immediately.
16. The Statement of Legal Capacity as per format provided at Annex-III in Appendix-I of the RFP, duly signed, is enclosed. The Power of Attorney for signing of Bid and the Power of Attorney for Lead Member of Consortium, as per format provided at Appendix II and III respectively of the RFP, are also enclosed.
17. I/ We understand that the Successful Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956, or shall incorporate as such prior to execution of the Concession Agreement.
18. I/We hereby irrevocably waive any right, which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of Bidders or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
19. In the event of my/ our being declared as the Successful Bidder, I/we agree to enter into a Concession Agreement in accordance with the draft that has been provided to me/ us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
20. I/ We have studied all the Bidding Documents carefully and also surveyed the Project. We understand that except to the extent as expressly set forth in the Concession Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or relating to the Bidding Process including the award of Concession.
21. I/ We offer a Bid Security of Rs. \_\_\_\_\_ (Rupees in words) to the Authority in accordance with the RFP Document.
22. The Bid Security in the form of a bank guarantee has been submitted in original to the authority and a scanned copy of the same has been attached with this submission.
23. I/ We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/we shall have any claim or right of whatsoever nature if the Project / Concession is not awarded to me/us or our Bid is not opened or rejected.

24. The Annual Concession Fee has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft Concession Agreement, our own estimates of costs and after a careful assessment of the site and all the conditions that may affect the project cost and implementation of the project.
25. I/We agree and undertake to abide by all the terms and conditions of the RFP.
26. We, the Consortium Members agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement in accordance with the Concession Agreement.
27. I/We agree and undertake to be jointly and severally liable for all our obligations under the Concession Agreement as per the provisions set out therein.
28. I/ We shall keep this offer valid for 180 (one hundred and eighty) days from the Bid Due Date specified in this RFP.

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

Yours faithfully,

(Signature of the Authorized signatory)

Date:

Place: -----

(Name and designation of the of the Authorized signatory)

Name and seal of Bidder/ lead Member of the Consortium

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

1. All blank spaces shall be suitably filled up by the Bidder to reflect the particulars relating to such Bidder.
2. If the Bidder is not a consortium, the provisions applicable to consortium may be omitted.

## Appendix I Annex-II

### Details of Bidder

*(To be submitted on the Letterhead of the Bidder/ Lead Member in case of a Consortium)*

#### 1. Details of Bidder

(a) Name:

(b) Country of incorporation:

(c) Address of the corporate headquarters and its branch office(s), if any, in India:

(d) Date of incorporation and/or commencement of business (Please provide a true copy of the incorporation certificate):

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

3. Details of individual(s) who will serve as the point of contact/ communication for the Authority:

1. Name:

2. Designation:

3. Company:

4. Address:

5. Telephone Number:

6. Mobile Number:

7. E-Mail Address:

8. Fax Number:

4. Particulars of the Authorized Signatory of the Bidder:

1. Name:

2. Designation:

3. Company:

4. Address:

5. Telephone Number:

6. E-Mail Address:

7. Mobile Number:

5. In case of a Consortium:

a. The information above (1-4) should be provided for all the members of the Consortium.

- b. A copy of the Jt. Bidding Agreement, as envisaged in Clause 2.2.5 should be attached to the Bid.
- c. Information regarding role of each member should be provided as per table below:

	<b>Name of Member</b>	<b>Role* {Refer Clause 2.2.5}</b>	<b>Percentage of equity in the Consortium {Refer Clause 2.2.5}</b>
1.			
2.			

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

- d. The following information shall also be provided for each member of the Consortium:

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

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

## Appendix I Annex-III

### Statement of Legal Capacity

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

Date:

To,

**Chief Executive Officer  
Diu Smart City Limited,  
Diu,**

Dear Sir/Madam,

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

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

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

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of .....

\*Please strike out whichever is not applicable.

## Appendix I Annex-IV

### Bank Guarantee for Bid Security

(To be submitted on Stamp paper of appropriate value)

B.G. No.

Dated: dd/mm/yyyy

1. In consideration of you, Chief Executive Officer, having its office at Diu Municipal Council, Fort Road, Diu, (hereinafter referred to as the “**Authority**”, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of \_\_\_\_\_ [a Company registered under provision of the Companies Act, 1956/2013] and having its registered office at \_\_\_\_\_ [and acting on behalf of its Consortium] (hereinafter referred to as the “**Bidder**” which expression shall unless it be repugnant to the subject or context thereof include its/their executors administrators, successors and assigns), for the **Development of Cable Car from Diu to Ghoghla, on Design, Build, Finance, Operate and Transfer Basis under PPP Framework** (hereinafter referred to as the “**Project**”) pursuant to the RFP dated \_\_\_\_\_ issued in respect of the Project and other related documents without limitation the Concession Agreement (hereinafter collectively referred to as “**Bidding Documents**”), we [Name of the Bank] having our registered office at \_\_\_\_\_ and one of its branches at \_\_\_\_\_ (hereinafter referred to as the “**Bank**”), at the request of the Bidder, do hereby in terms of the RFP, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Bidding Documents (including the RFP) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Authority an amount of Rs. 40,00,000/- (Rupees Forty Lakh only) as bid security (hereinafter referred to as the “**Bid Security**”) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfil or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by the Authority stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Authority is disputed by the Bidder or not merely on the first demand from the Authority stating that the amount claimed is due to the Authority by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set-forth in the said Bidding Documents

for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs 40,00,000/- (Rupees Forty Lakh only).

4. This Guarantee shall be irrevocable and unconditional and remain in full force for a period of 240 (Two hundred and forty) days from the Bid Due Date inclusive of a claim period of 60 (sixty) days or for such extended period as may be mutually agreed between the Authority and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.
5. We, the Bank, further agree that the Authority shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents including, *inter alia*, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Bidding Documents, and the decision of the Authority that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Authority and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other authority.
6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
7. In order to give full effect to this Guarantee, the Authority shall be entitled to treat the Bank as the principal debtor. The Authority shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to the Authority, and the Bank shall not be released from its liability under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of the Authority or any indulgence by the Authority to the said Bidder or by any change in the constitution of the Authority or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.
8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.

9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above.
10. branch that shall be deemed to have been duly authorized to receive the said notice of claim.
11. It shall not be necessary for the Authority to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforce able against the Bank, notwithstanding any other security which the Authority may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealized.
12. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Authority in writing.
13. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorized and has full power to execute this Guarantee for and on behalf of the Bank.
14. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. 40,00,000/- (Rupees Forty Lakh only). The Bank shall be liable to pay the said amount or any part thereof only if the Authority serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before \*\*\* (indicate date falling 240 days after the Bid Due Date).

Signed and Delivered by Bank

By the hand of Mr./Ms \_\_\_\_\_, its \_\_\_\_\_ and authorized official.

(Signature of the Authorized Signatory)

(Official Seal)

## Appendix II

### Power of Attorney for Signing of Bid

(To be submitted on Stamp paper of relevant value)

Know all men by these presents, We, \_\_\_\_\_ (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorize Mr. / Ms \_\_\_\_\_, son/daughter/wife of \_\_\_\_\_ and presently residing at, \_\_\_\_\_ who is presently employed with us/ the Lead Member of our Consortium and holding the position of \_\_\_\_\_, as our true and lawful attorney (hereinafter referred to as the “Attorney”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our bid for the **Development of Cable Car from Diu to Ghoghla, on Design, Build, Finance, Operate and Transfer Basis under PPP Framework** (the “Project”) proposed by the Diu Smart City Limited (the “Authority”) including but not limited to signing and submission of all Bids, and other documents and writings, participate in bidders' and other conferences and providing information / responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our bid for the said Project and/or upon award thereof to us and/or till the entering into of the concession Agreement with the Authority.

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

Capitalised terms not defined herein shall have the meaning assigned to them under the RFP.

IN WITNESS WHEREOF WE, \_\_\_\_\_, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF \_\_\_\_, 20\_\_ .

For -----

(Signature, name, designation and address)

Witnesses:

1.

2.

(Notarized)

Accepted

(Signature)

(Name, Title and Address of the Attorney)

Notes:

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

## Appendix III

### Power of Attorney for Lead Member of Consortium

(To be submitted on Stamp paper of relevant value)

Whereas the “Authority” has invited Bids from interested parties for the **Development of Cable Car from Diu to Ghoghla, on Design, Build, Finance, Operate and Transfer Basis under PPP Framework.**

Whereas, \_\_\_\_\_, \_\_\_\_\_ And \_\_\_\_\_ (Collectively the “Consortium”) being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of RFP and other connected documents in respect of the Project, and

Whereas, it is necessary under the RFP Document for the members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’s bid for the Project who, acting jointly, would have all necessary power and authority to do all acts, deeds and things on behalf of the Consortium, as may be necessary in connection with the Consortium’s bid for the Project.

NOW THIS POWER OF ATTORNEY WITNESSETH THAT;

We, M/s. \_\_\_\_\_ (Lead Member) and M/s \_\_\_\_\_ (the respective names and addresses of the registered office) do hereby designate M/s. \_\_\_\_\_ being one of the members of the Consortium, as the Lead Member of the Consortium, to do on behalf of the Consortium, all or any of the acts, deeds or things necessary or incidental to the Consortium’s bid for the Project, including submission of Bid/proposal, participating in conferences, responding to queries, submission of information/ documents and generally to represent the Consortium in all its dealings with the Authority, any other Government Agency or any person, in connection with the Project until culmination of the process of bidding and thereafter till the Concession Agreement is entered into with the Authority.

We hereby agree to ratify all acts, deeds and things lawfully done by Lead Member, our said attorney pursuant to this Power of Attorney and that all acts deeds and things done by our aforesaid attorney shall and shall always be deemed to have been done by us/Consortium.

Dated this the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

For (Signature)

\_\_\_\_\_  
(Executants)

Witnesses:

- 1. ....
- 2. ....

Notes:

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

## Appendix IV

### Joint Bidding Agreement

(To be executed on Stamp paper of appropriate value)

THIS JOINT BIDDING AGREEMENT is entered into on this the ..... day of.....,20..... (the “**Agreement**”)

AMONGST

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

AND

B. {..... Limited, a limited liability company incorporated under the (Indian) Companies Act, 1956 and having its registered office at ..... (hereinafter referred to as the “**Second Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)}<sup>3</sup>

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

WHEREAS

- A. Diu smart city Limited , represented by its Chief Executive Officer and , having its office at Diu Municipal Council, Fort Road, Diu, (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited Bids (the “**Bids**”) by its RFP Notice No ..... dated..... (the “**RFP**”) for selection of bidders for **Development of Cable Car from Diu to Ghoghla, on Design, Build, Finance, Operate and Transfer Basis under PPP Framework** (the “**Project**”).
- B. The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the RFP and other bid documents in respect of the Project, and

---

<sup>2</sup> A Bidder who is registered abroad may substitute the words, viz “a company registered under the Companies Act, 1956/2013” by the words, viz “a company duly organised and validly existing under the laws of the jurisdiction of its incorporation”. A similar modification may be made in Recital 2, as necessary.

<sup>3</sup> The number of Parties will be shown here, as applicable, subject however to a maximum of 2 (two)

- C. It is a necessary condition under the RFP that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Bid.

NOW IT IS HEREBY AGREED as follows:

### **1. Definitions and Interpretations**

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

### **2. Consortium**

- i. The Parties do hereby irrevocably constitute a consortium (the “**Consortium**”) for the purposes of jointly participating in the Bidding Process for the Project.
- ii. The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

### **3. Covenants**

The Parties hereby undertake that in the event the Consortium is declared the Successful Bidder and awarded the Project, it shall incorporate the SPV under the (Indian) Companies Act 1956 as required by and in accordance with the Bidding Documents for performing all its obligations as the Concessionaire in terms of the Concession Agreement for the Project.

### **4. Role of the Parties**

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

- a. Party of the First Part shall be the Lead member of the Consortium with experience in Development/ Construction and Operation of Cable Car Systems and shall have the power of attorney from Other Member for conducting all business for and on behalf of the Consortium during the Bidding Process and until the Appointed Date under the Concession Agreement when all the obligations of the Developer shall become effective;
- b. Party of the Second Part shall be \_\_\_\_\_ {the Other Member of the Consortium}

### **5. Joint and Several Liability**

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

### **6. Shareholding in the Developer**

1. The Parties agree that the proportion of shareholding among the Parties in the Developer shall be as follows:

First Party:

Second Party:

Third Party (If any):

2. Subject to the terms of the Concession Agreement, the lead Member shall during the term of the Concession Agreement hold equity share capital not less than 51% (fifty one percent) of the subscribed, paid up and voting equity share capital of the SPV until the completion of commercial operation of the Project;
3. Subject to the terms of this Concession Agreement, members of the Consortium undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity of the SPV at all times till the end of commercial operation of the Project; and
4. Subject to the terms of the Concession Agreement, the Member (other than the Lead Member) whose financial and technical capacities has been utilized for the purposes of qualification and in the Bid shall, at all times till the completion of commercial operation of the Project, hold equity share capital not less than 26% (twenty six percent) of the subscribed, paid up and voting equity share capital of the SPV.

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

#### 7. Representation of the Parties

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

- a. Such Party is duly organized, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- b. The execution, delivery and performance by such Party of this Agreement has been authorized by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:
  - i. require any consent or approval not already obtained;
  - ii. violate any Applicable Law presently in effect and having applicability to it;
  - iii. violate the memorandum and articles of association, by-laws or other applicable organizational documents thereof;
  - iv. violate any clearance, permit, concession, grant, license or other governmental authorization, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
  - v. create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse

effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;

- c. this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- d. there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfilment of its obligations under this Agreement.

8. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the Financial Closure of the Project is achieved under and in accordance with the Concession Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium is either not qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Bidder is not qualified or upon return of the Bid Security by the Authority to the Bidder, as the case may be.

9. Miscellaneous

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of

LEAD MEMBER by: (Signature)

(Name)

(Designation)

(Address)

SECOND PART by: (Signature)

(Name)

(Designation)

(Address)

In the presence of:

- 1.
- 2.

Notes:

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

## Appendix V

### Anti-Collusion Certificate

(To be executed on Stamp paper of appropriate value)

We undertake that, in competing for (and, if the award is made to us, in executing) the above contract, we will strictly observe the laws against fraud and corruption in force in India namely "Prevention of Corruption Act, 1988" and its subsequent amendments thereof.

We hereby certify and confirm that in the preparation and submission of our Proposal, we have not acted in concert or in collusion with any other Bidder or other person(s) and also not done any act, deed or thing which is or could be regarded as anti-competitive.

We further confirm that we have not offered nor will offer any illegal gratification in cash or kind to any person or agency in connection with the instant Proposal.

Dated this .....Day of ....., 20.....

.....

(Name of the Bidder)

.....

(Signature of the Bidder / Authorised Person)

.....

(Name of the Authorised Person)

## Appendix VI Annex-I

### Format of Financial Capacity for purpose of evaluation

[On the letter head of the Single Entity/lead Member]

(In Rs. Crore)

Bidder type	Member Code	Annual turnover			Average Annual Turnover	Net Worth
		Year 1	Year 2	Year 3		
1	2	3	4	5	6	7
Single Entity						
Consortium Member 1						
TOTAL						

#### Name & address of Bidder's Bankers:

#### Instructions:

- 1) The Bidder/ its constituent Consortium Members shall attach copies of the balance sheets, financial statements and Annual Reports for 3 (three) years preceding the Bid Due Date. The financial statements shall:
  - a. reflect the financial situation of the Bidder or Consortium Members;
  - b. be audited by a statutory auditor;
  - c. be complete, including all notes to the financial statements; and
  - d. Correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
- 2) Net Worth shall mean (Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off + reserves not available for distribution to equity shareholders).
- 3) Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on. In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year.
- 4) In the case of a Consortium, a copy of the Jt. Bidding Agreement shall be submitted in accordance with Clause 2.2.5 of the RFP document.
- 5) The Bidder shall also provide the name and address of the Bankers to the Authority.

- 6) The Bidder, except in the case of publicly listed companies, shall provide an Auditor's Certificate specifying the Average Annual turnover of 3 year and net worth of the Bidder and also specifying the methodology adopted for calculating such net worth in accordance with Clause 3.4.6 of the RFP document.

## Appendix VI Annex-II

Format of Technical Capacity for purpose of evaluation

Technical Capacity of the Bidder

(To be submitted on the Letterhead of the Bidder/ Lead Member in case of a Consortium)

Sl.No.	Name of Ropeway projects executed in last 7 years	In case of ropeway installed over sea (Yes/ No/NA)	Location (India/ Country Name)	Salient features	Project Cost (in Rs. Crores)**	Name of Entity and % shareholding of member of consortium whose experience is
1						
2						
3						
4						

- Provide details of only those projects that have been undertaken by the Bidder under its own name and/ or by an Associate specified in Clause 2.1.12.
- In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Bidder with such Associate, shall be provided
- Associate Relationship of the Legal Entity shall indicate NA for Not Applicable in case of a single entity Bidder.

*\*\*For conversion of US Dollars to Rupees, the rate of conversion shall be Rupees 65 (sixty five) to a US Dollar. In case of any other currency, the same shall first be converted to US Dollars as on the date 60 (sixty) days prior to the Bid Due Date, and the amount so derived in US Dollars shall be converted into Rupees at the aforesaid rate. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date.*

## Appendix VI Annex-III

### Details of the Eligible Project

Project Code:

Member Code:

Item		Particulars
Title of the project		
Nature of the project		
Entity for which the project was constructed/ developed/maintained		
Location		
Date of commencement of project/ contract		
Date of completion/ commissioning		
Date of start of operations and end of operations		
Equity shareholding (with period during which equity was held)		

#### Instructions:

- 1) Bidders are expected to provide information of only one Eligible Project in this Annex. The project cited must comply with the eligibility criteria specified. Information provided in this section is intended to serve as a backup for information provided in the Bid. Bidders should also refer to the Instructions below.
- 2) For a single entity Bidder, the Project Codes would be a, b, c, d etc. In case the Bidder is a Consortium then for Member 1, the Project Codes would be 1a, 1b, 1c, 1d etc., for Member 2 the Project Codes shall be 2a, 2b, 2c, 2d etc., and so on.
- 3) Member Code shall indicate NA for Not Applicable in case of a single entity Bidder. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member; and OM means Other Member.
- 4) Particulars such as name, address and contact details of owner/ Authority/ Agency (i.e. concession grantor, counter party to PPA, etc.) may be provided.
- 5) The date of commencement of the project must be mentioned.
- 6) The date of commissioning of the project, upon completion, should be indicated.
- 7) The equity shareholding of the Bidder, in the company owning the Eligible Project, held continuously during the period for which experience is claimed, needs to be given
- 8) Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a consortium in respect of the same experience shall be permitted in any manner whatsoever.

- 9) Certificate from the Bidder's statutory auditor or its respective clients must be furnished for each Eligible Project. In case of bidders that do not have statutory auditors, the auditors who audit the annual accounts of the Bidder/ Member may provide the requisite certification.
- 10) It may be noted that in the absence of any detail in the above certificate, the information would be considered inadequate and could lead to exclusion of the relevant project in computation of Technical Capacity.

## Appendix VII

### Format of Commercial Proposal

ORIGINAL

(to be submitted on the letter head)

**Date:**

To,

**Chief Executive Officer  
Diu Smart City Limited,  
Diu**

**Sub:** Development of Cable Car from Diu to Ghoghla, on Design, Build, Finance, Operate and Transfer Basis under PPP Framework.

**Sir/Madam,**

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

1. I/ We hereby submit our Bid and offer to pay Annual Concession Fee of Rs. \_\_\_\_\_ (Rupees in words) which shall be paid year commencing from the Commercial Operation Date till the end of the Concession Period as per the terms and conditions contained in the Concession Agreement. The Annual Concession Fee will be increased @ 5% every year over the previous year's Annual Concession Fee.
2. I/We agree to pay the GST and all other applicable taxes to the Central Government, any State Government and/or Local Authorities or the UT Of Dadra & Nagar Haveli and Daman & Diu for undertaking the aforesaid Project in accordance with the Bidding Documents and the Concession Agreement.
3. I/ We hereby declare to undertake the aforesaid Project in accordance with the terms & conditions of the Concession Agreement and the Bidding documents.

**Note:** Minimum Annual Concession Fee need to quote above the 10 Lakh per annum.

We have reviewed all the terms and conditions of the Request for Proposal including the Draft Concession Agreement and would undertake to abide by all the terms and conditions contained therein. We hereby declare that there are, and shall be, no deviations from the stated terms in the RFP Document.

Yours faithfully,

For and on behalf of *(Name of Bidder)*

*Duly signed by the Authorised Signatory of the Bidder*

*(Name, Designation and Address of the Authorised Signatory)*

## Appendix VIII

### Guidelines of the Department of Disinvestment

No. 6/4/2001-DD-II

Government of India

Department of Disinvestment

Block 14, CGO Complex New Delhi. Dated 13th July, 2001.

#### OFFICE MEMORANDUM

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

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

- a. In regard to matters other than the security and integrity of the country, any conviction by a Court of Law or indictment/ adverse order by a regulatory authority that casts a doubt on the ability of the bidder to manage the public sector unit when it is disinvested, or which relates to a grave offence would constitute disqualification. Grave offence is defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of the offence would be taken on case to case basis after considering the facts of the case and relevant legal principles, by the Government of India.
- b. In regard to matters relating to the security and integrity of the country, any charge-sheet by an agency of the Government/ conviction by a Court of Law for an offence committed by the bidding party or by any sister concern of the bidding party would result in disqualification. The decision in regard to the relationship between the sister concerns would be taken, based on the relevant facts and after examining whether the two concerns are substantially controlled by the same person/ persons.
- c. In both (a) and (b), disqualification shall continue for a period that Government deems appropriate.
- d. Any entity, which is disqualified from participating in the disinvestment process, would not be allowed to remain associated with it or get associated merely because it has preferred an appeal against the

order based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.

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

## Appendix XI: Project Information Memorandum

### A) Introduction:

The envisaged Cable Car is proposed to connect the Diu island with the mainland at Ghoghla. The alignment of Cable Car would be over the bay between Diu and Ghoghla. The envisaged length of the ropeway is about 1500 m. One end of the ropeway would be on the waterfront side of the Fort Road and the second end would be near the walkway adjacent to Ghoghla beach.

### B) Project Rationale and benefits

The proposed Cable Car would connect the popular tourist destination of waterfront along Fort Road with the beach at Ghoghla. The Cable Car would be a convenient, time saving, eco-friendly means of transport. It will make the already established tourist destinations more attractive. The Cable Car would be a tourist attraction itself offering the visitors a panoramic bird's eye view of the sea, Diu Fort, Panikotha as well as the waterfront.

### C) Proposed Location and alignment



### Site Layout of plot designated for proposed Terminal station at Diu



**Proposed Landing Point for Cable Car on Diu side waterfront**



**Site Layout of plot designated for proposed Terminal station at Ghoghla**



**Proposed Landing Point for Cable Car at Ghoghla side near walkway and beach**



**D) Proposed Ropeway for Diu to Ghoghla:**

For the proposed Ropeway between Ghoghla to Diu, a Monocable detachable Gondola (Cabin) System ropeway is recommended. The recommendation is based on the following advantages:

- 1) Capacity requirement is easily met by a proposed system.
- 2) Operation and Maintenance cost is less as compared to other systems.
- 3) Safe and comfortable cabins.
- 4) System is flexible. Capacity enhancement / reduction can be done very easily.
- 5) Passengers can have a panoramic view from the cabins.



**E) Project Components:**

The proposed Ropeway shall comprise of the following major items:

- Haulage rope, driven by electric power through Sheaves at one end and tensioned at the other end by hydraulics.
- Passenger Cabins complete with suspender and grip.
- Ropeway drive arrangement located station complete with Drive Sheave, Motor, Gearbox, Open gear & Pinion, Emergency and Service Brakes, Coupling etc.
- Intermediate support tower complete with mechanicals.
- Terminal stations complete with required Plant & Equipment and structure including electro-mechanical control room, administration office, store room, etc.
- Passenger amenities at the Terminal Landing stations such as ticketing booth, waiting lounge, toilets, snack counter, etc.

**F) Demand Estimation:**

The demand for proposed Cable Car has been estimated based on the number of tourists visiting Diu.

Total Tourist Footfall in last 20 Years

Year	Total Tourist Visited	Stay in Hotel	Day Travelers
1999	345,378	80,378	265,000
2000	405,932	105,932	300,000
2001	436,752	111,752	325,000
2002	471,026	131,026	340,000
2003	501,520	158,927	342,593
2004	504,968	170,756	334,212
2005	508,404	172,072	336,332
2006	525,097	199,097	326,000
2007	564,728	217,097	347,631
2008	533,100	224,652	308,448
2009	472,638	244,821	227,817
2010	487,532	273,627	213,905
2011	792,984	331,308	461,676
2012	1,268,539	359,357	909,182
2013	1,380,590	383,995	996,595
2014	1,742,811	357,662	1,385,149
2015	2,258,320	436,709	1,821,611
2016	1,466,589	402,587	1,064,002
2017	1,270,512	427,916	842,596
2018	1,000,315	494,456	505,859

Data Source: - Tourism Department Diu

Growth rate in tourist footfall at Diu:

Year	1999-2008	2009-2018
CAGR	5%	9%

Data Source: - Tourism Department Diu

**Passenger footfalls Estimate for Cable Car:**

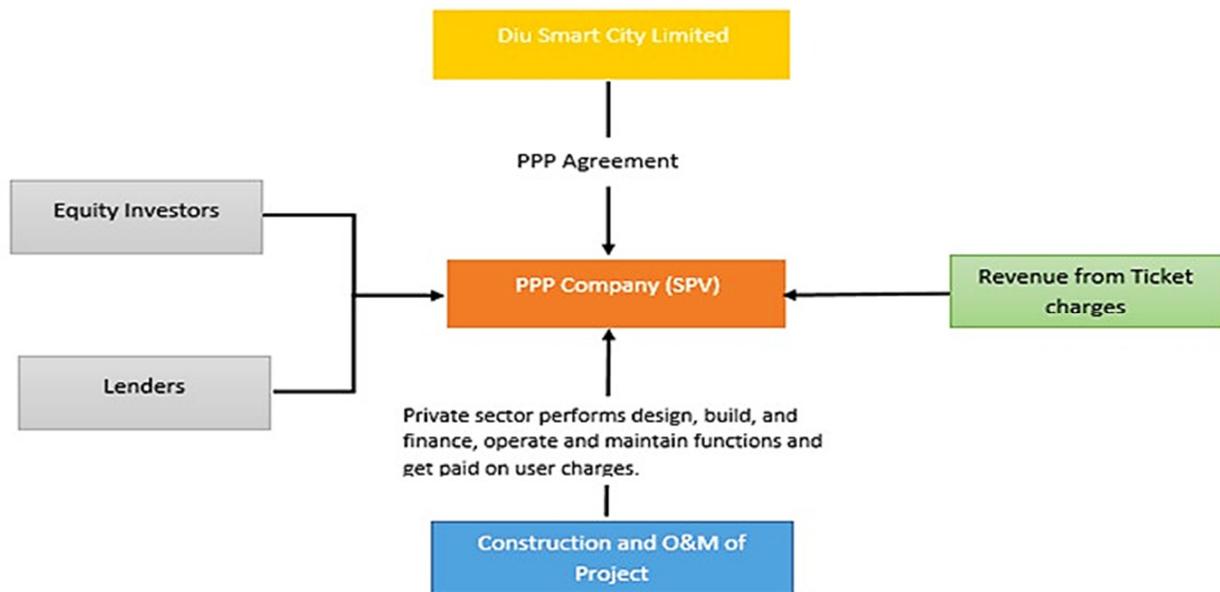
Passenger footfalls at proposed Cable Car are estimated as 20% from the Total tourists in Diu.

Projected Customer Counts	Per year
No of Customer	2,00,000

Bidder can do self-assessment for project.

**G) Proposed Implementation Model:**

The proposed PPP model will have the Diu Smart City as the Authority, which will enter into a Concession Agreement with the selected bidder to undertake the Project during the concession period of 30 (Thirty Five) years.



The concessionaire will be responsible for financing the Project, with its funds, which may comprise of its equity and debt from lenders (commercial banks or domestic financial institutions). It will generate revenue through ticket charges from users.

# Development of Cable Car from Diu to Ghoghla, on Design, Build, Finance, Operate and Transfer (DBFOT) Basis under PPP Framework (3rd Call)

Volume II

## Draft Concession Agreement



Tender No. 27/2020-21/DSCL-Diu

Bid due date: 11-02-2021

up to 18:00 hrs



**Diu Smart City Limited**

**C/o Diu Municipal Council**

**Fort Road, Diu - 362520**

**Contact : +91 2875 252126**

**Email: [Diudscl@gmail.com](mailto:Diudscl@gmail.com)**

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## Concession Agreement

This Concession Agreement ("Agreement") is entered into on this the \_\_\_ day of \_\_20 \_\_\_ at \_\_\_\_\_.

AMONGST

**Tourism Department**, Diu, UT Administration of Dadra & Nagar Haveli and Daman & Diu represented by the ..... and having its principal office at Diu, (hereinafter referred to as the "**Authority**" which expression shall, unless the context otherwise requires, include its administrators, successors and permitted assigns and substitutes) of First Part

AND

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

AND

**Diu Smart City Limited**, represented herein by its Chief Executive Officer / Authorized Officer, and having its Registered office at Office of Diu Smart City Limited, C/o Diu Municipal Council, Fort Road, Diu, Daman and Diu- 362520. (hereinafter referred to as the "**Authority**") which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of Third Part;

**WHEREAS:**

- A. **Tourism Department**, Diu, UT Administration of Dadra & Nagar Haveli and Daman & Diu (the "Authority") is engaged in the development of tourism infrastructure and as part of this endeavor, it has decided to undertake development of aerial passenger ropeway at Diu island to Ghoghla on Design, Build, Finance, Operate and Transfer (the "**DBFOT**") basis under Public Private Partnership Mode (the "**Project**") in accordance with the terms and conditions to be set forth in this Agreement.
- B. The **Diu Smart City Limited** ("**DSCL**" or the "**Transaction Authority**") is the nodal agency formed by the UT Administration of Dadra & Nagar Haveli and Daman & Diu for implementing Smart City proposal in Diu city. DSCL is engaged in the conceptualizing and development of infrastructure in the city of Diu through various development models.
- C. The Authority had accordingly invited single stage two envelope proposals by its RFP No. \_\_\_\_\_ dated \_\_\_\_\_ (the "**RFP**") on terms and conditions contained therein for the selection of successful bidder for undertaking the development of the Project on DBFOT basis in terms hereof.

- D. After evaluation of the bids received in accordance with the RFP, the Authority had accepted the bid of \_\_\_\_\_ (hereinafter referred to as the "Selected Bidder/Consortium") and issued Letter of Award ("LOA") No. \_\_\_\_\_ dated \_\_\_\_\_ (hereinafter called the "LOA") to the Selected Bidder i.e. M/s \_\_\_\_\_ requiring, inter alia, the execution of this Concession Agreement within 45 (forty-five) days of the date of issue of LOA.
- E. The Selected Bidder has incorporated an appropriate Special Purpose Vehicle under the Indian Companies Act, 2013 (hereinafter called the "**Concessionaire**") 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 under the LOA, including the obligation to enter into this Concession Agreement pursuant to the LOA for executing the Project.
- F. By its letter dated \_\_\_\_\_, the Concessionaire has also joined in the said request of the Selected Bidder to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder including the obligation to enter into this Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the Selected Bidder for the purposes hereof.
- G. The Authority has agreed to the said request of the Selected Bidder and the Concessionaire, and has accordingly agreed to enter into this Agreement with the Concessionaire for execution of the Project on DBFOT basis, subject to and in accordance with the terms and conditions set forth hereinafter.

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

**NOW, THIS AGREEMENT WITNESSETH AS FOLLOWS:**

## **1. DEFINITIONS AND INTERPRETATION**

### **1.1. Definitions**

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 46) 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 Dadra & Nagar Haveli and Daman & Diu, laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- c) references to a "**person**" and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- e) the words "**include**" and "**including**" are to be construed without limitation and shall be deemed to be followed by "**without limitation**" or "**but not limited to**" whether or not they are followed by such phrases;
- f) references to "**construction**" or "**building**" include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and "**construct**" or "**build**" shall be construed accordingly;
- g) references to "**development**" include, unless the context otherwise requires, construction, renovation, refurbishment, augmentation, up gradation and other activities incidental thereto, and "**develop**" shall be construed accordingly;
- h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- i) any reference to day shall mean a reference to a calendar day;
- j) references to a "**business day**" shall be construed as a reference to a day (other than a Sunday) on which banks in Diu are generally open for business;

- k) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- l) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- m) any reference to any period commencing "**from**" a specified day or date and "**till**" or "**until**" a specified day or date shall include both such days or dates provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- n) the words importing singular shall include plural and vice versa;
- o) references to any gender shall include the other and the neutral gender;
- p) "**lakh**" means a hundred thousand (100,000) and "**crore**" means ten million (10,000,000);
- q) "**indebtedness**" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- r) references to the "**winding-up**", "**dissolution**", "**insolvency**", or "**reorganization**" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
- s) any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
- t) Any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party or the Independent Engineer, as the case may be, in this behalf and not otherwise;
- u) The 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; and
- w) The damages payable by either Party to the other of them, as set forth in this Agreement, whether on *per diem* basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "**Damages**").
- 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. Measurements and arithmetic conventions**

- 1.4.1. This agreement, and all other agreements and documents forming part of this agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this agreement, the priority of this agreement and other documents and agreements forming part hereof shall, in the event of any conflict between them, be in the following order:
  - a) this agreement; and
  - b) all other agreements (including RFP and LOA) and documents forming part hereof; i.e. the agreement at (a) above shall prevail over the agreements and documents at (b) above.
- 1.4.2. Subject to Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:
  - a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
  - b) between the Clauses of this agreement and the 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 BIS Standards, the latter shall prevail;
  - e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
  - f) between any value written in numerals and that in words, the latter shall prevail

## 2. Scope of the Project

### 2.1. Scope of the Project

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

The Intended work is to provide connectivity through aerial ropeway system between Diu to Ghoghla on PPP (DBFOT)

**The scope of works will be as follows:**

1. The Selected bidder has to prepare the concept plan for the development of Cable Car system as per their own design based on the alignment provided by DSCL, which includes the development of terminal station at both the locations i.e. Diu and Ghoghla and necessary columns/pillar.
2. The firm has to develop the Mono Cable Detachable Gondola System Ropeway as per BIS Standard or CEN (European) standards. In case of CEN (European) standards Manufacturing of Ropeway and associated support structure should be done in India as per the guideline of Niti Aayog.
3. The work includes development of terminal station at Diu and Ghoghla on the area allotted by DSCL (2,000 Sqm (1000 for each Terminal Station) or the actual area given), as per their own concept according to the development rules applicable in the DMC/ area. However bidder has to submit the plan and design of the terminals to DSCL for its approval.
4. The firm has to develop all the necessary infrastructure, required for the effective operation of Cable Car, dispersal of traffic, parking, cloak room, evacuation of people, maintenance/workshop area etc.
5. The Concessionaire has to provide necessary infrastructure for smooth passage between the proposed terminal stations for tourist to embark/ disembark.
6. The Concessionaire has to plan Cable Car system to connect between two terminal stations by fixing the span between two columns, number of columns and height of columns at all point as per their own concept and design. However Concessionaire has to submit the plan and design of the same to DSCL for its approval.
7. The alignment of the Cable Car is crossing over the navigational channel in Diu Harbour, where ship/Boat movement is frequent which has to be considered during the development of the Cable Car. The Concessionaire has to provide clearance of minimum 30 m between water (high tide level) and the bottom of Gondola after considering the sag as per the standards. The Concessionaire has to confirm the span considered in the channel and maximum sag considered by anticipating maximum traffic, the future load and clearance between cable car and ship and provide the same to DSCL for approval.
8. The Concessionaire has to design entire Cable Car system including civil design of terminal, columns, any other structure required as per their concept on their own cost. However it has to be approved by DSCL before implementation and execution.

9. The Concessionaire has to get final approval from DSCL for the entire Cable Car system after its development before the operation. The operation of the Cable Car system has to be carried out as per the BIS standards and safety standards rules approved by the government time to time till the concession period.
10. The terminal station developed at Diu and Ghoghla will have to be maintained properly to meet need of tourist as per the prevailing laws and regulation of the government.
11. The maintenance of entire Cable Car system has to be carried out as per the BIS standards and prevailing rules for safety and security laid down by the government time to time for entire concession period.
12. The Concessionaire has to provide safety mechanism (as per BIS Standards) in the entire Cable Car system to prevent any accident and mishaps during operation for entire concession period. Accordingly bidder has to submit the safety mechanism plan to DSCL in advance prior to start of operation.
13. The Concessionaire has to provide necessary security system (as per BIS Standards) from the terminal at Diu to terminal at Ghoghla to prevent any breach in the security. To achieve this the bidder has to plan security mechanisms such as, deployment of specialised personal at vantage points, CCTV security system, PA system, alarm system or any other system which he seems suitable at their own cost.
14. The Concessionaire has to provide evacuation system in case of stoppage of Cable Car in midway, breaking of wire rope, any failure in the column, failure in machinery, any problems in the cable car, etc. during the operation of Cable Car. The plan of evacuation system has to be submitted to DSCL for its approval.
15. The Concessionaire has to develop the entire Cable Car system considering earth quake factor, so that any mishaps and public accident are prevented during the operations.
16. As this Cable Car system is being developed in the sea area, equipment, cable cars, ropes are likely to corrode fast, hence the design should be adopted considering this factor and operation and maintenance should also be done considering the same.
17. The Concessionaire will have freedom for the pricing of tickets, however they have to take insurance for the tourist, insurance of the machinery, equipment, civil structures, etc.
18. The Concessionaire has to provide medical aid system at both the terminal stations by deploying ambulances, first aid, etc.
19. The Concessionaire has to provide efficient firefighting system for the entire Cable Car including terminals.
20. The Concessionaire has to submit operational manual, standard operating procedure, maintenance manual, overhauling system of the Cable Car, traffic dispersal system at Diu and Ghoghla, evacuation plan of people for both the terminal, firefighting system, medical aid system, security system, etc. for the approval of DSCL before the operation.
21. All the necessary statutory approvals needed for construction and operation have to be taken by the Concessionaire prior to the sanction of plan, during the construction period and operation of services, etc.
22. The Concessionaire has to take power connection directly from source, as required for the entire Cable Car system including both the terminal stations. DSCL may provide support to get power connection.

23. The Concessionaire has to provide alternate power source for existing system in case of emergency, with adequate numbers of generators at both the stations.
24. The Concessionaire has to arrange at their own cost- Information Network system, including telephone line, OFC cables, etc. as per their requirement.
25. The Concessionaire has to implement and execute any other works related to smooth operation and maintenance of entire Cable Car system during concession period as and when directed by DSCL on its own cost.
26. The Concessionaire has to arrange and develop a system to monitor weather (wind speed, rainfall, etc.) by liaisoning with Meteorological Department to ensure safe services.
27. The Cable Car system should be mounted with modern cabins. The design and look of the cabins has to be presented to DSCL and the same shall be approved by DSCL for implementation.
28. Advertisements for promoting the cable car system shall be undertaken by the Concessionaire and for the same DSCL may assist wherever required.
29. Regular check-ups, safety audits and repairing of the necessary components of the cable car system are to be ensured on a peiodic basis. The records of the same needs to be maintained for future assessments.
30. The number of cabins for the cable car system to be more in couple of units to ensure smooth functioning of the service and also to ensure good quality cabins for customers. To achieve the same, regular checkups of the cabins are necessary.

2.1.2. Operation and Maintenance of the Diu to Ghoghla Ropeway in accordance with the provisions of this agreement.

2.1.3. 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.

### **3. Grant of Concession**

#### **3.1. Concession**

Subject to and in accordance with the terms and conditions set forth in this Agreement, and in particular subject to the due fulfillment of all the obligations assumed towards Concessioneing Authority by the Concessionaire, Concessioneing Authority hereby grants and authorizes the Concessionaire:

- a) Right of Way and access to the Site to design, finance, construct, commission, operate, manage and maintain the Ropeway Project at the Specified Location during the Concession Period at the cost and risk of the Concessionaire;
- b) subject to para (c) below, to collect fee/ tariff/ charge from the Users of any Project facilities other than the Ropeway system, at the rates to be determined by the Concessionaire on and from the COD till the Transfer Date;
- c) on and from the COD till the Transfer Date, to collect the user charges from the passengers using the Ropeway
- d) to sub-license/ let out during the Concession Period only those components of the Project which are expressly permitted under this Agreement, after taking prior written approval from the Concessioneing Authority. The approvals requested by the Concessionaire shall not be withheld unreasonably. However, the Concessionaire shall continue to remain solely liable towards the Concessioneing Authority for all its obligations during the entire Concession Period;
- e) to sub-contract only those components of the Project Facility to third parties which are expressly permitted under this Agreement, after taking prior written approval from the Concessioneing Authority. However, the Concessionaire shall continue to remain solely liable towards the Concessioneing Authority for all its obligations during the entire Concession Period;
- f) perform and fulfil all of the Concessionaire's obligations under and in accordance with this Agreement.
- g) bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement; and
- h) not assign, transfer or sublet or create any lien or Encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project and Project Facilities nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement.

- 3.1.1. The Concessionaire shall not be entitled to allow the use of the Project Facilities by any other person or for any purpose other than prescribed under this Agreement.
- 3.1.2. Nothing contained herein, including the act of granting permission to develop the Project Facility at the Site and to use of the Project Facility or any part thereof, shall not vest or create any proprietary interest in the Project Facility or any part thereof including any permanent fixture, fitting, etc. installed in the structure of the Project Facility in favour of the Concessionaire or any part thereof or any other person claiming through or under the Concessionaire. The Concessionaire shall not in any manner sell, transfer, assign, mortgage, charge, create any lien or otherwise encumber the Project Site and Project Assets.

### **3.2. Concession Period**

- 3.2.1. 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 Period") 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 of this Agreement.
- 3.2.2. At the end of the Concession Period or sooner Termination of this Agreement for any reason whatsoever, all rights given under this Concession Agreement shall cease to have effect and the Site and Project Facility with all the equipments, and fixtures and other assets permanently attached to the Project Facility shall revert to the Concessions Authority without any obligation of the Concessions Authority to pay or adjust any Consideration or other payment to the Concessionaire.
- 3.2.3. At the end of the Concession Period either by efflux of time or otherwise, the Concessions Authority would either operate the Project itself or may re-bid the same by suitably re-defining or re-structuring the Project parameters at its sole discretion. In the event of re-bidding, if the present Concessionaire chooses to participate in the rebidding process and does not emerge as the successful bidder (by being the highest bidder (i.e. H1) or the lowest bidder (i.e. L1) as required), then the present Concessionaire shall be provided with the right of first refusal to match the bid of the highest bidder or lowest bidder and to enter into fresh Concession Agreement upon the terms and conditions frozen as a part of the bid documents to be then issued by the Concessions Authority, provided its financial bid is within the range of 10% of the financial bid quoted by the H1 or the L1 bidder, as the case may be. However, the terms and conditions including the financial parameters, if any with regard to the mode, manner etc. of the right of first refusal and the provisions related thereto in the bidding documents shall be determined by the Concessions Authority at its sole discretion.

## **4. Conditions Precedent**

### **4.1. Conditions Precedent**

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

#### **4.1.2. Conditions Precedent for Concessioneing Authority**

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

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

### **4.2. Conditions Precedent for Concessioneire**

- i. The Concessioneire shall have furnished Detailed Project Report (DPR) outlining its detailed engineering designs/ drawings, Project Plans, construction methodology, quality assurance procedures, and the procurement, engineering & construction time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in Schedule-G. The Concessioneire shall also address any comments/ observations of the Authority on the DPR and also incorporate any suggestions/ modifications as may be suggested by the Authority.
- ii. Concessioneire shall have furnished constitutional documents, Board Resolution, certified copies of Project Agreement, financing plan and any other document related to the execution of the Project to the Concessioneing Authority for approval. The Concessioneire shall commence the installation/ construction only after approval of the DPR.
- iii. Concessioneire shall also have submitted three (3) certified true copies of all Project Agreements, in particular, the Financing Documents, etc. as well as the shareholders funding Agreement to the Concessioneing Authority.
- iv. Concessioneire shall have obtained all such Applicable Permits unconditionally or if subject to conditions then all such conditions must have been satisfied in full and such Applicable Permits are and shall be kept in full force and effect for the relevant period during the subsistence of the Concession Agreement.

- v. Concessionaire shall make all the necessary applications at its cost that are required for obtaining the land, forest and environment clearances and fulfill any necessary conditions as may be required. The Concessionaire shall also bear the cost of taking the Environmental / Forest clearances/ ROW i.e. NPV of trees etc.
- vi. Concessions Authority should have received from the Indian legal counsel of the Concessionaire a legal opinion with respect to the authority of the Concessionaire to enter into this Agreement and the Project Agreements and the Financing Documents and the enforceability of the provisions thereof;
- vii. Furnishing of the Performance Guarantee as stipulated in Article 9.1 hereof;
- viii. Concessionaire should have executed the Substitution Agreement.

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

#### **4.3. Time allotted for compliance with conditions precedent**

The aforesaid Conditions Precedent shall be complied with within 180 - (One Hundred and eighty) Days of the date of the Agreement, except submission of the performance Guarantee, which shall be submitted prior to signing of the Agreement. For the purpose of compliance of Financial Close obligation, Concessionaire, shall not be considered at default if the conditions pending for achieving financial close are only those which are required to be fulfilled by the Concessions Authority.

#### **4.4. Damages for Delay by the Authority**

In the event that (i) the Concessions Authority does not procure fulfilment of any or all of the Conditions Precedent set forth in Article 4.1 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure. The Concessionaire shall be entitled to Time Extension for the period of such delay in accordance with the provisions of this agreement. The Concessionaire agree that it shall not be entitled to claim any other damages on account of any such delay by the Concessions Authority.

#### **4.5. Damages for Delay by the Concessionaire**

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

#### **4.6. Termination for non-compliance of conditions precedents**

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

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

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

## 5. Obligations of the Concessionaire

### 5.1. Obligations of the Concessionaire

- 5.1.1. Subject to and on the terms and conditions of this Agreement, the Concessionaire shall at its cost and expense procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Diu to Ghoghla Ropeway and observe, fulfill, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2. The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.3. Subject to Clauses 5.1.1 and 5.1.2, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 5.1.4. The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- a) To complete the design and detailed engineering of the Project. The Concessionaire shall assess the land requirement for the Project including for right of way, terminal points, support infrastructure, etc. keeping in view the project requirements/ design considerations, technical parameters stated in the RFP and as specified in the Specifications and Standards set forth in Schedule D of this Agreement.
  - b) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details, as may be required for obtaining all Applicable Permits (Schedule E) and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
  - c) The Concessionaire shall procure all machinery, plant and equipment and complete installation, testing and commissioning of all machinery, plant and equipment comprising the Project.
  - d) The Concessionaire shall follow the guidelines for different Project components, as set out in Schedules of this Agreement.
  - e) The Concessionaire will make its own arrangement and raise finances, both in equity and debt, for funding the construction, operation, maintenance and management of the entire Project and shall perform and fulfill its obligations under the Financing Arrangements.
  - f) The Concessionaire will commence construction within 30 days of Appointed Date and achieve agreed milestones within the time period specified for it.
  - g) The Concessionaire shall complete the construction within the time frame stipulated in this Agreement.
  - h) Achieve Substantial Completion and/or Project completion in accordance with the provisions of this Agreement including Schedules, Prudent Utility Industry Practices and with full safety practices.
  - i) The Concessionaire will commence commercial operations of the facilities only after inspection, testing, full commissioning and issuance of the necessary Completion Certificate

by the Independent Engineer/ designated authority. The Substantial Completion shall be accorded after the Ropeway System is complete to enable trial runs.

- j) The Concessionaire cannot and shall not sub-contract the whole of the Concession. He may enter into Engineering Procurement Construction Contract (EPC), Supply and Erection Contract by inducting the EPC contractor(s) and maintenance operators for different Project activities and service contracts. However, the Concessionaire shall continue to remain solely liable towards the Concessions Authority for all such obligations sub-contracted during the entire Concession Period.
- k) The Concessionaire shall implement the Area Management Plan (AMP) required for the construction and operation phase of the Ropeway Project.
- l) The Concessionaire shall implement the Environmental Management Plan (EMP) required for the construction and operation phase of the Ropeway Project.
- m) The Concessionaire shall maintain and operate the Project Assets/ facilities in accordance with the Good Industry Practices/ Prudent Utility Industry Practices & technical safety practices, and performance standards.
- n) The Concessionaire shall maintain the requisite insurance in respect of the Project and the facilities comprised therein, both during construction and operations phase including but not limited to Passenger Liability Insurance for accidents etc., in accordance with Prudent Utility Industry Practices.
- o) The Concessionaire shall allow at all times, representatives of the Concessions Authority, Independent Engineer and other persons authorized by the Concessions Authority, access as required to the Project Site for monitoring and supervision.
- p) The Concessionaire shall make timely payment of Annual Concession Fee from the Commercial Operation Date to the Concessions Authority as quoted in the Financial Bid of the Concessionaire which will be increased @ 5% every year over the previous year's Annual Concession Fee.
- q) comply and adhere to the terms and conditions including renewals indicated in the clearances with respect to, CRZ, forest, wildlife and environment and keep these clearances in force including any renewal or modification, if required;
- r) The Concessionaire shall bear the cost of all inspections of the Ropeway systems both during construction and operations.

5.1.5. In the event upon inspection and in consultation with the Independent Engineer as the case may be, the Independent Engineer determines that the Aerial Ropeway or part thereof cannot be used without danger to the public or that it is no longer fit for the carriage of passengers, Concessions Authority may order closing of the Aerial Ropeway or part thereof to the public and the same may be reopened to public only after inspection and Concessions Authority's sanction to reopen after removal of defects.

- 5.1.6. The Concessionaire shall transfer the Project Assets to the Concessing Authority or its designated agency/ authority/ nominee after the expiry/ Termination of Concession Period in accordance with the provisions of this Agreement. At the time of transfer of Project/ Project Facility, the Concessing Authority in addition to other requirements as stated in this Agreement, shall ensure the fulfillment of the following requirements:
- i. All Project Assets including ropeway, parking structure, equipment etc shall have been renewed and cured of all defects and deficiencies as necessary so that the Project is compliant with the Specifications and Standards as per the Concession Agreement.
  - ii. The Concessionaire shall deliver all the records and reports pertaining to the Project and its engineering, construction, operation and maintenance.
  - iii. The Concessionaire shall execute such deeds of conveyance, documents and other writings as the Concessing Authority may reasonably require to convey, divest and assign all the rights, title and interest of the Concessionaire in the Project free from all encumbrances absolutely and free from any charge or Tax to Concessing Authority or its Nominee.
- 5.1.7. The Concessionaire shall be solely and primarily responsible towards the Concessing Authority for observance of all the provisions of this Concession Agreement on behalf of the Concessionaire, its employees and representatives and any person acting under or for and on behalf of the Concessionaire or the Sub Contractor. The Sub Contractor shall be fully responsible as if they were the acts or defaults of the Concessionaire, its agents or employees.
- 5.1.8. The Concessionaire shall be liable for and shall indemnify, protect, defend and hold harmless the Concessing Authority, Concessing Authority's officers, employees and agents from and against any/ all demands, claims, suits and any causes of action and all liability, costs, expenses, settlements and judgments arising out of the failure of the Concessionaire to discharge its obligations under this Article and to comply with the provisions of Applicable Laws and Applicable Permits.
- 5.1.9. The Concessionaire acknowledges and recognizes that time is of the essence of this Agreement and that performance of all its obligations shall be construed accordingly.

## **5.2. Obligations relating to Project Agreements**

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

- 5.2.2. The Concessionaire shall submit to the Authority the drafts of all Project Agreements or any amendments or replacements thereto for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that no review and/or observation of the Authority and/or its failure to review and/or convey its observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.
- 5.2.3. The Concessionaire shall not make any replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the 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, where under such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.

5.2.5. Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that selection or replacement of any EPC contractor and execution of any EPC contract shall be subject to the prior approval of the Concessions Authority from the perspective of national security and public interest, the decision of the Concessions 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 Concessions Authority. The Concessions Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Concessions 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. Ownership Structure**

The Applicant/Consortium has caused the Concessionaire to be incorporated as a special purpose company to implement, operate and maintain the Project/Project Facilities and Services in accordance with this Agreement. The shareholding pattern of Concessionaire/each member of the Consortium in the Concessionaire is [●].

#### **5.3.2. Shareholding**

The Concessionaire shall ensure that the Applicant/ members of the Consortium maintain Management Control at least until expiry of the two (2) years after COD as also maintain their equity holding in the Concessionaire such that:

- a) Selected Bidder/Consortium Members together with its/their Associates hold not less than 51% (Fifty One Percent) of its issued and paid up equity and that no member of Consortium whose technical and financial capacity was evaluated for the purposes of Pre-qualifications in response to Request for Qualification shall hold less than 26% (Twenty Six Percent) of such equity until expiry of two (2) years after COD. At any time, after expiry of the aforesaid share holding period, lead member can approach Authority for approval proposing a new entity/ consortium. Authority may at its sole discretion consider and approve it subject to the entity/consortium meeting the eligibility criteria as prescribed in Bid Document for the Project; and
- b) M/s [●] (“Lead Member”) of the Consortium (original or new as the case may be) legally and beneficially holds at any time not less than 51% (fifty one percent) of the Consortium’s holding in the paid up equity capital of the Concessionaire.

Any Transfer of shareholding in the Concessionaire and/or direct or indirect change in the Management Control of the Concessionaire, including by way of a restructuring or amalgamation, shall only be with the prior written approval of the Concessions Authority which consent shall not be withheld except (i) for reasons of national security; or (ii) [if the Person

proposed for assuming such Management Control would by virtue of the restrictions imposed under the Applicable Law or the conditions of bidding (including restrictions to avoid anti-competitive and monopolistic practice) and/or public policy be disqualified from undertaking the Project.]

Provided, nothing contained in this Article shall preclude or prevent pledge of shares in the Concessionaire in favour of Senior Lenders as security for the Financial Assistance subject to the enforcement and consequent Transfer thereof only with the prior written consent of the Concessioneing Authority as stated hereinbefore and in accordance with the Financing Documents.

### **5.3.3. Constituent Documents**

The Concessionaire shall ensure that its articles of association adequately reflect the aforesaid and the relevant commitments, obligations and responsibilities of the Applicant/Consortium.

In particular, the articles of association and the memorandum of association of the Concessionaire shall be amended within 3 (three) months of the Date of Award of Concession to include the terms and conditions regarding the composition of shareholding and management stipulated in this Agreement; and terms and conditions related to changes in the share-holding pattern stipulated in this Agreement. The Concessionaire shall submit the amended articles of association and the memorandum of association to the Concessioneing Authority as soon as may be reasonably possible.

Any subsequent change in the articles of association or the memorandum of association which alter the provisions required by this Article shall require the prior approval of the Concessioneing Authority and the articles of association and memorandum of association of the Concessionaire shall include a specific provision to this effect.

### **5.4. Employment of foreign national**

The Concessionaire acknowledges, agrees and undertakes that employment of foreign personnel by the Concessionaire and/or its contractors and their subcontractors shall be subject to grant of requisite regulatory permits and approvals including employment/ residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the 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 personal**

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

## **5.6. Obligations relating to medical aid**

For providing emergency medical aid to Users, the Concessionaire shall, at each Terminal Station, set up and operate a medical aid post (the "**Medical Aid Post**") equipped to render first aid and to assist in accessing emergency medical aid from hospitals / clinics in the vicinity.

## **5.7. Obligations relating to basic amenities**

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

5.7.2. The Concessionaire shall, during the entire term of the Concession Period, provide and procure hygienic and safe low-cost eateries and canteens, in adequate numbers and in accordance with Good Industry Practice.

## **5.8. 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.

## **5.9. 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.

## **5.10. Branding of the Ropeway**

The Ropeway Service between Diu and Ghoghla may be branded to advertise, display or reflect the name or identity of the Concessionaire or its shareholders. The Concessionaire may use the name or entity of the Ropeway Service between Diu and Ghoghla to advertise or display its own identity, brand equity or business interests, including those of its shareholders. 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 Ropeway Service between Diu and Ghoghla shall be known, promoted, displayed and advertised by the name of Authority.

### **5.11. Facility for physically challenged and elderly persons**

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

### **5.12. Obligations relating to maintenance of the Ropeway**

The Concessionaire agrees that it shall enter into a maintenance agreement with the original equipment or technical supplier of the equipment for a term of 10 (ten) years following COD. The Concessionaire shall furnish an undertaking to certify that it is in compliance with this obligation under Clause 5.12 no later than [15] days prior to COD. The equipment or technical supplier of the equipment shall provide guarantee of the equipment for a term of 10 (ten) years following COD.

### **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 Project and achieve integration of the Project with the character of the surrounding landscape through both appropriate design and sensitive management of all visible elements. The aesthetics of visible structure of the ropeway terminal stations shall be designed to integrate harmoniously with the adjacent Ghoghla beach and the architectural heritage structures including the Diu Fort and Panikotha. 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 water, air and sound pollution 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 water, air and sound pollution arising from the Project and its impact on Users and the neighborhood.

### **5.15. Obligations relating to establish a cloak room facilities at terminal buildings**

The Concessionaire shall establish a cloak room at the terminal buildings with adequate number of lockers for visitors and tourists who shall 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 shall be intimated to Authority forthwith.

### **5.16. Obligations relating to establish a vehicle parking facilities at terminal buildings**

The Concessionaire shall establish sufficient and adequate numbers of parking facilities for visiting motor vehicles at the terminal buildings for visitors and tourists who shall avail the ropeway facilities. The notification of Motor Vehicles Parking Fee shall be issued by the Concessionaire itself and fixed and modified by the Concessionaire according to market demand and the motor vehicle parking fee rate shall be intimated to Authority forthwith.

## 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 Concessions Authority shall return the Bid Security submitted by the Concessionaire after the submission of the Construction Period Performance Security.
- 6.1.3. 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, may provide support and facilitation to the Concessionaire in procuring Applicable Permits (**Schedule – E**) required from any Government Instrumentality for implementation and operation of the Project;
  - b) upon written request from the Concessionaire, may provide support the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favorable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;
  - c) ensure that no barriers are erected or placed on the Site by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency, national security, law and order or collection of inter-state taxes;
  - d) ensure the availability of Project Site, free of encumbrances to the Concessionaire.
  - e) assist the Concessionaire in procuring police assistance for regulation of traffic, removal of trespassers and security on or at the Ropeway Project;
  - f) not do or omit to do any act, deed or thing which may in any manner be violate of any of the provisions of this Agreement;
  - g) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
  - h) upon written request from the Concessionaire and subject to the provisions of Clause 5.4, may provide facilitation to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for the purposes of discharge by the Concessionaire or its Contractors their obligations under this Agreement and the Project Agreements.

### 6.2. Obligations of Transaction Authority – Diu Smart City Ltd:

The Authority has designated Diu Smart City Ltd (“**DSCL**”) as the Transaction Authority, on behalf of the Authority, for selection of a private sector operator for the implementation, management and O&M of the Project. DSCL had accordingly, prescribed technical and commercial terms and conditions and invited proposals (the “**Request for Proposal**” or “**RFP**”) from the interested bidders for execution of the above

referred Project on PPP basis in DBFOT format.

- Diu Smart City Limited shall monitor the Project during the implementation/ construction phase.
- PMC team working for implementation of Diu Smart city project is the PMC for the implementation phase of the project.
- DSCL will handover the project monitoring role after implementation of the project to the Authority.
- The Transaction Authority shall assist the Authority to select and appoint an Independent engineer for the operation phase of the project

## 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, validly existing and in good standing under 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;
- b) it has full power and authority to execute, deliver and perform its obligations under this Agreement;
- c) it has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- d) this Agreement constitutes the legal, valid and binding obligation of the Concessionaire, enforceable against it in accordance with the terms hereof;
- e) there are no actions, suits or proceedings pending or to its best knowledge, threatened against or affecting it before any court, administrative body or arbitral tribunal which might materially and adversely affect its ability to meet or perform any of its obligations under this Agreement;
- f) it has the financial standing and capacity to undertake the Project in accordance with the terms 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 of association and articles of association 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) 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;
- i) 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;
- j) 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;
- k) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and
- l) 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.

- m) agrees generally in respect of the enforcement of any judgement against it in any proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings.
- n) consents generally in respect of the enforcement of any judgement against it in any proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings.

## **7.2. Representations and Warranties of the Authority**

The Authority represents and warrants to the Concessionaire that:

- a) it is duly organised, validly existing and in good standing under the laws of India;
- b) it has full power and authority to execute, deliver and perform its obligations under this Agreement;
- c) it has taken all necessary actions under the Applicable Laws to authorize the execution, delivery and performance of this Agreement;
- d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- e) there are no actions, suits or proceedings pending or to its best knowledge, threatened against or affecting it before any court, administrative body or arbitral tribunal which might materially and adversely affect its ability to meet or perform any of its obligations under this Agreement
- f) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Authority's ability to perform its obligations under this Agreement; and
- g) it has complied with Applicable Laws in all material respects.

## **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 their presentation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any obligation of either Party under this Agreement.

## 8. Disclaimer

### 8.1. Disclaimer

- 8.1.1. The 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, 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.

## 9. Performance Security

### 9.1. Construction period performance security

9.1.1. The Concessionaire shall for due performance of its obligations during the Construction Phase provide to Concessioneing Authority an unconditional and irrevocable bank guarantee from Scheduled/Nationalized Bank, in favour of the Concessioneing Authority en-cashable and enforceable at Diu, substantially in the form set forth in Schedule F (the “**Performance Guarantee**”). The Performance Guarantee shall be for a sum of Rs. 1.2 Crore (Rupees One Crore twenty lakhs only) for the initial 2 (two) years after COD and thereafter sum of Rs. 60 Lakh (Rupees Sixty Lakh only). Till such time the Concessionaire provides to Concessioneing Authority the Performance Guarantee pursuant hereto, the Bid Security shall remain in full force and effect. The Performance Guarantee, in the form of a bank guarantee shall be valid for an initial period of 1 (one) year and shall be renewed 30 (thirty) Days prior to expiry of each year, for an additional term of 1 (one) year. It is clarified that the Concessionaire shall be liable to restore the Performance Guarantee to the full amount in case of part encashment of the same by the Concessioneing Authority. This shall be done within 30 (thirty) Days of any such part encashment. The Performance Guarantee furnished under this provision shall be valid until expiry of 24 (twenty four) months from the Date of Commercial Operations. Post 2 years of Commercial Operation Date, Concessionaire shall be liable to provide Performance Guarantee of Rs. 60 Lakh for the remaining Concession Period. Failure of the Concessionaire to provide a valid Performance Guarantee and/or restore and maintain the Performance Guarantee in accordance with this Article shall entitle the Concessioneing Authority to forthwith terminate this Agreement and also if relevant, to forfeit the Bid Security.

## 10. Right of Way

### 10.1. The Site

10.1.1. The site of the Diu to Ghoghla Ropeway shall comprise the real estate described in Schedule-A and in respect of which the Right of Way shall be provided and granted by the Authority to the Concessionaire as a licensee under and in accordance with this Agreement (the “**Site**”). For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the real estate required for Diu to Ghoghla Ropeway as set forth in Schedule-A or any real estate ancillary thereto that may be built, constructed, erected and/or developed in future pertaining to the real estate as laid down in Schedule A hereunder.

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

- 10.2.4. The Concessionaire hereby irrevocably appoints the Authority (acting directly or through a nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the licence granted hereunder at any time after the Concession Period has expired or has been terminated earlier in terms hereof, a sufficient proof of which will be the declaration of any duly authorised officer of the Authority, and the Concessionaire consents to it being registered for this purpose.
- 10.2.5. It is expressly agreed that with regard to the trees on the Site are property of the Authority except that the Concessionaire shall be entitled to exercise usufructory rights thereon during the Concession Period.

### **10.3. Procurement of the site**

- 10.3.1. Pursuant to the notice the Authority's 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 a Schedule 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 Schedule shall be deemed to have been granted to the Concessionaire upon vacant access thereto being provided by the Authority to the Concessionaire.
- 10.3.2. Without prejudice to the provisions of Clause 10.3.1, the Parties hereto agree that on or prior to the Appointed Date, the Authority shall have granted vacant access and Right of Way such that the Schedule shall not include more than 20% (twenty per cent) of the total area of the Site required and necessary for the Diu to Ghoghla Ropeway, and in the event Financial Close is delayed solely on account of delay in grant of such vacant access and Right of Way, the Authority shall not be liable to payment of Damages under and in accordance with the provisions of Clause 4.3.

- 10.3.3. On and after signing the memorandum referred to in Clause 10.3.1, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.
- 10.3.4. The Authority shall make best efforts to procure and grant, no later than 90 (ninety) days from the Appointed Date, the Right of Way to the Concessionaire in respect of all land included in the Schedule, and in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Concessionaire, the authority will not be liable until Right of Way is procured.
- 10.3.5. Upon receiving Right of Way in respect of any land included in the Schedules (If needed), the Concessionaire shall complete the Construction Works thereon within a reasonable period to be determined by the Independent Engineer, in accordance with Good Industry Practice; provided that the issue of Provisional Certificate shall not be affected or delayed on account of vacant access to any part of the Site not being granted to the Concessionaire or any construction on such part of the Site remaining incomplete on the date of Tests on account of the delay or denial of such access thereto. For the avoidance of doubt, it is expressly agreed that Construction Works on all lands for which Right of Way is granted within 90 (ninety) days of the Appointed Date shall be completed before the Project Completion Date. It is further agreed that the obligation of the Concessionaire to complete the affected Construction Works shall subsist so long as the Authority continues to pay the Damages specified herein, and upon the Authority ceasing to pay such Damages after giving 60 (sixty) days' notice thereof to the Concessionaire, the obligation of the Concessionaire to complete such works on such part of the Site shall cease forthwith. It is also expressly agreed that completion of the respective Construction Works within the time determined by the Independent Engineer hereunder shall be deemed to be Project Milestones for the purposes of levy and recovery of Damages.

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

- 10.4.1. 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**

10.5.1. 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**

10.6.1. 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.

## **10.7. Access to the Authority and Independent Engineer**

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

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

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

## **10.8. Geological and archaeological finds**

It is expressly agreed that mining, geological and 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. The Authority shall procure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period.

## **11. UTILITIES, ASSOCIATED ROADS AND TREES**

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

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

### **11.2. Shifting of Obstructing Utilities**

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

### **11.3. New utilities and roads**

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

### **11.4. Felling of trees**

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

## **12. CONSTRUCTION OF THE ROPEWAY FROM DIU TO GHOGHLA**

### **12.1. Obligations prior to commencement of construction**

Prior to commencement of Construction Works, the Concessionaire shall:

- a) submit to the Authority its detailed design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in Schedule-G;
- b) shall obtain the approval of the Authority and the applicable government agencies on the detailed design of the proposed ropeway and its ancillary facilities
- c) appoint its representative duly authorized to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement;
- d) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, the Applicable Laws and Applicable Permits; and
- e) make its own arrangements for quarrying of materials needed for the Project under and in accordance with the Applicable Laws and Applicable Permits.

### **12.2. Drawings**

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

- a) The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, 3 (three) copies each of all Drawings to the Independent Engineer for review.
- b) By submitting the Drawings for review to the Independent Engineer, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering, including field construction criteria related thereto, are in conformity with the Scope of the Project and the Specification and Standards.
- c) Within 15 (fifteen) days of the receipt of the Drawings, the Independent Engineer shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. The Concessionaire shall not be obliged to await the observations of the Independent Engineer on the Drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin or continue Construction Works at its own discretion and risk;
- d) If the aforesaid observations of the Independent Engineer indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the Concessionaire and resubmitted to the Independent Engineer for review. The Independent Engineer shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings;

- e) No review and/or observation of the Independent Engineer and/or its failure to review and/or convey its observations on any Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Engineer or the Authority be liable for the same in any manner.
- f) Without prejudice to the foregoing provisions of this Clause 12.2, the Concessionaire shall submit to the Independent Engineer/Authority for review and comments, its Drawings relating to alignment of the Diu to Ghoghla Ropeway and the Independent Engineer shall have the right but not the obligation to undertake such review and provide its comments, if any, within 30 (thirty) days of the receipt of such Drawings. The provisions of this Clause 12.2 shall apply mutatis mutandis to the review and comments hereunder.
- g) Within 90 (ninety) days of the Project Completion Date, the Concessionaire shall furnish to the Independent Engineer and the Authority a complete set of as-built Drawings, in 2 (two) hard copies and in micro film form or in such other medium as may be acceptable to the Authority, reflecting the Diu to Ghoghla Ropeway as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Diu to Ghoghla Ropeway and setback lines, if any, of the buildings and structures forming part of Project Facilities.

### **12.3. Construction of the Ropeway**

- 12.3.1. On or after the Appointed Date, the Concessionaire shall undertake construction of the Diu to Ghoghla Ropeway as specified in Schedule-B and Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D. The [730 day or 24 months, whichever is before] from the Appointed Date shall be the scheduled date for completion of the Diu to Ghoghla Ropeway (the "Scheduled Date") and the Concessionaire agrees and undertakes that construction of the Diu to Ghoghla Ropeway shall be completed on or before the Scheduled Date.

12.3.2. The Concessionaire shall construct the Diu to Ghoghla Ropeway in accordance with the Project Completion Schedule set forth in Schedule-G. In the event that the Concessionaire fails to achieve any Project Milestone within a period of 90 (ninety) days from the date set forth for such Milestone in Schedule-G, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of 0.2% (zero point Two per cent) of the amount of Performance Security for delay of each day subject to a maximum of 5% (five percent); provided that if any or all Project Milestones or the Scheduled Date are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-G shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-G has been amended as above; provided further that in the event Project Completion Date is achieved on or before the Scheduled Date, the Damages paid under this Clause 12.3.2 shall be refunded by the Authority to the Concessionaire, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.3.2 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

12.3.3. In the event that the Diu to Ghoghla Ropeway is not completed within 180 (One hundred and Eighty) days from the Scheduled Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.

#### **12.4. Construction Requirements for the Ropeway**

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

#### **12.5. Codes and Standards**

The Concessionaire shall carry out the design and construction of the Project Facility in strict compliance with all applicable Laws, codes and standards including but not limited to the BIS codes, Indian Electricity Act, National Building Code, Applicable Municipal Building Bylaws of UT Administration of Dadra & Nagar Haveli and Daman & Diu, etc. and Good Industry Practice. In case of non-availability of Indian Standards, suitable international standards will be followed after taking due approval of the Concessioneing Authority.

## **12.6. Before commencement of Construction**

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

- i. Shall obtain all Applicable Permits and approvals from the Concessioneing Authority & concerned local authorities, necessary to commence construction of such Project Facilities;
- ii. Shall carry out the design and construction of the Project Facility in strict compliance with all Applicable Laws in particular, applicable Building Codes and Standards and Good Industry Practices.
- iii. Appoint its representative duly authorised to deal with the Concessioneing Authority in respect of all matters under or arising out of or relating to this Agreement.
- iv. Shall be solely responsible and liable for development and implementation of the Project Facility. The Concessioneing Authority shall not be responsible in any manner whatsoever to either the Concessionaire or its contractors for any default or failure by the Concessionaire to comply with statutory requirements of design and construction as per the Applicable Laws in particular Building Codes and Good Industry Practice, observance of safety and security measures at Site, etc. Concessioneing Authority shall not bear any costs associated with it.
- v. Shall be solely responsible for obtaining all necessary clearances and sanctions from competent authorities for approval of the various components, such as firefighting system, required to be installed at the Project Facility. The Concessioneing Authority shall only provide assistance wherever possible, on best effort basis (without any legal and binding obligation) to facilitate the process.

## **12.7. During Construction**

a. The Concessionaire shall:

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

b. The Concessionaire shall be responsible for

- i. The accurate setting-out of the Project Site, Project's structures such as location of towers etc.
- ii. The correctness of the positions, levels, dimensions and alignment of all part of the works.

- iii. The Concessionaire shall be responsible at its cost, for procurement, transport, receiving, unloading and safe keeping of all plant and machinery, equipment, materials and other things required for the construction and operation & maintenance of the facilities.
  - iv. During the Concession Period, the Concessionaire shall be responsible for protecting the Site from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Contractor or other person claiming through or under the Concessionaire to place or create any Encumbrance or security interest over all or any part of the Site or the Project Assets, or on any rights of the Concessionaire therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.
  - v. Unless otherwise stated in this Concessions Agreement:
    - The Concessionaire shall be responsible for keeping unauthorized persons off the Project Site, during the Construction Period.
    - Authorized persons during the Construction Period shall be limited to the employees of the Concessionaire, employees of Sub Contractors of the Concessionaire, and employees and persons authorized by the Concessions Authority.
- c. The Concessionaire shall deploy the safety equipments and safety plan as envisaged in this Agreement.
  - d. The Concessionaire shall arrange for all the material requirements for the Project and disposal of all material wastes. The Applicable Permits in this regard would have to be obtained by the Concessionaire. All excess and unsuitable excavated materials shall be piled at appropriate dumping places or otherwise disposed of by the Concessionaire in consultation with the Concessions Authority and/ or the Independent Engineer.
  - e. During the Construction period, the Concessionaire no later than 7 (seven) days after the close of each month, furnish to the Concessions Authority and the Independent Engineer a monthly report on progress of the Construction Works and shall promptly give such other relevant information as may be required by the Independent Engineer. The report shall review the progress made, identify slippages, if any, and Project the future activities to be undertaken (including rectifications), operations and maintenance activities.

## 12.8. Construction Period

On or after the Appointed Date, the Concessionaire shall undertake construction of the Project as specified in Schedule-A and Schedule-B. The Concessionaire agrees and undertakes that the Project shall have achieved either full Completion or at least Substantial Completion on or before the 730<sup>th</sup> (seven hundred and thirtieth) day from the Appointed Date (the "**Scheduled Completion Date**").

## 12.9. Project Monitoring

- i. The Concessions Authority may appoint an Independent Engineer (IE) to monitor the Project Performance during Construction phase of the Project. In addition, the Concessions Authority may appoint an experienced and qualified firm or organization as Safety Consultant for carrying out safety audit of the Ropeway Project in accordance with the Safety Requirements.

- ii. Independent Engineer, shall also assess Performance of those critical parts of the ropeway system, failure of which is likely to cause serious injury to the passengers.

### **12.10. Substantial Completion of the Project**

It shall be noted by the Concessionaire that substantial completion to enable trial runs of ropeway system has been kept as 730<sup>th</sup> (seven hundred and thirtieth) day from the Appointed Date. The Project shall be considered substantially completed subject to the Completion of following Project activities:

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

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

### **12.11. Performance Standards**

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

- a. Carrying capacity of the Ropeway system at the time of commencement of Operations shall not be less than **500 PPHPD**.
- b. Ropeway should be in daily operation throughout the year, unless otherwise instructed by Collector, Diu (during cyclone or similar unfavorable conditions).
- c. The speed of ropeway system at boarding and de boarding areas should enable safe passenger movement including elderly persons and children.
- d. Performance of standby equipment: The rating of standard DG set should be equal to the main electrical power system to run at full load. **Care should be taken for altitude affect on the equipment.**
- e. Performance of Rescue systems and carrier evacuation system : The efficiency and number of rescue and evacuation system shall be measured in terms of following:
  - i. Response time to mishap detected by automatic detection system should be minimum.
  - ii. Evacuation/ mitigation time period up to terminal stations should be kept at minimum as per code.
- f. Provision of all necessary spares required for normal operation of system shall be proved by Concessionaire. Provision of spare cabins with grips and hangers shall also be ensured by the Concessionaire to meet any eventuality in order to maintain the required capacity of ropeway.
- g. All safety provisions related to the safe operation of the ropeway system shall be strictly adhered to as stipulated in the relevant specifications, safety requirements & guidelines.
- h. Performance of Rescue systems and carrier evacuation system. The efficiency of rescue and evacuation system shall be measured in terms of following:-
  - Response time to mishap detected by automatic detection system should be minimum;

- Evacuation/ mitigation time period upto terminal stations should be kept at minimum.
- For rescuing arrangements, Diesel engine of appropriate capacity to operate the drive at slow speed shall be provided.

## **13. MONITORING OF CONSTRUCTION**

### **13.1. Monthly Progress report**

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

### **13.2. Inspection**

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

### **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 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 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**

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

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

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

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

13.5.3. 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.

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 Schedule Date is extended pursuant hereto, the Concession Period shall be deemed to be extended by a period equal in length to the period of extension of the Schedule Date.

### **13.6. Video recording**

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

## 14. COMPLETION CERTIFICATE

### 14.1. Test

- 14.1.1. At least 45 (forty-five) Days prior to the likely completion of the Project, the Concessionaire shall notify the Independent Engineer of the date when it intends to commence commercial operations. The Independent Engineer shall then proceed to inspect the Construction Works with the intention of issuing the Completion Certificate and determine and notify to the Concessionaire the schedule and manner of the tests as are specified in Schedule J that it shall carry out to ensure that the Project meets with the Construction Standards (“the **Tests**”). The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Concessionaire, and notified to the Concessions Authority who may designate its representative to witness the Tests. 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 7 (Seven) days’ notice to the Independent Engineer;
- 14.1.2. Upon completion of each Test, the Independent Engineer shall provide to the Concessionaire and the Concessions Authority copies of all Test data including detailed Test results;
- 14.1.3. Upon completion of Construction Works and the Independent Engineer determining all the Tests to be successful, it shall forthwith issue to the Concessionaire and the Concessions Authority a Completion Certificate substantially in the form set forth in Schedule K;
- 14.1.4. 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. The Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire (the “**Punch List**”) to be completed by the Concessionaire within a stipulated time. Provided, notwithstanding the foregoing, no such Provisional Certificate will be issued pending notifications in the Official Gazette by the Collector of Customs. 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 or such other extended period that the Concessions Authority may in its sole discretion determine, failing which the Provisional Certificate shall lose its validity and the Concessions Authority shall be entitled to terminate this Agreement;

14.1.5. Without prejudice to the foregoing, if the Concessionaire shall have failed to complete any Construction Works on account of Force Majeure or for reasons solely attributable to the Concessions Authority, the Concessions Authority may, in its discretion, reduce the scope of Project and require the Concessionaire to pay 80% (eighty percent) of the sum saved due to such reduction of scope. Upon such payment to the Concessions Authority, the obligations of the Concessionaire in respect of such works shall be deemed to have been fulfilled.

## **14.2. Completion Certificate**

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

## **14.3. Provisional Certificate**

14.3.1. The Authority 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 Durgam Cheruvu Ropeway can be safely and reliably placed in commercial operation though certain associated works and / or facilities for users forming part thereof are outstanding and not yet complete. In such an event, the Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Authority and the Concessionaire (the "**Punch List**"); provided that the Authority shall not withhold the Provisional Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the Authority.

## **14.4. 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) 0.2% (zero point two per cent) of the Performance Security, and (b) 0.3% (zero point three per cent) of the cost of completing such items as estimated by the Authority. 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 Authority 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. Rescheduling of Tests**

14.5.1. 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.

## **15. ENTRY INTO COMMERCIAL SERVICE**

### **15.1. Commercial Operation Date (COD)**

15.1.1. Commissioning of Diu to Ghoghla Ropeway shall be deemed to be complete when the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 14 and in accordance with the format provided in Schedule K. hereunder The Diu to Ghoghla Ropeway shall enter into commercial service on COD whereupon the Concessionaire shall be entitled to demand and collect Fee in accordance with the provisions of Article 25. Concessionaire may initiate Commercial activity only after the commissioning operation of Ropeways.

15.1.2. No commercial activity shall start before COD of the ropeway project. Thus, only after ropeway starts functioning shall other commercial activities be permitted to be taken up.

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

15.2.1. Subject to the provisions of Clause 12.3, if COD does not occur prior to the 61st (sixty first) day from the Schedule 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 at the rate of 0.2% of the Construction Period Performance Security for delay of each day subject to a maximum of 5% (five percent).

### **15.3. Termination due to delay**

15.3.1. In the event that Project and Project Facilities are not completed within 180 (one hundred eighty) days from the Schedule Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.

## 16. CHANGE IN SCOPE

### 16.1. Change in 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 notices in writing request the Authority to consider such Change of Scope. The Authority, may in its sole discretion, within 30 days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefore in accordance with this Article 16 or inform the 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**”). Any change of scope of work will also comply with requisite Specifications and Standards wherever applicable
- 16.2.2. Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary Documentation in support of:
- a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule, if the works or services are required to be carried out during the Construction Period; and
  - b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Authority to its contractors, along with the proposed premium/ discount on such rates; provided that the cost incurred by the Concessionaire in providing such information shall be reimbursed by the Authority to the extent such cost is certified by the Independent Engineer as reasonable.

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

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

- 16.3.1. Within 30 (thirty) days of issuing a Change of Scope Order, the Authority shall make an advance payment to the Concessionaire in a sum equal to 20% (twenty per cent) of the cost of Change of Scope as agreed hereunder, and in the event of a Dispute, 20% (twenty per cent) of the cost assessed by the Independent Engineer. The Concessionaire shall, after commencement of work, present to the Authority bills for payment in respect of the works in progress or completed works, as the case may be, supported by such Documentation as is reasonably sufficient for the Authority to determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills, the Authority shall disburse to the Concessionaire such amounts after making a proportionate deduction for the advance payment made hereunder, and in the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure.
- 16.3.2. Notwithstanding anything to the contrary contained in Clause 16.3.1, all costs arising out of any Change of Scope Order issued during the Construction Period shall be borne by the Concessionaire, subject to an aggregate ceiling of 0.25% (zero point two five per cent) of the Total Project Cost. Any costs in excess of the ceiling shall be reimbursed by the Authority in accordance with Clause 16.3.1. In the event that the total cost arising out of Change of Scope Orders (if any) issued prior to the Project Completion Date is less than 0.25% (zero point two five per cent) of the Total Project Cost, the difference thereof shall be credited by the Concessionaire to the Safety Fund within a period of 180 (one hundred and eighty) days of the Project Completion Date. For the avoidance of doubt, it is agreed that the aforesaid 0.25% (zero point two five per cent) of the Total Project Cost shall, to the extent borne by the Concessionaire, be deemed to form part of the actual capital cost of the Project.

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

- 16.4.1. Notwithstanding anything to the contrary contained in this Article 16, but subject to the provisions of Clause 16.4.2, the Authority shall not require the Concessionaire to undertake any works or services if such works or services are likely to delay completion of the Diu to Ghoghla Ropeway; provided that in the event that the Authority considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of or affected by such Order shall not be reckoned for purposes of determining completion of Diu to Ghoghla Ropeway and issuing the Provisional Certificate.
- 16.4.2. Notwithstanding anything to the contrary contained in this Article 16, the Concessionaire shall be entitled to nullify any Change of Scope Order if it causes the cumulative costs relating to all the Change of Scope Orders to exceed 5% (five per cent) of the Total Project Cost in any continuous period of 3 (three) years immediately preceding the date of such Change of Scope Order or if such cumulative costs exceed 20% (twenty per cent) of the Total Project Cost at any time during the Concession Period.

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

- 16.5.1. Notwithstanding anything to the contrary contained in Clauses 16.1.1, 16.2 and 16.3, the Authority may, after giving notice to the Concessionaire and considering its reply thereto, award any works or services, contemplated under Clause 16.1.1, to any person on the basis of open competitive bidding; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 2% (two per cent) of the bid amount to the Authority, 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 per cent) 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 minimizes the disruption in operation of the Diu to Ghoghla Ropeway. The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply mutatis mutandis to the works carried out under this Clause 16.5.

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

- 16.6.1. If the Concessionaire shall have failed to complete any Construction Works on account of Force Majeure or for reasons solely attributable to the Authority, the Authority may, in its discretion, require the Concessionaire to pay 80% (eighty 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 Change of Scope Order by the Authority hereunder, the Concessionaire shall pay forthwith the sum specified therein

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

- a) permitting safe, smooth and uninterrupted flow of passengers on the Ropeway/ Cable Car during normal operating conditions;
- b) collecting and appropriating the Fee;
- c) minimizing disruption of operation of Project in terms hereof in the event of accidents or other incidents affecting the safety and use of the Project by providing a rapid and effective response and maintaining liaison with emergency services available in the State/UT;
- d) carrying out periodic preventive maintenance of the Ropeway/ Cable Car;
- e) undertaking routine maintenance of the Project;
- f) undertaking major maintenance of the Diu to Ghoghla Ropeway;
- g) preventing, with the assistance of concerned law enforcement agencies, any unauthorized use or encroachments of the Project, including the Site;
- h) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on the Diu to Ghoghla Ropeway;
- i) Protection of the environment in and around the ropeway system as per statutory rules prevailing in the region. It includes maintaining the environment around mud flat in the alinement of ropeway, protection of sea environment, near terminal station, pillars and terminal station in the water area. The operator has to maintain the environment and ecological balance to protect the environment adequately.
- j) provision of equipment and materials thereof;
- k) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Project;
- l) maintaining a public relations unit to interface with and attend to suggestions from the Users, government agencies, media and other agencies; and
- m) complying with Safety Requirements in accordance with Article 18.

17.1.2. The Concessionaire shall remove promptly from the Project all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keep the Project and Project Facilities in a clean, tidy and orderly condition, and in conformity with the Applicable Laws, Applicable Permits and Good Industry Practice.

## **17.2. Maintenance Requirement**

17.2.1. The Concessionaire shall procure that at all times during the Operation Period; the Project Facility conforms to the maintenance requirements set forth in Schedule L and M (the "**Maintenance / Safety Requirements**").

## **17.3. Maintenance Manual**

17.3.1. No later than 60 (Sixty Days) 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 Diu to Ghoghla Ropeway in conformity with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice, and shall provide 5 (five) copies thereof to the Authority and 2 (two) copies to the Independent Engineer. The Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause 17.3 shall apply, *mutatis mutandis*.

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

## **17.4. Maintenance Program**

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, the Concessionaire shall provide to the Authority, 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 Project;
- 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 30 (thirty) days of receipt of the Maintenance Programme, the Authority 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, breakdowns and accidents, it shall follow the relevant operating procedures as per 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 Diu to Ghoghla Ropeway shall be limited to getting the passengers to the nearest station for disembarkation. The technology provider shall define procedure / capability under such circumstances. Alternatively, rescue operations procedure to be followed as per Specifications and Standards with the responsibility of the Concessionaire to get people safely on the ground.

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

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

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

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

### **17.7. Damages for breach of maintenance obligations**

17.7.1. In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the higher of (a) 0.5% (zero point five per cent) of Average Daily Fee, and (b) 0.1% (zero point one per cent) of the cost of such repair or rectification as estimated by the Independent Engineer. Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

17.7.2. The Damages set forth in Clause 17.7.1 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.

### **17.8. Authority's right to take remedial measures**

17.8.1. 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, by itself and/or through third party / agency, 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 17.8.1 shall be without prejudice to its rights and remedies provided under Clause 17.7.

17.8.2. The Authority shall have the right and the Concessionaire hereby expressly grants to the Authority the right, to recover the costs and damage specified in Clause 17.8.1 directly from the Operation Period Performance Security.

### **17.9. O&M Overriding powers of the Authority**

17.9.1. 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.

17.9.2. In the event that the Concessionaire, upon notice under Clause 17.9.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Clause 17.9.2 and take over the performance of any or all the obligations of the 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 17.8 along with the Damages specified therein .

17.9.3. In the event of a national emergency, civil commotion or any other act specified in Clause 29.3, 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 State/UT Government or Government of India, and exercise such control over the Project or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of doubt, the consequences of such action shall be dealt in accordance with the provisions of Article 29. 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 and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

### **17.10. Restoration of loss or damage to Project**

Save and except as otherwise expressly provided in this Agreement, in the event that the Project or any part thereof suffers any loss or damage during the Concession Period from any cause whatsoever, the

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.

### **17.11. 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 and Good Industry Practice and Applicable Laws; provided that the Concessionaire shall notify the Independent Engineer or Authority of the proposed modifications along with particulars thereof at least 30 (thirty) days before commencing work on such modifications and shall comply with all suggestions that the Authority may make within 15 (fifteen) days of receiving the Concessionaire's proposal. For the avoidance of doubt, all modifications made hereunder shall comply with the Specifications and Standards, Applicable Laws and the provisions of this Agreement.

### **17.12. Excuse from performance of obligations**

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

- a) an event of Force Majeure;
- b) measures taken to ensure the safe use of the Ropeway Project or any part thereof 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 Ropeway Project.

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

### **17.13. Barriers and diversions**

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

### **17.14. Advertising on the Site**

The Concessionaire shall be permitted commercial advertising, display or hoarding at specific places on the Site as per prevalent approvals from local authority. All advertising on the Diu to Ghoghla Ropeway shall also conform to Good Industry Practice. For the avoidance of doubt, it is agreed that the rights of the Concessionaire hereunder shall be subject to Applicable Laws, as in force and effect from time to time, and no compensation shall be claimed on account thereof.

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

### **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.

## **19. Monitoring of Operation and Maintenance**

### **19.1. Monthly status report**

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 a monthly report stating in reasonable detail the condition of the Project including its compliance or otherwise with the Maintenance Requirements, Maintenance Manual, Maintenance Programme and Safety Requirements, and shall promptly give such other relevant information as may be required by the Authority or Independent Engineer. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

### **19.2. Inspection**

19.2.1. The Authority or its authorized representative may inspect the Project at any time. It shall make a report of such inspection (the "**O&M Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Requirements, Maintenance Manual, the Maintenance Programme and Safety Requirements, and send a copy thereof to the Concessionaire within 7 (Seven) days of such inspection.

### **19.3. Tests**

19.3.1. Any tests warranted by maintenance requirements have to comply with applicable Specifications and Standards which will be carried out by the Concessionaire and furnish results of such tests to the Independent Engineer.

19.3.2. 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 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 Authority or Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Project into compliance with the Maintenance Requirements and the procedure set forth in this Clause 19.4 shall be repeated until the Project conforms to the Maintenance Requirements. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Authority shall be entitled to do these remedial measures at its own cost and recover the same from the Concessionaire under and in accordance with the provisions of Clause 17.8.

## **19.5. Monthly Fee Statement**

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

## **19.6. Reports on unusual occurrence**

19.6.1. 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 Diu to Ghoghla Ropeway relating to the safety and security of the Users and Diu to Ghoghla Ropeway. A weekly and monthly summary of such reports shall also be sent within 3 (three) days of the closing of each week and month, as the case may be. For the purposes of this Clause 19.6, accidents and unusual occurrences on the Diu to Ghoghla Ropeway shall include:

- a. death or injury to any person;
- b. damaged or dislodged fixed equipment;
- c. any obstruction on the Diu to Ghoghla Ropeway, 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 Diu to Ghoghla Ropeway;
- f. smoke or fire or any other hazard or accident; and
- g. such other relevant information as may be required by the Authority or the Independent Engineer.

## **20. Key Performance Indicators**

### **20.1. 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 Clause 20 (the "**Key Performance Indicators**").

### **20.2. Operation of Ropeway Cabins**

20.2.1. The Diu to Ghoghla Ropeway shall be operated such that the service shall operate between [XXX hours] and [YYY hours] at the service levels specified in this Clause 20.2; provided that the duration of services may be customized as per the requirements.

20.2.2. The Concessionaire shall at all times ensure that:

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

### **20.3. Provisions of Cabins**

The number of cabin & capacity of the cabin will be decided by the Concessionaire as per the demand. Any time passengers shall not exceed the design capacity of the cabin.

### **20.4. Operation of Terminal Stations**

20.4.1. 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 cabin or to exit the station or after exiting from the cabin.

20.4.2. The design, construction, operation and maintenance of the stations shall be such that:

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

20.4.3. 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.

20.4.4. 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.

20.4.5. 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 Diu to Ghogha Ropeway are answered within 30 (thirty) seconds.

## **20.5. Monthly status report**

20.5.1. During Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish a monthly report stating in reasonable detail the compliance with all the Key Performance Indicators specified in this Article 20 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.

## **20.6. Penalty for shortfall in performance**

20.6.1. The Concessionaire shall ensure and procure compliance of each of the Key Performance Indicators specified in this Article 20 and for any shortfall in average performance during a quarter, it shall pay Damages within 30 (thirty) days of the close of the quarter in which the shortfall occurred. The Damages due and payable under this Clause 20.6 shall be determined at the rate of 1% (one per cent) of the Total revenue from fee in respective quarter for every shortfall of 10% (ten per cent) in any single performance indicator specified in this article 20; 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.

## 20.7. Passenger Charter

20.7.1. 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-T of this Agreement. The Concessionaire shall at all-time be accountable and liable to Users in accordance with the provisions of the Passenger Charter and Applicable Laws.

## **21. EMERGENCT MEDICAL AID**

### **21.1. Medical Aid Posts**

The Concessionaire shall have requisite and sufficient number of first aid kits at each terminal station as well as the basic first aid training to the ropeway operators. (Similar to first aid kits and training of air hostesses in airlines).

For providing emergency medical aid during the Operation Period, as set forth in this Agreement, the Concessionaire shall assist the State/UT 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 terminal building with round-the-clock ambulance services for victims of accidents on the Diu to Ghoghla Ropeway.

## **22. Independent Engineer**

### **22.1. Appointment of Independent engineer**

22.1.1. The Authority shall appoint a consulting engineering firm, to be the independent consultant under this Agreement (the “**Independent Engineer**”). The Independent engineer during project implementation/ construction phase shall be the PMC already engaged by DSCL for Diu Smart City project. On expiry or termination of the aforesaid period, the Authority may in its discretion renew the appointment on mutually agreed terms, or appoint another firm from a fresh panel constituted pursuant to Schedule-I to be the Independent Engineer for a term of 2 (two) years, and such procedure shall be repeated after expiry of each appointment. Selection criteria for Independent Engineer set forth in Schedule-I

22.1.2. If desired, by the Independent Engineer for monitoring the quality of works which is executed as per Indian standards, he may assign this work on his behalf to the reputed firms locally to carry out inspection, testing in accordance with Indian Codes.

### **22.2. Duties and function**

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

22.2.2. 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.

22.2.3. 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.

22.2.4. 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.

22.2.5. 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.

### **22.3. Remuneration**

22.3.1. 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 Concessions Authority within 15 (fifteen) days of receiving a statement of expenditure from the Concessions Authority.

### **22.4. Termination of appointment**

22.4.1. 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 22.1.

22.4.2. If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Authority and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the Independent Engineer is terminated hereunder, the Authority shall appoint forthwith another Independent Engineer in accordance with Clause 22.1.

### **22.5. Authorized signatories**

22.5.1. 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. Any communication/report/document submitted by the Independent Engineer in terms hereof shall be valid and effective only if signed by any of the designated persons; provided that the Independent Engineer may, by notice in writing, substitute any of the designated persons by any of its employees.

### **22.6. Dispute resolution**

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

## **23. Financial Close**

### **23.1. Financial Close**

23.1.1. 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 (Sixty)] days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.2% (zero point Two 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 15.2; 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 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 **Error! Reference source not found.**

23.1.2. 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.

### **23.2. Termination due to failure to achieve Financial Close**

23.2.1. Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 29.6.1, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 23.1.1, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. 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 23.2.1 shall not apply.

23.2.2. Upon Termination under Clause 23.2.1, 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 4.3, it shall, upon Termination, return the Bid Security forthwith along with the Damages due and payable under Clause 4 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.

## **24. Concession Fee**

### **24.1. Concession Fee**

24.1.1. In consideration of the grant of Concession, the Concessionaire shall pay in each Year to the Authority, a concession fee (“**Concession Fee**”) in advance commencing from 2 (two) years from Effective Date or COD, whichever is earlier for the entire Concession Period in accordance with the terms of this Agreement. The first instance of Concession Fee will be due 30 (thirty) days before completion of 2 (two) years from Effective Date or COD, whichever is earlier, even if construction is delayed beyond the scheduled construction period of 2 (two) years, and subsequent payments of Concession Fee will be due 30 (thirty) days before the anniversary of the first payment of Concession Fee.

24.1.2. The Concession Fee for the first instance will be Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ only) determined by the financial bid of the Selected Bidder. The Concession Fee is exclusive of GST which will be payable as per the rates applicable at the time of the payment of Concession Fee.

24.1.3. The Concession Fee will be escalated by 5% per annum thereafter.

### **24.2. Payment of Concession Fee**

24.2.1. The Concession Fee shall be paid based on the financial bid of the Selected Bidder and the conditions specified in this Agreement through a Demand Draft. The Concessionaire irrevocably and unconditionally agrees to pay Concession Fee during the term of this Agreement.

24.2.2. If the Concession Fee is not paid by the due date, it shall be a Concessionaire Default, and in such case, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Construction Period Performance Security or Operation Period Performance Security, as the case may be, as Damages for such Developer Default. In such case, the Developer has to replenish the Performance Security in accordance with the provisions of Article 9.

## **25. User Fee**

### **25.1. Collection and appropriation of User Fee**

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

### **25.2. Revision of Fee**

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

### **25.3. Display of Fee Rates**

- 25.3.1. The Concessionaire shall conspicuously display the Fee structure at the both terminal stations of the Project at least in English, Hindi and Gujarati.
- 25.3.2. The Concessionaire shall, from time to time, inform the Authority of the applicable Fee. Such information shall be communicated at least 15 (fifteen) days prior to the revision of Fee under and in accordance with this Agreement.
- 25.3.3. 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 4% (Four percent) thereof.

### **25.4. Commercial Activity**

- 25.4.1. No commercial activity should start before the COD of the ropeway project. Thus, only after ropeway starts functioning should other commercial activities be permitted to be taken up.

## **26. Traffic Regulation**

### **26.1. Traffic Regulation by the Concessionaire**

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

### **26.2. Police assistance**

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

## **27. Insurance**

### **27.1. Insurance during Concession Period**

27.1.1. 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 "**Insurance Cover**"). 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 and/or Operation Period. For the avoidance of doubt, the level of insurance to be maintained by the Concessionaire after repayment of Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Lenders' dues.

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

- i. Standard Fire and Special Perils Policy with earthquake cover to insure loss, damage or destruction of the Project Assets;
- ii. Machinery Break-down Insurance Policy for insuring critical plant & equipment against any damage;
- iii. Comprehensive third party liability insurance including injury to or death of personnel of the Authority or others who may enter the Project;
- iv. Concessionaire's general liability arising out of the Concession;
- v. Workmen's compensation insurance, personal accident insurance and medical insurance;
- vi. Passenger accident insurance for the passengers on-board the ropeway project having a valid ticket; and
- vii. 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 (i) to (vi) above.

### **27.2. Notices to the Authority**

Not later than 45 (forty-five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the 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 27. 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.

### **27.3. Evidence of Insurance Cover**

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

### **27.4. 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 premium 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.

### **27.5. Waiver of subrogation**

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

### **27.6. 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.

### **27.7. Application of insurance proceeds**

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

## **28. Accounts and Audit**

### **28.1. Audited Accounts**

- 28.1.1. The Concessionaire shall maintain books of accounts recording all its receipts (including all fees and other revenues derived/collected by it from or on account of the Diu to Ghoghla Ropeway and/or its use), income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.
- 28.1.2. The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.
- 28.1.3. On or before the thirty-first day of May each Year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarized information on (a) the number of passenger using the Ropeway Facility and liable for payment of Fee thereof, (b) Fee charged and received and other revenues derived from the Project and (c) such other information as the Authority may reasonably require.
- 28.1.4. Concessionaire may by virtue of concession or any other covenant may come under the Purview of C&AG scrutiny at their (C&AG's) own protocol.

## **28.2. Appointment of auditors**

- 28.2.1. The Concessionaire shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from the mutually agreed list of 10 (ten) reputable firms of chartered accountants (the “Panel of Chartered Accountants”), such list to be prepared substantially in accordance with the criteria set forth in Schedule-S. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.
- 28.2.2. The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of 45 (forty-five) days to the Authority, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.
- 28.2.3. Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, another firm (the “**Additional Auditors**”) from the panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realizations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

## **28.3. Certification of claims by Statutory Auditors**

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

## **28.4. Set-off**

- 28.4.1. In the event any amount is due and payable by the Authority to the Concessionaire, it may set-off any sums payable to it by the Concessionaire and pay the balance remaining. Any exercise by the Authority of its rights under this Clause shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

## **28.5. Appointment of Independent Auditor**

- 28.5.1. Irrespective of auditor appointment by concessionaire, separate Independent Auditor will be appointed by the Authority to check the books of accounts of the concessionaire. The concessionaire has to allow and permit to check all the transactions details, fees received, expenses, costs, realizations, which the auditors are required to do, undertake or certify. All fees and expenses of the Independent Auditor shall be borne by the Concessionaire after the intimation of expenditure by the Authority.

## 28.5.2. Duties and functions

28.5.2.1. The role of Independent Auditor is to ascertain, quantify, check, audit, monitor all the revenue streams of the Concessionaire based on Indian Accounting Standard. The Concessionaire has to facilitate the Independent Auditor to check and verify to free access to the book of accounts, inspection of the documents, physical verification etc. connected with revenue stream of the Concessionaire.

28.5.2.2. The Independent Auditor shall discharge its duties and functions in accordance with the terms of reference set by the Authority.

28.5.2.3. The Independent Auditor shall submit regular periodic reports (at least once every month) to the Authority in respect of its duties and functions.

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

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

28.5.2.6. Independent Auditor shall periodically submit data on financial progress and other requisite details at such interval, as mentioned in the Term of Reference.

## 28.5.3. Remuneration

The remuneration, cost and expenses of the Independent Auditor shall be paid by the Authority.

## 28.5.4. Termination of appointment

28.5.4.1. The Authority may, in its discretion, terminate the appointment of the Independent Auditor at any time, but only after appointment of another Independent Auditor in accordance with Terms of Reference of appointment.

28.5.4.2. If the Concessionaire has reason to believe that the Independent Auditor is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Authority and seek termination of the appointment of the Independent Auditor. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and Independent Auditor 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 Auditor is terminated hereunder, the Authority may appoint forthwith another Independent Auditor.

#### 28.5.5. Authorised signatories

The Authority shall require the Independent Auditor 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 Auditor, and any communication or document required to be signed by the Independent Auditor shall be valid and effective only if signed by any of the designated persons; provided that the Independent Auditor may, by notice in writing, substitute any of the designated persons by any of its employees.

#### 28.5.6. Dispute resolution

If either Party disputes any advice, instruction, decision, direction or award of the Independent Auditor, 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.

### **28.6. Dispute resolution**

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

## 29. Force Majeure

### 29.1. Force Majeure

29.1.1. As used in this Agreement, the expression "**Force Majeure**" or "**Force Majeure Event**" shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 29.2, 29.3 and 29.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "**Affected Party**") of its obligations under this Agreement and which act or event

- i. is beyond the reasonable control of the Affected Party, and
- ii. the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and
- iii. has Material Adverse Effect on the Affected Party.

### 29.2. Non Political Event

29.2.1. Any of the following events which prevent the Affected Party from performing any of its obligations for a continuous period of not less than 7 (seven) Days from the date of its occurrence, shall constitute a Non-Political Event:

- a. act of God, epidemic, pandemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- b. strikes or boycotts (other than those involving the 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 7 (seven) days and an aggregate period exceeding 30 (thirty) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 29.3;
- c. any failure or delay of a Contractor but only to the extent caused by another Non- Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- d. any delay or failure of an overseas contractor to deliver rolling stock or equipment in India if such delay or failure is caused outside India by any event specified in Sub- clause (a) above and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such overseas contractor,
- e. any judgment or order of any court of competent jurisdiction or statutory authority made against the 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.

### **29.3. Indirect Political Event**

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

- a. an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- b. industry-wide or State-wide strikes or industrial action for a continuous period of 7 (seven) days and exceeding an aggregate period of 30 (thirty) days in an Accounting Year;
- c. any civil commotion, boycott or political agitation which prevents collection of Fee by the Concessionaire for an aggregate period exceeding 30 (thirty) days in an Accounting Year;
- d. any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the 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.

### **29.4. Political Event**

29.4.1. 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 36; and its effect, in financial terms, exceeds the sum specified in Clause **Error! Reference source not found.**;
- b. compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors; or
- 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.

## **29.5. Duty to report Force Majeure Event**

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

- a. the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 29 with evidence in support thereof;
- b. the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- c. the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- d. any other information relevant to the Affected Party's claim.

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

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

## **29.6. Effect of Force Majeure Event on the Concession**

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

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

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

## **29.7. Allocation of costs arising out of Force Majeure**

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

29.7.2. 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.

29.7.3. Save and except as expressly provided in this Article 29, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

## **29.8. Termination Notice for Force Majeure Event**

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 29, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days’ time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

## **29.9. Termination Payment for Force Majeure Event**

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

29.9.2. If Termination is on account of an Indirect Political Event, the Authority shall make a Termination Payment to the 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.

29.9.3. If termination is due to a Political Event, compensation payable to the Concessionaire shall be the same as that stipulated for termination due to a Concessions Authority Event of Default under Article 30.2.

Provided, no compensation shall be payable to the Concessionaire if the Concessionaire fails to maintain Insurance Cover as contemplated under Article 27 of this Agreement.

## **29.10. Dispute resolution**

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

## **29.11. Excuse from performance of obligations**

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

- a. the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- b. the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- c. when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

## **30. COMPENSTION FOR BREAH OF AGREEMENT**

### **30.1. 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 and/or incidental 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 30.1 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.

### **30.2. 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.

### **30.3. Extension of Concession Period**

Subject to the provisions of Clause 30.2, in the event that a material breach or default of this Agreement set forth in Clause 30.2 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 30.2, 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 30.2, 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.

## **31. Suspension of Concessionaire's Rights**

### **31.1. 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 or authorize any other person to exercise the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the 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.

### **31.2. Authority to act on behalf of Concessionaire**

- 31.2.1. 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 Project Account. The Authority shall be entitled to make withdrawals from the Project Account for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses.
- 31.2.2. During the period of Suspension hereunder, all assets and liabilities in relation to the Project shall continue to vest in the Concessionaire and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period. The Concessionaire hereby licences and sub-licences respectively, the Authority or any other person authorised by it under Clause 31.1 to use during Suspension, all Intellectual Property belonging to or licenced to the Concessionaire with respect to the Diu to Ghoghla Ropeway and its design, engineering, construction, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

### **31.3. Revocation of Suspension**

31.3.1. 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.

31.3.2. 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.

### **31.4. Substitution of Concessionaire**

At any time during the period of Suspension, the Lenders' Representative, on behalf of 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 31.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Lenders.

### **31.5. Termination**

31.5.1. At any time during the period of Suspension under this Article 31, 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 31.4, the Authority shall within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 32.

31.5.2. 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 31.1, 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.

## 32. Termination

### 32.1. Termination for Concessionaire Default

32.1.1. 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 (a "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 9.1. 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 this clause 9.1, the Concessionaire fails to cure, within a Cure Period of 30 (thirty) days, the Concessionaire Default for which whole or part of the Performance Security as the case may be 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 60 (sixty) days;
- d. the Concessionaire abandons or manifests intention to abandon the construction or operation of the Project Facilities without the prior written consent of the Authority;
- e. Project Completion Date does not occur within the period;
- f. the Punch List items have not been completed within the period set forth in Clause 14.4.1;
- g. the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;
- h. the Concessionaire has failed to make any payment such as Concession Fee 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. 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. Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- o. there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes 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. resolution for winding up of the Concessionaire is passed, or any petition for winding up on the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction, provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements, provided further that:
  - i. the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
  - ii. the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date, and
  - iii. each of the Project Agreements remains in full force and effect;
- t. any representation or warranty of the Concessionaire / Selected Bidder herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;
- u. the Concessionaire/ Selected Bidder submits to the Authority any statement which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
- v. the Concessionaire has failed to fulfill any obligation, for which failure Termination has been specified in this Agreement; or
- w. the Concessionaire commits a default in complying with any other provision of this Agreement if such a default causes a Material Adverse Effect on the Authority.

32.1.2. 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, issue the Termination Notice, subject to the provisions of clause 32.1.3.

32.1.3. The Authority shall, if there be Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 32.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Lenders' right of substitution in accordance with the Substitution Agreement:

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

## **32.2. Termination for Authority Default**

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

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

32.2.2. 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.

32.2.3. On operational ground or any other Administrative Exigencies: Licensor reserve the rights to terminate Concession Agreement by giving 30 (Thirty) days advance notice in such exigency.

### **32.3. Termination Payment**

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

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

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

32.3.3. Termination Payment shall become due and payable to the Concessionaire within 15 (fifteen) days of a demand being made by the Concessionaire to the 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.

32.3.4. The Concessionaire expressly agrees that Termination Payment under this Article 32 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.

#### **32.4. Other rights and obligations of the Authority**

Upon Termination for any reason whatsoever, the Authority shall:

- a. be deemed to have taken unencumbered possession and control of the Project, Site and Project Assets and Project Facilities forthwith free of any encroachments or Encumbrances;
- b. take possession and control of all the terminal stations, building, structures, towers including land given to the Concessionaire;
- c. take possession and control of all materials, stores, implements, tangible and intangible assets including movable and immovable properties and tools, furniture, consumer durables on or about the Site;
- d. 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;
- e. require the Concessionaire to comply with the Divestment Requirements set forth in Clause 33.1;
- f. 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, it is hereby agreed, and the Concessionaire hereby acknowledges, that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the 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;

#### **32.5. Certain limitations on Termination Payment**

- 32.5.1. 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.

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

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

### **32.6. No Compensation on Expiry of Concession Period**

In the event of expiry of Concession by efflux of time (the Concession having run its full course), the Concessionaire shall hand over/ transfer peaceful possession of the Project Site, Project Assets and the Project Facilities and Services free of cost and Encumbrance.

### **32.7. Survival of rights**

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

## 33. DIVESTMENT OF RIGHTS AND INTEREST

### 33.1. Divestment requirement

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

33.1.2. 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.

## **33.2. Inspection and cure**

33.2.1. 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 34 shall apply, mutatis mutandis, in relation to curing of defects or deficiencies under this Article 33.

## **33.3. Cooperation and assistance on transfer of Project**

33.3.1. 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.

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

33.3.3. 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 33.1.1 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.

## **33.4. 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.

### **33.5. Additional Facilities**

Notwithstanding anything to the contrary contained in this Agreement, all Additional Facilities shall continue to vest in the Concessionaire upon and after Termination.

### **33.6. Divestment Cost etc.**

33.6.1. 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:

33.6.2. In the event of any dispute relating to matters covered by and under this Article 33, the Dispute Resolution Procedure shall apply.

## **34. DEFECTS LIABILITY AFTER TERMINATION**

### **34.1. Liability for defects after Termination**

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

### **34.2. Retention in Escrow Account**

34.2.1. Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 34.2.3, a sum equal to 5% (five per cent) of the total revenues 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 34.1.

34.2.2. Without prejudice to the provisions of Clause 34.2.1, the Independent Engineer shall carry out an inspection of the XXX Ropeway at any time between 210 (two hundred and ten) and 180 (one hundred and eighty) days prior to the Termination and if it recommends that the status of the XXX Ropeway is such that a sum larger than the amount stipulated in Clause 34.2.1 should be retained in the Escrow Account and for a period longer than the aforesaid 120 (one hundred and twenty) days, the amount recommended by the Independent Engineer shall be retained in the Escrow Account for the period specified by it.

34.2.3. The Concessionaire may, for the performance of its obligations under this Article 34, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under Clause 34.2.1 or 34.2.2, 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 39. Upon furnishing of a Performance Guarantee under this Clause 34.2.3, the retention of funds in the Escrow Account in terms of Clause 34.2.1 or 34.2.2, as the case may be, shall be dispensed with.

## **35. ASSIGNMENT AND CHARGES**

### **35.1. Restrictions on assignment and charges**

35.1.1. Subject to Clauses 35.2 and 35.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

35.1.2. Subject to the provisions of Clause 35.2, 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.

### **35.2. Permitted assignment and charges**

The restraints set forth in Clause 35.1 shall not apply to:

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

### **35.3. Substitution Agreement**

35.3.1. The Lenders' Representative, on behalf of Lenders, may exercise the right to substitute the Concessionaire in accordance with 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 Lenders, substantially in the form set forth in Schedule O.

35.3.2. 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.

#### **35.4. Assignment by the Authority**

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

## **36. Change in Law**

### **36.1. Increase in costs**

If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of Rs. 1 crore (Rupees one crore)<sup>1</sup> and 0.5% (zero point five percent) of the revenues 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 36.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

### **36.2. 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 revenues 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

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

avoidance of doubt, it is agreed that this Clause 36.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

### **36.3. Protection of NPV**

Pursuant to the provisions of Clauses 36.1 and 36.2 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.

### **36.4. Restriction on cash compensation**

The Parties acknowledge and agree that the demand for cash compensation under this Article 36 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.

### **36.5. 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.

## **37. Liability and Indemnity**

### **37.1. General indemnity**

37.1.1. 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 third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the Concessionaire to any User, except to the extent that any such suits, proceedings, actions, demands and claims have arisen solely due to any negligent act or omission, or breach of this Agreement on the part of the Authority Indemnified Persons.

37.1.2. The Authority will indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of (i) defect in title and /or the right 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.

### **37.2. Indemnity by the Concessionaire**

37.2.1. Without limiting the generality of Clause 37.1, the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any all loss and/or damages arising out of or with respect to:

- a. failure of the 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.

37.2.2. Without limiting the generality of the provisions of this Article 37, 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 license, at no cost to the Authority, authorizing continued use of the infringing work. If the Concessionaire is unable to secure such license 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.

### **37.3. 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 37 (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.

## **37.4. Defence of claims**

- 37.4.1. The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 35, the Indemnifying Party shall be entitled, at its option, to assume and control the Defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such Defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.
- 37.4.2. If the Indemnifying Party has exercised its rights under Clause 37.3, 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).
- 37.4.3. If the Indemnifying Party exercises its rights under Clause 37.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party when and as incurred, unless:
- a. the employment of counsel by such party has been authorized in writing by the Indemnifying Party; or
  - b. the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the Defence of such action; or
  - c. the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the Defence of such action and shall have been so notified by the Indemnified Party; or
  - d. the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:

- i. that there may be specific defenses available to it which are different from or additional to those available to the Indemnifying Party; or
- ii. that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement.

Provided that if Sub-clauses b, c or d of this Clause 37.4.3 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.

### **37.5. No consequential claims**

Notwithstanding anything to the contrary contained in this Article 35, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

### **37.6. Survival on Termination**

The provisions of this Article 37 shall survive Termination.

## **38. RIGHTS AND TITLE OVER THE SITE**

### **38.1. 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 and approval of the Authority.

### **38.2. Access rights of the Authority and others**

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

### **38.3. 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.

### **38.4. Stamp Duty and other incidental charges**

The Concessionaire has to bear the cost incurred towards stamp duty and registration for the agreement or any other documents to be registered as per the provision of law. The Authority shall intimate the Concessionaire in advance to pay the requisite amount to pay the stamp duty and registration fees to the concerned Authority. Further the Concessionaire should note that any incidental charges required for documentation shall be borne by the Concessionaire.

### **38.5. 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 Diu to Ghoghla Ropeway.

## **39. DISPUTE RESOLUTION**

### **39.1. Dispute Resolution**

39.1.1. 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 Article 39.2.

39.1.2. 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.

### **39.2. Amicable Settlement**

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/Secretary 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 39.1.1 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 39.3.

### **39.3. Arbitration**

39.3.1. Any Dispute which is not resolved amicably, as provided in Article 39.2, the parties shall submit such dispute for arbitration by ‘Secretary, Tourism, UT Administration of Dadra & Nagar Haveli and Daman & Diu as the Sole Arbitrator. The proceeding shall be conducted as per the Arbitration and Conciliation Act, 1996 (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 Diu, and the language of arbitration proceedings shall be English.

- 39.3.2. The Sole Arbitrator shall make a reasoned award (the “Award”). Any Award made in any arbitration held pursuant to this Article 39 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Concessioneing Authority agree and undertake to carry out such Award without delay.
- 39.3.3. The Concessionaire and the Concessioneing Authority agree that an Award may be enforced against the Concessionaire and/or the Concessioneing Authority, as the case may be, and their respective assets wherever situated
- 39.3.4. This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

## **40. DISCLOSURE**

### **40.1. Disclosure of Specified Document**

Subject to terms hereof and Applicable Laws, 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 and at the Project Site. The Concessionaire shall prominently display at the Project Site, public notices stating the availability of the Specified Documents for such inspection, and shall provide copies of the same to any person upon payment of copying charges on a ‘no profit no loss’ basis.

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

Notwithstanding the provisions of Clauses 40.1 and 40.2, 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 40.1 and 40.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

### **40.3. Disclosure for circumstance**

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 obligation of either Party under this Agreement.

## **41. REDRESSAL OF PUBLIC GRIEVANCE**

### **41.1. Complaints Register**

- 41.1.1. The Concessionaire shall maintain a public relations office at the Project Site where it shall keep a register (the "**Complaint Register**" and "**Suggestion 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 station so as to bring it to the attention of all Users.
- 41.1.2. 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.
- 41.1.3. Without prejudice to the provisions of Clauses 41.1.1 and 41.1.2, the Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

### **41.2. Redressal of complaints**

- 41.2.1. 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.
- 41.2.2. Within 7 (seven) days of the close of each month, the Concessionaire shall send to the Authority, a true photocopy each of all the pages of the Complaint Register on which any entry has been recorded during the course of such month, and upon perusal thereof, the Authority may, in its discretion, advise the 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.

## **42. Miscellaneous**

### **42.1. 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 Diu shall have jurisdiction over matters arising out of or relating to this Agreement.

### **42.2. Waiver of immunity**

Each Party unconditionally and irrevocably:

1. agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
2. agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
3. waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
4. consents generally in respect of the enforcement of any judgment or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

### **42.3. Depreciation and Interest**

42.3.1. 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.

42.3.2. 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.

### **42.4. Delayed payments**

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

## **42.5. Waiver**

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

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

42.5.2. 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.

## **42.6. 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.

## **42.7. 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.

## **42.8. Survival:**

42.8.1. 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.

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

#### **42.9. Entire Agreement**

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Concessionaire arising from the Request for Proposals, as the case may be, shall be deemed to form part of this Agreement and treated as such.

#### **42.10. 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.

#### **42.11. 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.

#### **42.12. 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.

#### **42.13. Successors and assigns**

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

#### **42.14. 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/Secretary 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 Diu 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.

#### **42.15. Language**

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

#### **42.16. Counterparts**

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

## **43. ASSETS: OWNERSHIP AND PERMITTED CHARGE**

### **43.1. Ownership of Assets**

#### **43.1.1. Land and Water Area**

The ownership of the Project Site shall always remain vested with the Concessing Authority. The rights of the Concessionaire in the Project Site shall only be that of a bare licensee of such assets and the Concessionaire shall neither assign, transfer, sublet, create any charge or Encumbrance, nor shall the Concessionaire create or permit creation of any third party rights whatsoever, on whole or any part of the Project Site. Further, any such rights of the Concessionaire shall always be subject to existing rights of way. It is expressly agreed that the Concessionaire's rights in the Project Site shall cease without the need for any action to be taken by the Concessing Authority upon the termination of this Agreement for any reason whatsoever.

#### **43.1.2. Assets created or provided by the Concessionaire**

The ownership of all infrastructure assets, buildings, structures, berths, wharfs, equipment and other immovable and movable assets constructed, installed, located, created or provided by the Concessionaire at the Project Site and/or in the Port's Assets pursuant to this Agreement shall, until expiry of this Agreement or transfer to the Concessing Authority on Termination in accordance with this Agreement, be with the Concessionaire. However, such ownership of buildings etc. erected by the Concessionaire at the Project Site shall not be construed as and shall not confer any rights in the Project Site upon the Concessionaire, save as that of a bare licensee as provided for in this Agreement.

### **43.2. Permitted Charge on Assets**

The Concessionaire shall be entitled to create a charge on its rights, title and interest in the assets referred to in Article 44.1 in favour of Senior Lenders for securing the Financial Assistance provided or agreed to be provided by them under the Financing Documents. Provided, any such charge shall not be effective before Financial Close and shall not continue for a period exceeding the Concession Period. Provided further, that such charge shall not be for the Project Site nor encumber the Project Site and/or the Port's Assets.

Provided further, in the event of termination of this Agreement, the said charge shall stand extinguished upon payment of compensation by the Concessing Authority to the Senior Lenders, to the extent they are entitled to receive the same in accordance with the provisions of this Agreement.

## **44. TRANSFER ON EXPIRY OF THE CONCESSION**

### **44.1. General Scope of Transfer**

The Parties shall perform/discharge their respective obligations to be performed or discharged under the provisions of this Agreement on the Transfer Date in entirety. Without prejudice to the generality of this provision and the provisions of Article 32, the transactions to be consummated and the formalities to be completed by the Parties on the Transfer Date shall be as set out in this Article.

### **44.2. Concessionaire's Obligations**

The Concessionaire shall;

- a. hand over peaceful possession of the Project Site, Assets, the Project and the Project Facilities and Services free of Encumbrance;
- b. handover peaceful possession of the land, terminal stations, towers etc to the Authority
- c. transfer all its rights, titles and interests in the assets comprised in the Project Facilities and Services which are required to be transferred to the Concessions Authority in accordance with this Agreement and execute such deeds and documents as may be necessary for the purpose and complete all legal or other formalities required in this regard;
- d. hand over to the Concessions Authority all documents including as built drawings, manuals and records relating to operation and maintenance of the Project Facilities and Services;
- e. transfer technology and up-to-date know-how relating to operation and maintenance of the Ropeway system and other Assets and/or the Project Facilities and Services;
- f. transfer or cause to be transferred to the Concessions Authority any Project Contracts which are (i) valid and subsisting; (ii) capable of being transferred to the Concessions Authority; and (iii) those the Concessions Authority has chosen to take over, and cancel or cause to be cancelled such Project Contracts not transferred to the Concessions Authority. For this purpose, the Concessionaire shall ensure that all Project Contracts are assignable in favor of the Concessions Authority without any further action on part of the respective counterparties. The Concessionaire shall entirely at its cost, terminate all such Project Contracts which are not transferred/assigned and/or are not required to be transferred/assigned to the Concessions Authority;
- g. at its cost, transfer to the Concessions Authority all such Applicable Permits which the Concessions Authority may require and which can be legally transferred. Provided if the termination is on account of Concessions Authority Event of Default the cost of such transfer shall be borne/ reimbursed by the Concessions Authority;
- h. at its cost, remove within 90 (ninety) days from expiry of the Concession Period, from the Project Site, any moveable assets that are not taken over by or not to be transferred to the Concessions Authority in terms of the provisions of this Agreement.

### **44.3. Change of ownership**

44.3.1. In the event efflux of the Concession period, the Concessionaire shall transfer the complete Project Facilities to the Concessions Authority without any financial consideration.

44.3.2. The transfer real estate plus ropeway system in working condition including all stations, towers etc.

### **44.4. Deleted**

### **44.5. Risk**

Until transfer in accordance with this Article 45, the the Project Facilities and Services shall remain at the sole risk of the Concessionaire except for any loss or damage caused to or suffered by the Concessionaire due to any act or omission or negligence on the part of the Concessions Authority under this Agreement.

## **45. GENERAL RIGHTS, DUTIES AND OBLIGATIONS**

### **45.1. Of the Concessionaire**

#### **(a) Applicable Permits**

The Concessionaire shall at all times during the Concession Period maintain and comply with the Applicable Permits.

#### **(b) Taxes & duties**

The Concessionaire shall during the Concession Period pay in a timely manner all taxes, duties, levies, GST, cess and charges including but not limited to income tax, sales tax, excise duty, customs duty, service tax and etc. that may be levied, claimed or demanded from time to time by any Government Authority including any increase therein effected from time to time from any Government Authority, in respect of the Project/ the Project Facilities and Services.

#### **(c) Assignability**

Except as otherwise provided in this Agreement, the Concessionaire shall not assign its rights, title or interest in this Agreement in favour of any Persons without prior written consent of the Concessions Authority. Provided the Concessionaire may assign its rights, interests and benefits under this Agreement to the Senior Lenders as security for the Financial Assistance. Provided further nothing contained in this Article shall:

- i. absolve the Concessionaire from its responsibilities to perform/discharge any of its obligations under and in accordance with the provisions of this Agreement; and
- ii. authorize or be deemed to authorize the Senior Lenders to operate the Project Facilities and Services themselves and any such assignment to operate shall be in terms of the Substitution Agreement.

#### **(d) Engagement of Contractors**

The Concessionaire may engage a Management Contractor and execute the Management Contract, thereby entrusting the Management Contractor with the responsibilities of operating and managing the Project Facilities and Services in the manner envisaged under the Request for Proposal. A copy of the Management Contract shall be provided to the Concessions Authority and the same shall not be amended, substituted or revoked without prior written consent of the Concessions Authority.

The Concessionaire may engage any Person possessing the requisite skill, expertise and capability of designing, engineering, procurement and construction of civil/ mechanical/electrical engineering structures/equipment, and /or operation and maintenance of the Project Facilities and Services.

Provided:

the Concessionaire shall at all times be solely responsible for all its obligations under this Agreement notwithstanding any such engagement and anything contained in any Project Contracts or any other agreement, and no default under any Project Contract or agreement shall excuse the Concessionaire from its obligations or liability hereunder and the Concessionaire shall at all times be solely responsible for non-performance or for any defect, deficiency or delay in the construction and erection and/or installation of the structures/equipment or any part thereof and for the operation and maintenance of the Project/the Project Facilities and Services in accordance with the provisions of this Agreement;

- i. the Concessionaire should have obtained, if required, security clearance for the Contractor the Concessionaire intends to engage;
- ii. the Concessionaire shall ensure that the Project Contracts contain provisions that entitle the Concessioning Authority to step into such contract in its sole discretion in substitution of the Concessionaire in the event of termination or suspension of this Agreement; and
- iii. any contract that it enters with an Affiliate in respect of the Project shall be on an arm's length basis.

#### **(e) Condition Survey**

- i. The Concessionaire agrees that at least 6 (six) Months prior to the expiry by efflux of time of the Concession Period, it shall, cause to be conducted at its cost by an Expert appointed by the Parties by mutual consent, a condition survey and an inventory of the entire Project Facilities and Services. If, as a result of such survey, the Expert shall observe/notice that the Project Facilities and Services or any part thereof have/has not been operated and maintained in accordance with the requirements therefor under this Agreement (normal wear and tear excepted) the Concessionaire shall, at its cost and expenses, take all necessary steps to put the same in good working condition well before the Transfer Date. In the event the Concessionaire fails to comply with this provision, the Concessioning Authority may itself cause the condition survey and inventory of the Port's Assets and Project Facilities and Services to be conducted and remove any defect or deficiency. The Concessioning Authority shall be promptly reimbursed by the Concessionaire for the costs incurred in conducting such survey and preparation of inventory as also in putting the Project Facilities and Services in a good working condition.
- ii. The Concessionaire shall as security for performance of its obligation in the preceding sub-article (i), provide/submit to the Concessioning Authority a guarantee issued by a scheduled bank in India for a sum of Rs [●] (Rupees ● Only) (two) years prior to the expiry of the Concession Period. In the event of Concessionaire's failure to provide such guarantee, the same shall be deemed to be a Concessionaire Event of Default and the Concessioning Authority shall accordingly be entitled to terminate this Agreement.

## **45.2. Of the Concessioning Authority**

### **(a) Assistance in obtaining Approvals, Permits and Licenses**

The Concessing Authority may, at the written request of the Concessionaire, but without guarantees and/or without assuming any responsibility in that behalf, issue recommendatory letters and make best efforts to facilitate the Concessionaire in obtaining all the Applicable Permits including renewals thereof. Provided that, nothing contained in this Article shall relieve the Concessionaire of its obligations under this Agreement to obtain the Applicable Permits and to keep them in force and effect throughout the Concession Period.

**(b) General rights of inspection and verification**

The Concessing Authority may during the pendency of the Agreement itself or by appointment of Experts verify the performance of obligations of the Concessionaire as set out in this Agreement.

**45.3. Of the Concessing Authority and the Concessionaire**

**(a) Monitoring Arrangement**

The parties shall furnish to each other periodical status reports relating to key milestones and obligations as per relevant Schedule.

**(b) Compliance with Laws and Regulations**

The Parties shall perform their respective obligations under this Agreement in accordance with the Applicable Laws and Applicable Permits.

**(c) Rights to Documents**

**i. Concessing Authority's Documents**

Documents and computer programs or copies thereof, if any, provided by the Concessing Authority to the Concessionaire, shall always remain the property of the Concessing Authority. Such documents, computer programs and/or copies shall not be used by the Concessionaire for the purposes other than for the Project. Such documents, computer programs and/or copies thereof shall, unless otherwise agreed upon by the Concessing Authority, be returned by the Concessionaire to the Concessing Authority on the Transfer Date.

**ii. Concessionaire's Documents**

Documents and computer programs provided by the Concessionaire, or which are developed (and owned by the Concessionaire) for operation and/or maintenance of the Project /the Project Facilities and Services shall be handed over by the Concessionaire to the Concessing Authority free of cost on the Transfer Date.

**iii. Confidentiality**

All confidential information and documents (whether financial, technical or otherwise) provided by either Party to the other shall not, unless compelled by law or the process of a Government Authority, be disclosed to any Person without the consent of the other Party with the exception of providing such

information to legal advisors/auditors of the concerned party on a need-to-know basis. This covenant shall survive the Concession Period.

**iv. Obligation to Cooperate**

The Parties shall mutually cooperate with each other in order to achieve the objectives of this Agreement.

## 46. Definitions

### 46.1. Definitions

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

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

**"Additional Cost"** means the additional capital expenditure which the Concessionaire has or would be required to incur and which has arisen as a result of Change in Law.

**"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 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 0.33% (zero point thirty three per cent)<sup>2</sup> 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 29.1;

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<sup>2</sup> This number shall be substituted in each case by the figure arrived at upon dividing 100 by the number of months comprising the Concession Period. For example, the figure for a 25 Year Concession Period shall be  $100/300 = 0.333$  rounded off to two decimal points i.e. 0.33.

**"Agreement" or "Concession Agreement"** means this Agreement, its Recitals, and the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

**"Applicable Laws"** means all laws, brought into force and effect by GOI or the State / UT Government including rules, regulations and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

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

**"Appointed Date"** means the date on which 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.

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

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

**"Authority"** 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 32.1.1;

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

**"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 Scheduled Bank, but does not include a bank in which any Lender has an interest;

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

**"Bid"** means the documents in their entirety comprised in the bid submitted by the Concessionaire/ Consortium in response to the RFP in accordance with the provisions thereof;

**"Bid Security"** means the security provided by the Concessionaire to the Authority along with the Bid in a sum of Rs. \*\*\*\*\* Lakh (Rupees \*\*\*\*\* Lakh), in accordance with the Request for Proposal, and which is to remain in force until substituted by the Performance Security;

**"CEN"** shall mean Comité Européen De Normalisation, European Committee for Standardization;

**"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 Effective Date;
- d. a change in the interpretation or application of any Indian law by judgment of a court of record which has become final conclusive and binding, as compared to such interpretation or application by a court of record prior to the Effective Date.
- e. any change in the rates of any of the Taxes that have a direct effect on the Project;

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

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

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

**"Completion Certificate"** shall have the meaning set forth in Clause 14.2;

**"Concession"** shall have the meaning set forth in Clause **Error! Reference source not found.**;

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

**"Concessionaire Default"** shall have the meaning set forth in Clause 32.1.1;

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

**“Concession Fee”** means the amount payable by the Concessionaire to the Concessions Authority as per Article 24 of this Agreement;

**“Concession Period”** means a period of 30 (Thirty) years starting from the Appointed Date and ending on the Transfer Date;

**“Condition Precedent ”** shall have the meaning set forth in Clause **Error! Reference source not found.**;

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

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

**“Construction Phase”** means the period from the Date of Award of Concession to the Date of Commercial Operation.

**“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 agreement or contract for construction, operation and/or maintenance of the Project and / or Project Facilities or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Concessionaire;

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

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

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

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

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

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

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

**"Debt Service"** means the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Lenders under the Financing Agreements;

**“Development Period”** means the period from the date of this Agreement until the Appointed Date;

**"Dispute"** shall have the meaning set forth in Clause **Error! Reference source not found.**;

**"Dispute Resolution Procedure"** means the procedure for resolution of Disputes set forth in Article 39;

**"Divestment Requirements"** means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 33.1;

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

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

**“Effective Date”** shall mean the date on which the Concession Agreement has been executed by the Parties;

**"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 and Project Facilities 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 and Project Facilities, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project and Project Facilities, where applicable herein but excluding utilities referred to in Clause 11.1;

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

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

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

**"Fee Notification"** means the Notification as issued by the Concessionaire and as modified by the Concessionaire according to market demand and the user fee rate shall be intimated to Authority forthwith, from time to time, for usage of Diu to Ghoghla Ropeway;

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

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

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

**"Financial Package"** means the financing package indicating the total capital cost of Project and the means of financing thereof, as set forth in the Financial Model and approved by the Lenders, and includes Equity and all financial assistance specified in the Financing Agreements;

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

**"Force Majeure" or "Force Majeure Event"** shall have the meaning ascribed to it in Clause 29.1; "GOI" means the Government of India;

**"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 37; "Indemnifying Party" means the Party obligated to indemnify the other Party pursuant to Article 37;

**"Independent Engineer"** shall have the meaning set forth in Clause 22.1;

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

**"Insurance Cover"** means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 27, and includes all insurances required to be taken out by the Concessionaire under Clause 27.1 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;

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

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

**"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;

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

**“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;

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

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

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

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

**“Minimum Guarantee payment”** means a payment of a sum specified in this document, irrespective of revenues of concessionaire.

**"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 29.2;

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

**"O&M Contract"** means the operation and maintenance contract that may be entered into between the 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) premium for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under the O&M Contract, or any other contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

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

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

**"Panel of Chartered Accountants"** shall have the meaning set forth in Clause **Error! Reference source not found.**;

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

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

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

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

**"Project"** means the design, finance, construction, Operate and Transfer of the Diu to Ghoghla Ropeway in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project;

**"Project Agreements"** means this Agreement, the Financing Agreements, EPC Contract, O&M Contract, and any other 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 Substitution Agreement;

**"Project Assets"** means all physical and other assets relating to and forming part of the Site including

- a) rights over the Site in the form of license, Right of Way or otherwise;
- b) tangible assets such as civil works and equipment including but not limited to foundations, gondolas, drainage works, sign boards, electrical systems, communication systems, rest areas, maintenance depots, Terminals and administrative offices etc.;
- c) Project Facilities situated on the Site;
- d) all rights of the Concessionaire under the Project Agreements;
- e) financial assets, such as receivables, security deposits etc;

- f) insurance proceeds; and
- g) Applicable Permits and authorizations relating to or in respect of the Project;

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

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

**"Project Facilities"** means all the amenities and facilities required as basic and support infrastructure for Project, for the optimal functioning thereof, including but not limited to sewage and sanitation system, water supply, electricity distribution and supply, paved roads and lanes, situated on the Site, as described in Schedule C;

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

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

**"Punch List"** shall have the meaning ascribed to it in Clause 14.3;

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

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

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

**"Request for Proposals" or "RFP"** 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 Diu to Ghoghla Ropeway in accordance with this Agreement.

**"Ropeway Facility"** shall mean Aerial Passenger ropeway at Diu to Ghoghla in Diu along with the lower and upper terminal stations and associated facilities.

**"Safety Consultant"** shall have the meaning set forth in Clause **Error! Reference source not found.**;

**"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;

**"Schedules"** shall have the meaning set forth in Clause 10.3.1;

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

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

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

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

**“Selected Bidder”** means the bidder who has been awarded the Project;

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

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

**"State/UT"** means the UT of Daman and Diu **"State/UT Government"** means the UT Administration of Daman and Diu;

**"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 **Error! eference source not found.**;

**"Substitution Agreement"** shall have the meaning set forth in Clause 35.3;

**"Suspension"** shall have the meaning set forth in Clause 31.1;

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

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

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

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

**“Termination Payment”** means the amount payable, under and in accordance with this Agreement, by the Authority to the Concessionaire upon Termination.

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

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

- a. the capital cost of the Project, as set forth in the Financial Package; and
- b. the actual capital cost of the Project upon completion of the Project.
- c. a sum of Rs \*\*\*\*\* lakh (Rupees \*\*\*\*\* Lakh) Less Equity Support 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 uses the Project or Project Facility or any part thereof;

**"Vesting Certificate"** shall have the meaning set forth in Clause 33.4; 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 revision of Fee shall be computed with reference to WPI as on January 31 of that year.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of  
Tourism Department,  
Diu (“Authority”) by:

For and on behalf of  
Diu Smart City Limited  
 (“Authority”) by:

For and on behalf of  
 (“Concessionaire”) by:

For and on behalf of  
 (“Selected Bidder”) by:

Sign and Seal:

Sign and Seal:

Sign and Seal:

Sign and Seal:

Name:

Name:

Name:

Name:

Designation:

Designation:

Designation

Designation

In the presence of:

1.

2.

## Schedule A: SITE OF THE PROJECT (See Clause 10.1)

### 1. The Site

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

### Proposed Location and alignment



## Annex – I

(Schedule-A)

### Site for the Ropeway

The Project envisages construction of a ropeway from Diu (Latitude 20°43'3.74"N, Longitude 70°59'27.38"E) to Ghoghla (Latitude 20°43'49.59"N, Longitude 70°59'33.43"E). The approximate distance of the ropeway would be 1500 M and would be developed on Mono cable Detachable Gondola System Ropeway conforming to BIS standards or CEN (European) standards. In case of CEN (European) standards Manufacturing of Ropeway and associated support structure should be done in India as per the guideline of Niti Aayog.

The Terminal Station at Diu & Ghoghla will be developed in 2,000 sq.m. of land (actual land given). The Concessionaire has to provide aesthetically designed, eco-friendly connectivity between Terminal station and jetty for smooth and safe movement of tourist to Terminal Station. The latitude and longitude given in this agreement are indicative.

### Site Layout of plot designated for proposed Terminal station at Diu



### Proposed Landing Point for Cable Car on Diu side waterfront



**Site Layout of plot designated for proposed Terminal station at Ghoghla**



**Proposed Landing Point for Cable Car at Ghoghla side near walkway and beach**



By the development of ropeway, it is expected that the preference of tourists will change to use this mode as it will become a landmark destination in Diu city. It is expected that the number of tourists will increase substantially by adoption eco-friendly transportation mode. As the people will like to enjoy the panoramic view of Sea, Diu Fort, Panikotha and city landscape.

The travel time by ropeways will take approximately 7 minutes (Approx) from Diu to Ghoghla by 6 to 8 seated cable car.

## Schedule B: DEVELOPMENT OF THE ROPEWAY AND SCOPE

### 1. Development of the Project

- 1.1. The Development of Project shall mean, subject to the provisions of the RFP and Concession Agreement, an indicative 1500 m long, Mono cable Detachable Gondola System Ropeway Facility for Diu to Ghoghla.
- i. Design the concept plan for the development of Cable Car system as per their own design based on the alignment provided by DSCL, which includes the development of terminal station at both the locations i.e. Diu and Ghoghla and necessary columns/pillar.
  - ii. The firm has to develop the Mono Cable Detachable Gondola System Ropeway as per BIS Standard or CEN (European) standards. In case of CEN (European) standards Manufacturing of Ropeway and associated support structure should be done in India as per the guideline of Niti Aayog.
  - iii. Drive Gear with entire driving arrangement, Cabins, Hanger, Carriage, Tensioning system and Haulage Rope to be as per BIS standards. The structural elements i.e. civil construction, Tower and Station structure shall be indigenously constructed as per relevant applicable codes.
  - iv. Carrying capacity of the Ropeway system at the time of commencement of Operations shall not be less than 500 PPHPD.
  - v. the development of other tourism components as per defined use;
  - vi. design, financing, construction of the Project at the Site, implementation, completion, commissioning, marketing, management, operation and maintenance and commercial use of the Project, execution of the Works and all activities incidental thereto, such as engineering, testing, commissioning and insurance etc., by the Concessionaire during the Concession Period;
  - vii. The work includes development of terminal station at Diu and Ghoghla on the area allotted by DSCL (2,000 Sqm (1000 for each Terminal Station) or the actual area given), as per their own concept according to the development rules applicable in the DMC/ area. However bidder has to submit the plan and design of the terminals to DSCL for its approval.
  - viii. The firm has to develop all the necessary infrastructure, required for the effective operation of Cable Car, dispersal of traffic, parking, cloak room, evacuation of people, maintenance/workshop area etc.
  - ix. The Concessionaire has to provide necessary infrastructure for smooth passage between the proposed terminal stations for tourist to embark/ disembark.
  - x. The Concessionaire has to plan Cable Car system to connect between two terminal stations by fixing the span between two columns, number of columns and height of columns at all point as per their own concept and design. However Concessionaire has to submit the plan and design of the same to DSCL for its approval.
  - xi. The alignment of the Cable Car is crossing over the navigational channel in Diu Harbour, where ship/Boat movement is frequent which has to be considered during the development of the Cable Car. The Concessionaire has to provide clearance of minimum 30 m between water (high tide level) and the bottom of Gondola after considering the sag as per the standards. The Concessionaire has to confirm the span considered in the channel and maximum sag considered by anticipating maximum traffic, the future load and clearance between cable car and ship and provide the same to DSCL for approval.

- xii. The Concessionaire has to design entire Cable Car system including civil design of terminal, columns, any other structure required as per their concept on their own cost. However it has to be approved by DSCL before implementation and execution.
- xiii. The Concessionaire has to get final approval from DSCL for the entire Cable Car system after its development before the operation. The operation of the Cable Car system has to be carried out as per the BIS standards and safety standards rules approved by the government time to time till the concession period.
- xiv. The terminal station developed at Diu and Ghoghla will have to be maintained properly to meet need of tourist as per the prevailing laws and regulation of the government.
- xv. The maintenance of entire Cable Car system has to be carried out as per the BIS standards and prevailing rules for safety and security laid down by the government time to time for entire concession period.
- xvi. The Concessionaire has to provide safety mechanism (as per BIS Standards) in the entire Cable Car system to prevent any accident and mishaps during operation for entire concession period. Accordingly bidder has to submit the safety mechanism plan to DSCL in advance prior to start of operation.
- xvii. The Concessionaire has to provide necessary security system (as per BIS Standards) from the terminal at Diu to terminal at Ghoghla to prevent any breach in the security. To achieve this the bidder has to plan security mechanisms such as, deployment of specialised personal at vantage points, CCTV security system, PA system, alarm system or any other system which he seems suitable at their own cost.
- xviii. The Concessionaire has to plan for provision of evacuation system in case of stoppage of Cable Car in midway, breaking of wire rope, any failure in the column structure, failure in machinery, any problems in the cable car, etc. during the operation of Cable Car. The plan of evacuation system has to be submitted to DSCL for its approval.
- xix. The Concessionaire has to develop the entire Cable Car system in a way considering earthquake factor, so that any mishaps and accidents to public and damages to infrastructure are prevented during the operations.
- xx. As this Cable Car system is being developed in the sea area; equipment, cable cars, ropes are likely to corrode fast, hence the design should be adopted considering this factor and operation and maintenance should also be done considering the same.
- xxi. The Concessionaire will have freedom for the pricing of tickets, however they have to take insurance for the tourist, insurance of the machinery, equipment, civil structures, etc.
- xxii. The Concessionaire has to provide medical aid system at both the terminal stations by deploying ambulances, first aid, etc.
- xxiii. The Concessionaire has to provide efficient firefighting system for the entire Cable Car including terminals.
- xxiv. The Concessionaire has to submit operational manual, standard operating procedure, maintenance manual, overhauling system of the Cable Car, traffic dispersal system at Diu and Ghoghla, evacuation plan of people for both the terminal, firefighting system, medical aid system, security system, etc. for the approval of DSCL before the operation.
- xxv. All the necessary statutory approvals needed for construction and operation have to be taken by the Concessionaire prior to the sanction of plan, during the construction period and operation of services, etc.

- xxvi. The Concessionaire has to take power connection directly from source, as required for the entire Cable Car system including both the terminal stations. DSCL may provide support to get power connection.
- xxvii. The Concessionaire has to provide alternate power source for existing system in case of emergency, with adequate numbers of generators at both the stations.
- xxviii. The Concessionaire has to arrange at their own cost- Information Network system, including telephone line, OFC cables, etc. as per their requirement.
- xxix. The Concessionaire has to implement and execute any other works related to smooth operation and maintenance of entire Cable Car system during concession period as and when directed by DSCL on its own cost.
- xxx. The Concessionaire has to arrange and develop a system to monitor weather (wind speed, rainfall, etc.) by liaising with Meteorological Department to ensure safe services.
- xxxi. The Cable Car system should be mounted with modern cabins. The design and look of the cabins has to be presented to DSCL and the same shall be approved by DSCL for implementation.
- xxxii. Advertisements for promoting the cable car system shall be undertaken by the Concessionaire and for the same DSCL may assist wherever required.
- xxxiii. Regular check-ups, safety audits and repairing of the necessary components of the cable car system are to be ensured on a peiodic basis. The records of the same needs to be maintained for future assessments.
- xxxiv. The number of cabins for the cable car system to be more in couple of units to ensure smooth functioning of the service and also to ensure good quality cabins for customers. To achieve the same, regular checkups of the cabins are necessary.

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

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

## **2. Mandatory Project Facilities**

### **1. Project Facilities**

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

### **2. Mandatory Project Facilities**

The Concessionaire shall construct the Mandatory Project Facilities described as under on or before the Project Completion Date. The Mandatory Project Facilities shall include the Project Facilities required to adequately and efficiently support the Ropeway Project and shall include but not be limited to the following:

Ropeway:

- Technology: Mono Cable Detachable Gondola system conforming to all relevant Indian Standards.

- Drive Gear with entire driving arrangement, Cabins, Hanger, Carriage, Tension arrangement and Haulage Rope to be as per BIS standards.
- Length of the Alignment: indicative 1500 m
- Tariff: Local Residents and Tourist Traffic as per Schedule.

#### **At Diu Terminal Station**

Ropeway Station, Parking for ropeway cabins, Store, Office, Ticket Counter, Account and staff room, Toilet, Queue Area, Genset room.

#### **At Ghoghla Terminal Station**

Ropeway Station, Parking for ropeway cabins, Store, Office, Ticket Counter, Account and staff room, Toilet, Queue Area, Car Parking, Genset room.

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

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

## **Annex – I**

(Schedule-B)

### **PROJECT REQUIREMENTS**

#### **1. System Operation:**

The Monocable Detachable Gondola ropeway system for Ropeway has to be installed for Diu to Ghoghla. Operational cycle of the Monocable Detachable system is described below:

- a. The ropeway stations i.e. Tension & drive are connected by an endless haulage rope through Drive /Return sheaves followed by different rocker sheaves placed on the trestles. The trestles will be placed at a varying distance as per requirement.
- b. One gondola will be fixed to the rope at a predetermined equal spacing along the entire ropeway length.
- c. The haulage rope along with different gondolas moves continuously in a particular direction in a specified speed.
- d. On approaching a particular station i.e either tension or Drive the gondola detaches from the rope by a mechanism
- e. After detachment the gondola de accelerates and moves on the curved rail inside the station with a speed of 0.5 m/sec by some chain arrangement.
- f. During this period the gate of the gondola will be opened for de-boarding and corresponding boarding.
- g. Once boarding is over the gate of the gondola will be closed.
- h. By some another mechanism the speed of the gondola accelerates and then be allowed to attach with the haulage rope.
- i. The gondola then moves out from the station and moves towards other station.
- j. Every after given spacing one gondola enters and leaves the station by following the above (d- i) method.

#### **2. Basic Design Consideration**

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

All the station structures and trestles shall be designed supplied and constructed to withstand the effects of wind, humidity, earthquake, temperature variations, geo technical conditions etc. likely to be prevalent at the site. In this regard the relevant Indian Codes (BIS) would be considered as guidelines. Appropriate OITAF/French regulations/DIN/B.S./ASTM specifications and other international guides will

apply in case Indian Codes do not fully cover requirements required for ropeway structures, such as, critical and important welded fabrications.

All the structure shall be designed as per the provisions of the corresponding IS Codes taking into account the seismic coefficient and Importance factors which should be at least 1.5. However during actual designing, Importance factors higher than 1.5 can also be considered. Further, for the design of structures, a temperature variation of approx. (+) 40 deg. Centigrade to 2 deg. Centigrade may be considered. It would also be necessary for specific geo-technical investigations to be carried out before execution to ensure proper foundation design at the location of important locations, like stations, trestles etc.

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

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

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

### **3. Power Supply Requirement**

The total requirement for the motor and lighting load for the Ropeway has to assess. The power supply made available by DDED. Power line/ substation required for power availability at the ropeway terminals could be laid with from nearby DDED substation. The cost of the installation of the power line/ substation has to borne by the concessionaire. Necessary step down transformer shall be provided to supply LT power for ropeway electrical equipment and lighting.

Normally the ropeway system shall work on power supply arranged by DDED, but in case regular power supply fails, the system shall operate on standby Diesel Generator (DG) power supply. The DG set shall be of continuous rating. It shall be capable for full capacity load requirement of the passenger ropeway system and related buildings and shall be suitable to operate on required load. The DG power system shall

be noise-free and air pollution free as per code of Practices. The cost of the DG set and its installation has to borne by the concessionaire.

#### **4. Operation and Maintenance**

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

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

#### **5. Performance Standards and Monitoring**

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

- a. Carrying capacity of the Ropeway system at the time of commencement of Operations shall not be less than 500 PPH.
- b. Ropeway should be in daily operation throughout the year, unless otherwise instructed by Ropeway Inspector (during unfavorable conditions).
- c. Performance of the system at boarding and de boarding areas.
  - i. The speed of ropeway system at boarding and de-boarding areas should enable safe passenger movement.
  - ii. Queue length of passengers shall commensurate with the requirement.
  - iii. Waiting time for the passengers shall be minimum
- d. Performance of standby equipment. The rating of standard DG set should be equal to the main electrical power system to run at full load.
- e. Performance of Rescue systems and carrier evacuation system. The efficiency and number of rescue and evacuation system shall be measured in terms of following:
  - i. Response time to mishap detected by automatic detection system should be minimum.
  - ii. Evacuation/ mitigation time period up to terminal stations should be kept at minimum as per code.

**Annex – II**  
(Schedule-B)

**Description of Real Estate Development**

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

Site of the Ropeway Project shall include the land, buildings, structures and road works as described in the Schedules.

An inventory of the Site including the land, buildings, structures, road works, trees and any other immovable property on, or attached to, the Site shall be prepared jointly by the Authority Representative and the Concessionaire, and such inventory shall form part of the Agreement.

The Site of the Project comprises the area of Diu & Ghoghla Terminal, area of Towers for cable car. The land and structures comprising the Site are described below.

Approximately 1,000 sq.m. of land will be provided on right to use basis to the Concessionaire at Diu, where Concessionaire has to build terminal station for the operations purpose.

Approximately 1,000 sq.m. of land will be provided on right to use basis to the Concessionaire at Ghoghla, where Concessionaire has to build terminal station for the operations purpose.

Concessionaire has to do his own necessary study/survey required for the construction of terminal stations at both the end.

Construction at terminal stations needs to be done as per statutory rules applicable in that area.

## Schedule C: PROJECT FACILITIES

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

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

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

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

## Schedule D: SPECIFICATION AND STANDARDS

### 1. ROPEWAY:

The project shall mean, subject to the provisions of the RFP and Concession agreement an indicative 1500 m long, Monocable detachable Gondola (Cabin) System ropeway transport system.

### 2. ROPEWAY SYSTEM:

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

- a) The ropeway shall conform to applicable BIS standards.
- b) The proposed capacity of ropeway is 500 PPHPD. However, if concessionaire wants to install higher capacity ropeway then he may do so.
- c) All ropeway components except structural items shall be strictly as per BIS standards procured from reputed manufacturer. All necessary certificates needs to be submitted along with the design and plans submitted to the Concessioneing authority.

Terminal Points: Ropeway Project for Diu to Ghoghla will have One station at Diu Site (near collectriate) and another station at Ghoghla Side near Jogging Track. The terminal shall have enough space to provide for:

- a) Ropeway Terminal & Associated Facilities
  - ✓ Ropeway Station- Boarding & de-boarding
  - ✓ Parking for ropeway Cabins
  - ✓ Ropeway Store
  - ✓ Ropeway Workshop
  - ✓ Office
  - ✓ Account and staff room
  - ✓ Generator Room
  - ✓ Miscellaneous area
- b) Ticket counters
- c) Toilets - Gents / Ladies Toilet
- d) Waiting Area - Approach Road
- e) Cloak Room

Towers: The number and location of towers shall depend upon the final design approved by the Concessioneing Authority.

### 3. AERIAL ROPEWAY: TECHNICAL PARAMETERS

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

Sr. No	Item	Parameters
1	System	Mono-cable Detachable Gondola

Sr. No	Item	Parameters
2	Capacity (Designed), PPHPD (Passengers per hour per direction)	Minimum 500 @ max speed
3	Line speed, m/sec	3-5
4	Length, m	1500 M
5	Alignment	As per document
6	Capacity of Cabin persons	6 – 8
7	Travel time one Way minimum	6
8	Type of cabin	Enclosed cabin with ventilation. Door operation – Automatic
9	Boarding/De boarding	In motion. Speed should not be more than 0.3 m/sec. Cabin should be guided.
10	Handling of cabin in station	Cabin conveyor system
11	Tensioning system	Hydraulic
12	Line Rescue System	At least two systems of redundancy
13	Stand by D.G. set @ station for station lighting, KVA	To be decided by developer. It should b capable to run ropeway in worst loading condition.
14	Ambient temp	(+) 40° C max and -10° C min.

The above technical data is given for guidance only. Concessionaire may use different parameter keeping the ropeway capacity as 500 PPHPD. However, Concessionaire shall submit a technical plan to the Authority indicating the ropeway system as per their preference conforming to relevant BIS and keeping the ropeway Capacity as 500 PPHPD.

### 3.1. Other Facility

As per the Concession Agreement.

### 3.2. Area Management Plan

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

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

### 3.3. Environment Management Plan (EMP):

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

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

### 3.3.1. Environmental Impact Analysis:

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

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

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

The EIA report shall covers construction and operation of the development and future expansion. EIA report shall also cover technical disciplines and areas such as noise and vibration, air quality, ecology, water quality & hydrology, archaeology & cultural heritage, landscape & visual character, sustainability and socio- economics. The EIA report will describe how the project has been improved through the EIA process and what alternatives are considered.

### 3.3.2. Environmental Clearance Process

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

### 3.3.3. Terms of Reference

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

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

### 3.4. Safety measures to be adhered to:

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

### 3.5. Miscellaneous, Communication and Fire Precautions:

#### a. Communication System:

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

#### b. Fire Precautions:

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

### 3.6. Guidelines Relating to Execution

The Concessionaire shall consider Specifications provided by Bureau of Indian Standards / International Standards and other applicable statutory code of practices like Indian Electricity Act, National Building Code, Municipal Building Byelaws applicable in UT Administration of Dadra & Nagar Haveli and Daman & Diu, etc for design, construction, operation and maintenance of the project facilities. In case of non-availability of Indian standards, suitable international standards may be followed.

- a) All building works shall conform to Central Public Works Department (CPWD) specifications for Class I building works and standards given in National Building Code (NBC) as amended and/ or modified from time to time.
- b) All building works shall be designed to meet the functional requirements and shall be compatible with the regional architecture and microclimate, particularly incorporating mitigation measures for earthquake and natural disasters.
- c) Locally available materials shall be accorded preference subject to meeting the requirement of IS codes and the quality of construction.
- d) All brick and stone masonry works shall be of first class type and as per good practices.
- e) All the open spaces around terminals need to be landscaped.
- f) The design of drinking water supply and storage systems, laying of pipes, cleaning and disinfecting of the water storage shall be as per relevant clauses of the NBC.
- g) The design, layout and construction of drains for sewerage disposal system with all ancillary works shall be in accordance with NBC.
- h) The design and location of all electrical installations, distribution system, wiring, fittings, accessories and lightning protection of buildings shall be as per relevant clauses of the NBC.
- i) Fire fighting equipment including smoke detectors and audiovisual alarm system shall be planned and installed as per relevant sections of NBC.

## Schedule E: APPLICABLE PERMITS

### Applicable Permits

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

#### (A) Indicative list of Approvals/Permits to be obtained by the Concessionaire

Sr. No.	Description
<b>Approvals Required</b>	
1.	No Objection Certificate from the UT Administration (if applicable)
2.	Consent to Establish under the Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974 from Pollution Control Board (UT and Centre).
3.	Forest clearance from Ministry of Environment and Forest.
4.	No-Objection certificate from Diu Municipal Council in whose territorial limits the project is located, if applicable.
5.	CRZ/Environment Clearance
6.	Consent for Right of Way under applicable law ( if applicable)
7.	NOC for height clearance from directorate of air traffic management, Airport Authority of India when project lies within 20Kms radius of air strips/funnel.
8.	Approval under Ancient Monuments and Archaeological Sites and Remains Act, 1958 with subsequent amendments
9.	No Objection Certificate from the UT Administration (if applicable)
10.	Consent to Establish under the Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974 from Pollution Control Board (UT and Centre).
11.	Compliance under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.
12.	No-Objection certificate from relevant panchayat in whose territorial limits the project is located, if applicable.
13.	Clearance of fire safety standards and protection apparatus and system under the Factories Act, 1948, and standards mandated by the local fire department, if applicable from Chief Inspector of Factories or any other designated authority appointed.
14.	Compliance under Maternity Benefit Act, 1961.
15.	License for usage and storage of fuel oil storage tank, pressurized vessels, explosive and inflammable liquids, gases and chemicals under (a) Explosives Act, 1884 read with Explosives Rules, 2008 and Gas Cylinder Rules, 2004; and (b) Petroleum Act, 1934 read

Sr. No.	Description
<b>Approvals Required</b>	
	with Petroleum Rules, 2002, if applicable from Chief Controller of Explosives, Gol, if applicable.
16.	Approval under the Electricity Act 2003 for electrical installations and works form Chief Electrical Inspector.
17.	Other facilitation that could be obtained from the nodal agency is statutory clearances from Govt. Departments/Agencies, Evacuation approval from State/UT Transmission Utility (STU), Connectivity to the substation of STU, clearances from State/UT Pollution Control Board (SPCB), whenever feasible.
18.	Certificate of Registration from the labour department issued under the Inter- State Migrant Workmen (Regulations of Employment and Conditions of Services) Act, 1979 in relation to employment of migrant workmen.
19.	Registration under Section 7 of Contract Labour (Regulation and Abolition) Act, 1970.
20.	Registration under Employees Provident Fund and Miscellaneous Provisions Act, 1952.
21.	Authorization for management and handling of hazardous waste under Hazardous Waste (Management, Handling & Transboundary Movement) Rules, 2016.
22.	Registration under Employee State Insurance Act, 1948.
23.	Any other clearance required for commercial operation.

## Schedule F: PERFORMANCE SECURITY

To

**Chief Executive Officer  
Diu Smart City Limited  
Diu,**

### WHEREAS:

- A. \_\_\_\_\_ (the "Concessionaire") which has been accepted by Chief Executive officer, Diu Smart City Ltd (the "**Authority**") vide letter No. \_\_\_\_\_ dated \_\_\_\_\_ shall be signing the Concession Agreement (the "**Agreement**") with the Authority within 30 days from the date of issue of Letter of Award (the "**LOA**") to the Successful Bidder for undertaking the Development of Passenger Ropeway System at Diu to Ghoghla in Diu on Design, Build, Finance, Operate and Transfer Basis under PPP Model, subject to and in accordance with the provisions of the Agreement.
- B. The Agreement requires the Concessionaire to furnish a Construction Period Performance Security to the Authority in a sum of Rs \_\_\_\_\_ (Rupees in words) (the "**Guarantee Amount**") as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Construction Period (as defined in the Agreement).
- C. We, \_\_\_\_\_ through our Branch at \_\_\_\_\_ (the "Bank") have agreed to furnish this Bank.

Guarantee by way of Construction Period Performance Security.

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

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Concessionaire's obligations during the Construction Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums up to an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an officer not below the rank of Director, in the Directorate of Tourism, Government of Madhya Pradesh, that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Construction Period under the Agreement and

its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.

3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfillment and/ or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfillment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force until the expiry of 6 (six) months beyond the Commercial Operation Date and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, not later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.

9. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorized to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
10. This Guarantee shall come into force with immediate effect and shall remain in force and effect up to or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

Signed and sealed this \_\_\_ day of \_\_\_, 20\_\_\_ at \_\_\_\_\_. SIGNED, SEALED AND DELIVERED For and on behalf of the BANK by:

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

NOTES:

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

## Schedule G: PROJECT COMPLETION SCHEDULE (See Clause 12.1)

### 1. Project Completion Schedule

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

### 2. Project Milestone I

Project Milestone I shall occur on the date falling on the 180th (one hundred and Eighty) day from the Appointed Date (the "Project Milestone I").

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

### 3. Project Milestone II

3.1 Project Milestone I shall occur on the date falling on the 365th (Three hundred and Sixty five) day from the Appointed Date (the "Project Milestone I").

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

### 4. Project Milestone III

4.1 Project Milestone III shall occur on the date falling on the 540th (Five hundred and Fortieth) day from the Appointed Date (the "Project Milestone III").

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

### 5. Scheduled Completion Date

5.1 The Scheduled Completion Date shall occur on the 730th (Seven Hundred and thirtieth) day from the Appointed Date.

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

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

### 6. Extension of period

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

## Schedule H: DRAWINGS

### 1. Drawings

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

### 2. Additional drawings

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

## **Annex I**

### **(Schedule H)**

#### **List of Drawings**

- i. Site plan
- ii. Terminal Plan at Diu
- iii. Terminal Plan at Ghoghla
- iv. Building plan (floor wise)
- v. Structural Plan and design of all the structures (including Piers, towers, terminal, and any other structures)
- vi. Architectural plan and design of all the structures (including Piers, towers, terminal, and any other structures)
- vii. Operational area plan
- viii. Traffic dispersal plan
- ix. Parking plan
- x. Green area planning/ Landscape layout
- xi. Any other plans required for this Project

**Schedule I: SELECTION OF INDEPENDENT ENGINEER**  
(See Clause 22.1 and 22.2)

**1. Selection of Independent Engineer**

- 1.1. The provisions of the Model Request for Proposals for selection of technical consultants, issued by the Ministry of Finance, Government of India vide OM 24(23)/PF-II/ 2008 dated 21, May 2009, or any substitute thereof shall apply for selection of an experienced firm to discharge the functions and duties of an Independent Engineer. The Independent engineer during project implementation/ construction phase shall be the PMC already engaged by DSCL for Diu Smart City project.
- 1.2. In the event of termination of an Independent Engineer appointed in accordance with the provisions of Paragraph 1.1, the Authority shall appoint another firm of technical consultants forthwith or may engage a government-owned entity in accordance with the provisions of Paragraph 5 of this Schedule.

**2. Term of Reference**

- 2.1. The Terms of Reference for the Independent Engineer shall substantially conform to this Schedule-I.

**3. Fee and expenses**

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

**4. Selection in every three year**

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

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

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

## II Terms of Reference for Independent Engineer

### 1. Scope

- 1.1. These Terms of Reference for the Independent Engineer (the "TOR") are being specified pursuant to the Concession Agreement dated \_\_\_\_\_ (the "Agreement"), which has been entered into between the Authority and \_\_\_\_\_ (the "Concessionaire") for Development of Passenger Ropeway System at Diu to Ghoghla in Diu on Design, Build, Finance, Operate and Transfer Basis under PPP Model ("Project"), and a copy of which is annexed hereto and marked as Annex A to form part of this TOR.
- 1.2. This TOR shall apply to only construction, supervision and monitoring of the Project.

### 2. Definitions and interpretation

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

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

- 3.1. The role and functions of the Independent Engineer during the Term of its appointment shall include the following:
  - (i) review of the Drawings and Documents as set forth in Paragraph 4;
  - (ii) review, inspection and monitoring of Construction Works as set forth in Paragraph 5;
  - (iii) conducting Tests on completion of construction and issuing Completion/ Provisional Certificate as set forth in Paragraph 5;
  - (iv) determining, as required under the Agreement, the costs of the works or services and/or their reasonableness w.r.t this Project and certifying the same;
  - (v) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
  - (vi) assisting the Parties in resolution of disputes as set forth in Paragraph 7; and
  - (vii) undertaking all other duties and functions in accordance with the Agreement.

- 3.2. The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

#### **4. Development Period**

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

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

- 5.1. In respect of the Drawings, Documents and Safety Report received by the Independent Engineer for its review and comments during the Construction Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.
- 5.2. The Independent Engineer shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 5.3. The Independent Engineer shall inspect the construction works and electromechanical equipment (if any) once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the "Inspection Report") setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works and electromechanical with the Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the

Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Diu to Ghoghla Ropeway or the deficiencies in the electromechanical equipment. The Independent Engineer shall send a copy of its Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.

- 5.4. The Independent Engineer may inspect the Diu to Ghoghla Ropeway more than once in a month if any lapses, defects or deficiencies require such inspections.
- 5.5. For determining that the Construction works conform to specification and standards, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on sample basis to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance. The Independent Engineer shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.
- 5.6. The sample size of the tests, to be specified by the Independent Engineer, shall comprise 10% (ten per cent) of the quantity or number of tests prescribed for each category or type of tests in the Quality Control Manuals; provided that the Independent Engineer may, for reasons to be recorded in writing, increase the aforesaid sample size by up to 10% (ten per cent) for certain categories or types of tests.
- 5.7. The timing of tests referred above, and the criteria for acceptance/ rejection of their results shall be determined by the Independent Engineer in accordance with the Quality Control Manuals. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.
- 5.8. In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the Specifications and Standards, and the provisions of this Paragraph 5 shall apply to such tests.
- 5.9. In the event that the Concessionaire fails to achieve any of the Project Milestones, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Diu to Ghoghla Ropeway is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which COD shall be achieved. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire forthwith.
- 5.10. If at any time during the Construction Period, the Independent Engineer determines that the Concessionaire has not made adequate arrangements for the safety of workers and Users in the zone

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

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

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

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

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

## **6. Determination of costs and time**

- 6.1. The Independent Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.
- 6.2. The Independent Engineer shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

## **7. Assistance in Dispute resolution**

- 7.1. When called upon by either Party in the event of any Dispute, the Independent Engineer shall mediate and assist the Parties in arriving at an amicable settlement.
- 7.2. In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

## **8. Other duties and functions**

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

## **9. Miscellaneous**

- 9.1. The Independent Engineer shall notify its programme of inspection to the Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.
- 9.2. A copy of all communications, comments, instructions, Drawings or Documents sent by the Independent Engineer to the Concessionaire pursuant to this TOR, and a copy of all the test results with comments of the Independent Engineer thereon shall be furnished by the Independent Engineer to the Authority forthwith.
- 9.3. The Independent Engineer shall obtain, and the Concessionaire shall furnish in two copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Independent Engineer, whereupon the Independent Engineer shall send one of the copies to the Authority along with its comments thereon.
- 9.4. The Independent Engineer shall retain at least one copy each of all Drawings and Documents received by it, including 'as-built' Drawings, and keep them in its safe custody.
- 9.5. Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list all Drawings, Documents, results of tests and other relevant records, and hand them over to the Authority or such other person as the Authority may specify, and obtain written receipt thereof. Two copies of the said documents shall also be furnished in micro film form or in such other medium as may be acceptable to the Authority.
- 9.6. Wherever no period has been specified for delivery of services by the Independent Engineer, the Independent Engineer shall act with the efficiency and urgency necessary for discharging its functions in accordance with Good Industry Practice.

## Schedule J: TESTS (See Clause 14.1.2)

### 1. Schedule for Tests

- 1.1. The Concessionaire shall, not later than 30 (Thirty) days prior to the likely completion of construction, notify the Independent Engineer and the Authority of its intent to subject the Project to Tests, and not later than 7 (seven) days prior to the actual date of Tests, furnish to the Independent Engineer and the Authority detailed inventory and particulars of all works and equipment forming part of the Project.
- 1.2. The Concessionaire shall notify the Independent Engineer of its readiness to subject the Project to Tests at any time after 7 (seven) days from the date of such notice, and upon receipt of such notice, the Independent Engineer shall, in consultation with the Concessionaire, determine the date and time for each Test and notify the same to the Authority who may designate its representative to witness the Tests. The Independent Engineer shall thereupon conduct the Tests itself or cause any of the Tests to be conducted in accordance with Article 14 and this schedule.

### 2. Tests

- 2.1. The Independent Engineer shall conduct, or cause to be conducted, the Tests in accordance with Applicable Law, Good Industry Practice and Specifications and Standards. The tests to be conducted shall include inter alia:
  - check of the correct execution and assembly of the ropeway
  - check the final documentation of the supplier including certificates and conformity declaration of all safety parts and subsystems
  - check all safety devices of the ropeway including the correct setting
  - check the electrical safety control system
  - check the correct settings of all brakes and drives
  - check the emergency drive
  - check the smooth and safe running of the rope and cabins on the line and on the roller batteries
  - check of the operation and maintenance manual
  - check the experience and the knowledge of the service staff for the operation
  - check the correct, safe and smooth running of the garage system, the conveyor system and the coupling system
  - Check the rescue equipment and do a rescue exercise on the installation
  - Check Construction and safety standards of terminal stations at both the end.

Any other Test as may be prescribed under Applicable Laws, Good Industry Practice and Specifications and Standards.

### **3. Agency for conducting Tests**

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

### **4. Completion Certificate**

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

### **5. Tests during construction**

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

Schedule K: COMPLETION CERTIFICATE  
(See Clause 14.2 & 14.3)

1. I, Diu Smart City Ltd (The **"Transaction Authority"**) under and in accordance with the Concession Agreement dated \*\*\*\*\* (the **"Agreement"**), for construction and development of **"Development of Passenger Ropeway System at Diu to Ghoghla in Diu on Design, Build, Finance, Operate and Transfer Basis under PPP Model"** (the **"Project"**), through \*\*\*\*\* (Name of Concessionaire), hereby certify that the Tests specified in Article 14 and schedule J of the Agreement have been successfully undertaken to determine compliance of the Mandatory Project and Mandatory Project Facilities with the provisions of the Agreement, and I am satisfied that the Mandatory Project and Mandatory Project Facilities can be safely and reliably placed in commercial service of the Users thereof.

2. It is certified that, in terms of the aforesaid Agreement, all works forming part of Mandatory Project and Mandatory Project Facilities have been completed, and the Mandatory Project and Mandatory Project Facilities are hereby declared fit for entry into commercial operation on this the \*\*\* day of \*\*\* 20\*\*.

SIGNED, SEALED AND DELIVERED

For and on behalf of Authority by:

(Signature)

(Name)

(Designation)

(Address)

## Schedule L: PERFORMANCE AND MAINTENANCE REQUIREMENTS

### 1. Detailed Operation and Maintenance Plan

The Operator shall perform all the obligations under the Agreement with utmost care, effective and efficient and adapt the best practices in all operations and maintenance activities in accordance to the industry standard. The Operator shall undertake the operations and maintenance activities including but not limited to the tasks detailed herein.

A. General requirements:-

#### Operating Functions: Basic Operating Functions

Area of Operations	Key Operating Functions
Ropeway Station	<ul style="list-style-type: none"> <li>➤ Conduct routine O&amp;M</li> <li>➤ Facility Management</li> <li>➤ Asset maintenance</li> <li>➤ Passenger monitoring</li> </ul>
Terminals/ Towers/ Ropeway	<ul style="list-style-type: none"> <li>➤ Conduct routine O&amp;M</li> <li>➤ Movable part inspection</li> <li>➤ Compliance monitoring for service and quality</li> <li>➤ Flow / movement monitoring of cabins and rope</li> <li>➤ Fault detection and repair</li> <li>➤ Store inspection</li> <li>➤ Repairs, rehabilitation, expansion of facilities</li> <li>➤ Replacement of assets as per maintenance schedule</li> </ul>
Consumer services	<ul style="list-style-type: none"> <li>➤ Maintain ticket counters</li> <li>➤ User facilities maintenance</li> <li>➤ Q area maintenance</li> <li>➤ Safe Boarding and De-boarding</li> <li>➤ Consumer complaints redressal, and monitor Consumer</li> </ul>
Passenger Safety	<ul style="list-style-type: none"> <li>➤ Monitor safety plan</li> <li>➤ Monitoring service quality</li> </ul>
Administration	<ul style="list-style-type: none"> <li>➤ Planning and coordination with other authorities</li> <li>➤ Procurement of materials, works and services</li> <li>➤ Project Management and supervision</li> <li>➤ Accounts and financial management, and training</li> <li>➤ Information recording and management</li> <li>➤ Regulatory reporting</li> </ul>

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

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

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

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

### 3. O&M Requirements

- 3.1. The Concessionaire shall, at all times, operate and maintain the Ropeway System in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits. In particular, the Concessionaire shall, at all times during the Operation Period, conform to the operations and maintenance requirements set forth in this Schedule (the “**O&M Requirements**”).
- 3.2. The Concessionaire shall repair or rectify any defect or deficiency set forth in this Schedule within the time limit specified therein and any failure in this behalf shall constitute a breach of the Agreement. Upon occurrence of any breach hereunder, the Authority shall be entitled to recover Damages as set forth in the Agreement, without prejudice to the rights of the Authority under the Agreement, including Termination thereof.
- 3.3. The Concessionaire shall be required to meet the Performance Benchmarks set forth in this Schedule within the time limit specified therein and any failure in this behalf shall constitute a breach of the Agreement. Upon occurrence of any breach hereunder, the Authority shall be entitled to recover Damages as set forth in the Agreement, without prejudice to the rights of the Authority under the Agreement, including Termination thereof.

#### **4. Repair/rectification of defects and deficiencies**

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

#### **5. Performance Benchmarks**

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

#### **6. Other defects and deficiencies**

- 6.1. In respect of any defect or deficiency not specified in this Schedule, the Concessionaire shall undertake repair or rectification in accordance with Good Industry Practice and within the time limit specified by the Independent Engineer.
- 6.2. In respect of any defect or deficiency not specified in this Schedule, the Independent Engineer may, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards, and any deviation or deterioration beyond the permissible limit shall be repaired or rectified by the Concessionaire in accordance with Good Industry Practice and within the time limit specified by the Independent Engineer.

#### **7. Extension of time limit**

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

#### **8. Emergency repairs/restoration**

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

#### **9. Daily Inspection by the Concessionaire**

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

## **10.Divestment Requirements**

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

## **11.Display of O&M Schedule**

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

## Schedule M: SAFETY REQUIREMENTS (See Clause 18.1)

### 1. Guiding Principles

- 1.1. Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on the Project, irrespective of the person(s) at fault.
- 1.2. Users of the project include staff of the Concessionaire and its contractors working at the Project Site.
- 1.3. Safety Requirements apply to all phases of construction, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.
- 1.4. Safety Requirements include measures associated with safe movement, safety management, safety equipment, fire safety, enforcement and emergency response, with particular reference to the Safety Guidelines specified in this Schedule.

### 2. Obligations of the Concessionaire

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

- a) Applicable Laws and Applicable Permits;
- b) Manual for Safety issued by ropeway components' suppliers and/or by the Authority;
- c) Provisions of this Agreement; and
- d) relevant Standards/Guidelines contained in internationally accepted codes;
- e) Good Industry Practice.

### 3. Appointment of Safety Consultant

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

### 4. Safety measures during Development Period

- 4.1. No later than 90 (ninety) days from the date of this Agreement, the Authority shall appoint a Safety Consultant for carrying out safety audit at the design stage of the Project.
- 4.2. The Concessionaire shall provide to the Safety Consultant, in four copies, the relevant drawings containing the design details that have a bearing on safety of Users (the "**Safety Drawings**"). Such

design details shall include ropeway alignments; horizontal and vertical forces, layouts of ropeway profile, foundation drawings, inertia forces, bending moments in global coordinates, tower loads, sheave loads, effects of forces caused by winds, snow, ice or any other external factors, station forces and design, people movement and safety procedures at stations along with other incidental or consequential information. The Safety Consultant shall review the design details and forward 3 (three) copies of the Safety Drawings with its recommendations, if any, to the Independent Engineer who shall record its comments, if any, and forward one copy each to the Authority and the Concessionaire.

- 4.3. The design details shall be compiled, analysed and used by the Safety Consultant for evolving a package of recommendations consisting of safety related measures for the Diu to Ghoghla Ropeways. The safety audit shall be completed in a period of three months and a report thereof (the “**Safety Report**”) shall be submitted to the Authority, in 5 (five) copies. One copy each of the Safety Report shall be forwarded by the Authority to the Concessionaire and the Independent Engineer forthwith.
- 4.4. The Concessionaire shall endeavour to incorporate the recommendations of the Safety Report in the design of the Diu to Ghoghla Ropeways, as may reasonably be required in accordance with Applicable Laws, Applicable Permits, Manuals and Guidelines of the Authority, Specifications and Standards, and Good Industry Practice. If the Concessionaire does not agree with any or all of such recommendations, it shall state the reasons thereof and convey them to the Authority forthwith. In the event that any or all of the works and services recommended in the Safety Report fall beyond the scope of Schedule-C, Schedule-D or Schedule-E, the Concessionaire shall make a report thereon and seek the instructions of the Authority for funding such works in accordance with the provisions of Agreement.
- 4.5. Without prejudice to the provisions of Paragraph 4, the Concessionaire and the Independent Engineer shall, within 15 (fifteen) days of receiving the Safety Report, send their respective comments thereon to the Authority, and no later than 15 (fifteen) days of receiving such comments, the Authority shall review the same along with the Safety Report and by notice direct the Concessionaire to carry out any or all of the recommendations contained therein with such modifications as the Authority may specify; provided that any works or services required to be undertaken hereunder shall be governed by the provisions of Agreement.

## **5. Safety measures during Construction Period**

- 5.1. A Safety Consultant shall be appointed by the Authority, no later than 4 (Four) months prior to the expected Project Completion Date, for carrying out a safety audit of the completed Construction Works.
- 5.2. The Safety Consultant shall study the Safety Report for the Development Period and inspect the Diu to Ghoghla Ropeway to assess the adequacy of safety measures. The Safety Consultant shall complete the safety audit within a period of 4 (four) months and submit a Safety Report recommending a package of additional safety measures, if any, that are considered essential for reducing accident hazards on the Diu to Ghoghla Ropeway. Such recommendations shall be processed, *mutatis mutandis*, and acted upon in the manner set forth in Paragraphs 4.3, 4.4 and 4.5 of this Schedule-M.

5.3. The Concessionaire shall make adequate arrangements during the Construction Period for the safety of workers and road users in accordance with Applicable Laws and Good Industry Practice for safety in construction zones and notify the Authority and the Independent Engineer about such arrangements.

## **6. Safety measures during Operation Period**

6.1. The Concessionaire shall develop, implement and administer a surveillance and safety programme for Users, including correction of safety violations and deficiencies and all other actions necessary to provide a safe environment in accordance with this Agreement.

6.2. The Concessionaire shall establish a Ropeway Safety Management Unit (the "RSMU") to be functional on and after COD, and designate one of its officers to be in-charge of the RSMU. Such officer shall have specialist knowledge and training in ropeway safety and traffic engineering by having attended a course conducted by a reputed organization on the subject.

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

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

6.5. Once in every six months of the Accounting Year, a safety audit shall be carried out by the Safety Consultant to be appointed by the Authority. It shall review and analyses the annual report and accident data of the preceding year, and undertake an inspection of the Project. The Safety Consultant shall complete the safety audit within a period of 1 (one) month and submit a Safety Report recommending specific improvements, if any. Such recommendations shall be processed, mutatis mutandis, and acted upon in the manner set forth in Paragraphs 4.3, 4.4 and 4.5 of this Schedule M.

## **7. Costs and expenses**

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

**Annex I**  
**(Schedule M)**  
**Safety Guidelines**

**1. Safe Movement**

- 1.1. In the design, construction and operation of stations and ropeway system, particular care shall be taken to ensure safety of users in entry and exit; while waiting, boarding or alighting; and in moving systems. This shall include facilities for safe and efficient evacuation in case of emergency. In particular, ropeways shall be designed and tested for safe movement.

**2. System integrity**

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

**3. Restoration of service**

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

**4. Safety management**

- 4.1. A safety statement shall be prepared by the Concessionaire once every quarter to bring out clearly the system of management of checks and maintenance tolerances for various assets including cabins, and compliance thereof. The statement shall also bring out the nature and extent of, staff training and awareness in dealing with such checks and tolerances. Two copies of the statement shall be sent to the Independent Engineer within 15 (fifteen) days of the close of every quarter.

**5. Safety equipment**

- 5.1. The following equipment shall be provided at every station:
- a. Fire extinguishers and fire alarms at the appropriate locations on the platforms;
  - b. Two fire extinguishers in the station office;
  - c. Two stretchers and two standard first aid boxes; and
  - d. Such other equipment as may be required in conformity with Good Industry Practice.

**6. Emergency**

- 6.1. A set of emergency procedures shall be formulated to deal with different emergency situations and the operations staff shall be trained to respond appropriately during emergency through periodic simulated exercises as laid down in a manual for management of disasters (the “**Disaster Management Manual**”) to be prepared and published by the Concessionaire prior to COD. The

Concessionaire shall provide 5 (five) copies each of the Disaster Management Manual to the Authority and the independent expert no later than 30 (thirty) days prior to COD.

## **7. Fire Safety**

- 7.1. The Concessionaire shall adopt provisions in a combination of the National Fire Protection Association (NFPA) 130 standard for fixed guide way transit and passenger Ropeway Systems
- 7.2. To prevent fire in the passenger areas, the Concessionaire shall use fire resistant materials in the construction thereof and shall avoid use of materials which are to some extent flammable, or which emit smoke and harmful gases when burning.
- 7.3. Emergency exit should be accessible without any obstructions and the exit doors should be kept locked in the ordinary course. The exit doors shall be easy to open from inside the station in case of emergency.
- 7.4. Escape routes shall be clearly marked by arrows in the correct direction and no cryptic symbols shall be used. In complying with the provisions of this Clause, the possibility of poor visibility due to smoke shall be duly taken into account. All notices and signages shall be uniform and standardized.

## **8. User safety and information system:**

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

The User information system shall comprise dynamic visual displays and loudspeakers.

## Schedule N: VESTING CERTIFICATE

The Chief Executive Officer, Diu Smart City Ltd, C/o Diu Municipal Council, Fort Road, Diu – 362520, (the “**Transaction Authority**”) refers to the Concession Agreement dated ..... (the “**Agreement**”) entered into between the Authority and ..... (the “**Concessionaire**”) for \*\*\*\*\* ropeway (the “Diu to Ghoghla Ropeway”) on design, build, finance, operate and transfer (the “DFBOT”) basis.

The Authority hereby acknowledges compliance and fulfillment by the Concessionaire of the Divestment Requirements set forth in the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Project shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.

Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

Signed this ..... day of ....., 20..... At Diu.

AGREED, ACCEPTED AND SIGNED

SIGNED, SEALED AND DELIVERED

For and on behalf of Concessionaire by:

For and on behalf of Authority by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

In the presence of:

1.

2

.

Schedule O: SUBSTITUTION AGREEMENT  
(See Clause 35.3)

THIS SUBSTITUTION AGREEMENT is entered into on this the \_\_\_\_ day of \_\_\_\_ 20\_\_

AMONGST

1. Tourism Department, Diu, UT Administration of Daman and Diu represented by the ..... and having its principal office at Diu, hereinafter referred to as the "**Authority**" which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);
2. [\_\_\_\_\_ LIMITED], a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at \_\_\_\_\_, (hereinafter referred to as the "**Concessionaire**" which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);
3. \_\_\_\_\_ [name and particulars of Lenders' Representative] and having its registered office at \_\_\_\_\_, acting for and on behalf of the Lenders as their duly authorized agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "**Lenders' Representative**", which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

**WHEREAS:**

- A. The Authority has entered into a Concession Agreement dated \_\_\_\_\_ with the Concessionaire (the "**Concession Agreement**") for Development of Passenger Ropeway System at Diu to Ghoghla in Diu on Design, Build, Finance, Operate and Transfer ("**DBFOT**") Basis under PPP Model, and a copy of which is annexed hereto and marked as Annex A to form part of this Agreement.
- B. Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- C. Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.
- D. In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a

Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

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

## **1. Definitions and Interpretation**

### **1.1. Definitions**

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

**"Agreement"** means this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

**"Financial Default"** means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months;

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

**"Nominated Company"** means a company, incorporated under the provisions of the Companies Act, 1956, selected by the Lenders' Representative, on behalf of Lenders, and proposed to the Authority for assignment/transfer of the Concession as provided in this Agreement;

**"Notice of Financial Default"** shall have the meaning ascribed thereto in Clause 3.2.1; and

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

### **1.2. Interpretation**

1.2.1. References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Lenders.

1.2.2. References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.3. The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed there to in the Concession Agreement.

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

## **2. Assignment**

### **2.1. Assignment of rights and title**

The Concessionaire hereby assigns the rights, title and interest in the Concession to, and in favour of, the Lenders' Representative pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Lenders under the Financing Agreements.

## **3. Substitution of the Concessionaire**

### **3.1. Rights of substitution**

3.1.1. Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

3.1.2. The Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. (For the avoidance of doubt, the Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project as Concessionaire either individually or collectively).

### **3.2. Substitution upon occurrence of Financial Default**

3.2.1. Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "**Notice of Financial Default**") along with particulars thereof, and send a copy to the Authority for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.

3.2.2. Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.

3.2.3. At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Concessionaire and undertake the

operation and maintenance of the Project in accordance with the provisions of Article 36 of the Concession Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days. For the avoidance of doubt, the Authority expressly agrees and undertakes to terminate the Concession Agreement forthwith, upon receipt of a written request from the Lenders' Representative at any time after 240 (two hundred and forty) days from the date of Suspension hereunder.

### **3.3. Substitution upon occurrence of Concessionaire Default**

3.3.1. Upon occurrence of a Concessionaire Default, the Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days' time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.

3.3.2. In the event that the Lenders' Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

### **3.4. Procedure for substitution**

3.4.1. The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the takeover and transfer of the Project including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement and towards the Lenders under the Financing Agreements.

3.4.2. To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfill the eligibility criteria that were laid down by the Authority for shortlisting the

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

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

- a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Project in accordance with the provisions of the Project Development and Management Agreement;
- b) endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
- c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.

3.4.4. If the Authority has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within 7 (seven) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority thereupon shall transfer and endorse the Concession within 7 (seven) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

### **3.5. Selection to be binding**

The decision of the Lenders' Representative and the Authority in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Lenders or the Authority taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Authority and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Authority or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

## **4. Project Agreements**

### **4.1. Substitution of Nominated Company in Project Agreements**

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Company's assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

## **5. Termination of Concession Agreement**

### **5.1. Termination upon occurrence of Financial Default**

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 32 of the Concession Agreement.

### **5.2. Termination when no Nominated Company is selected**

In the event that no Nominated Company acceptable to the Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2, the Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

### **5.3. Realization of Debt Due**

The Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement.

## **6. Duration of The Agreement**

### **6.1. Duration of the Agreement**

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- a) Termination of the Agreement; or
- b) no sum remains to be advanced, or is outstanding to the Lenders, under the Financing Agreements.

## **7. Indemnity**

### **7.1. General indemnity**

- 7.1.1. The Concessionaire will indemnify, defend and hold the Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.
- 7.1.2. The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfill any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.
- 7.1.3. The Lenders' Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfill its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

## **7.2. Notice and contest of claims**

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

## **8. Dispute Resolution**

### **8.1. Dispute resolution**

- 8.1.1. Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Concessionaire and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules") or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.

8.1.2. The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be in Diu and the language of arbitration shall be English.

## **9. Miscellaneous Provisions**

### **9.1. Governing law and jurisdiction**

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

### **9.2. Waiver of sovereign immunity**

The Authority unconditionally and irrevocably:

- a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;
- c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- d) consents generally in respect of the enforcement of any judgment or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

### **9.3. Priority of agreements**

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

### **9.4. Alteration of terms**

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorized representatives of the Parties.

### **9.5. Waiver**

9.5.1. Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

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

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

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

#### **9.6. No third party beneficiaries**

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

#### **9.7. Survival**

##### 9.7.1. Termination of this Agreement

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

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

#### **9.8. Severability**

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

#### **9.9. Successors and assigns**

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

#### **9.10. Notices**

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be

sent by facsimile or e-mail. The address for service of each Party and its facsimile number are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

**9.11. Language**

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

**9.12. Authorized representatives**

Each of the Parties shall by notice in writing designate their respective authorized representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorized representative by similar notice.

**9.13. Original Document**

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

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

THE COMMON SEAL OF 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 / Authorized Officer who has countersigned the same in token thereof.

SIGNED, SEALED AND DELIVERED

For and on behalf of Tourism Department, Diu ("Authority") by:	For and on behalf of Diu Smart City Limited ("Authority") by:	For and on behalf of ("Concessionaire") by:	For and on behalf of ("Selected Bidder") by:
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Sign and Seal:

Name:

Designation:

Sign and Seal:

Name:

Designation: CEO,  
Diu Smart City Limited

Sign and Seal:

Name:

Designation:

Sign and Seal:

Name:

Designation:

In the presence of:

1.

2.

**Schedule P: FEE NOTIFICATION**  
(See Clause 25.1.1)

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 according to market demand.

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

**Schedule Q: MONTHLY FEE STATEMENT**  
(See Clause 19.5)

Project:

Month:

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

Remarks, if any:

Schedule R: MONTHLY TRAFFIC CENSUS  
(See Clause 22.1)

Project:

Month ending:

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

Remarks, if any:

## Schedule S: COMPENSATION AMOUNT

During the Operation Period, the Concessionaire shall ensure that user of the ropeway facility is insured as per provisions of Section 27 "Insurance" of this Concession Agreement and in case of accident, provide the victim with the compensation, not less than the amount specified below:

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

## Schedule T: PASSENGER CHARTER (See Clause 20.8)

### Diu to Ghoghla Ropeway Facility

#### At Our Service

Our Passenger Charter explains our commitments to you and sets out the targets that these are based upon. It is not legally binding and does not affect your legal rights, which are set under the Applicable Law. Copies of the conditions can be obtained from all staffed stations or from our customer service center. They can also be viewed online at [www \[please mention the website\]](#)

#### Contents

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

## 1. Introduction

We want to give our passengers excellent service.

This is a bold statement but its intention is to focus the mind of every employee of the Passenger Ropeway Facility on what is important – our passengers. We aim to provide you with:

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

## 2. Our standards for Passenger Service

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

### 2.1. Punctuality

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

## **2.2. Reliability**

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

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

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

## **3. Information and planning for your journey**

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

- i. Diu & Ghoghla Facility Enquiries telephone ..... (hours). Diu to Ghoghla Ropeway Facility Enquiries offers you impartial information on ropeway timings, fares, etc.

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

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

- ii. Customer Service Centre telephone: .....

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

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

### **3.1. At Stations**

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

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

### **3.2. Our Website**

We aim to provide as much useful and relevant information as possible on our website to help you plan your journey. This includes pocket timetables to download.

### **3.3. Engineering Work**

#### **3.3.1. Planned Engineering work**

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

The maintenance work on ropeway systems is done during shutdown hours which means that system functions at peak performance during the operation hours. However, in case of any specific instances when planned engineering work time extends beyond the shutdown time viz affecting operations during service time, advance information along with notification will be posted on the display system and website.

**Information will also be available from:**

- Ropeway Facility Enquiries
- Customer Service Centre

Under best effort circumstances, we will try to post information well in advance for you to plan your trips.

#### **3.3.2. Unplanned engineering work**

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

#### **3.3.3. Help and advice during your journey**

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

## **4. Passenger who require assistance**

We are committed to meeting the travelling needs of our disabled passengers. We recognise that many of our passengers may have special needs which require us to adjust the way we provide our service. The ropeway station is equipped to handle requirements of all riders and the ropeway system, cabins are designed to accommodate wheel chairs, baby prams, prosthetics etc. The design facilitates seamless travel from start to finish.

#### **4.1. Advance information and assistance for disabled passengers**

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

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

#### **4.2. Station access**

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

#### **4.3. Ropeway Cabins**

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

#### **4.4. Reservations of wheelchair spaces**

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

#### **4.5. Disability awareness training**

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

### **5. Buying a ticket**

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

#### **5.1. At stations**

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

#### **5.2. By telephone**

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

### **5.3. Tickets online**

You can also buy your tickets online.

### **5.4. Penalty fares**

Diu to Ghoghla Ropeway Facility has a duty to its fare-paying passengers to ensure that no-one travels for free. To help us achieve this, we operate a penalty fares scheme across our network.

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

## **6. Your Journey**

### **6.1. Getting a seat**

We operate a 'walk-on' service, which means you can board the next arriving cabin provided you have a valid ticket. The seat is guaranteed as the ropeway cabin is designed not to allow more people to board than its capacity. In Aerial Tramway (ATW), Cable Liners (Automated People Movers) are designed to allow sitting and standing passengers.

### **6.2. Security**

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

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

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

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

### **6.3. Smoking / Alcohol**

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

#### **6.4. Lost Property**

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

#### **6.5. Service disruption**

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

Other causes of disruption include:

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

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

If a problem does occur mid-way in the ropeway journey, we will ensure that you reach the nearest station with minimum inconvenience.

All our cabins are fitted with public address systems are equipped to provide all information on real time basis and most of our staff are linked by telephone systems. We aim to let you know what is happening.

### **7. Claims for delays and cancellations**

#### **7.1. 'Void' day refunds**

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

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

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

## 7.2. Punctuality and reliability discounts for Tickets

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

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

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

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

## 7.3. Cancellation

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

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

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

## 8. Listening to your views

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

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

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

### **8.1. Making a comment or complaint**

We welcome your comments, suggestions, complaints and praise about any aspect of our service. We also welcome comments about our Charter. Senior managers monitor the number and type of complaints and comments that you make. They are also responsible for delivering continuous improvement to customer service. Your feedback can therefore help us to achieve this. If you are commenting on a journey, please remember to include your tickets and any other details, as this will help us to provide you with a quicker response.

### **8.2. Further information:**

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

### **8.3. Contacting our Customer Service Centre**

Please visit our Contact us section for details.

### **8.4. Our promised response times**

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

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

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

### **8.5. If you are unhappy with our reply**

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

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