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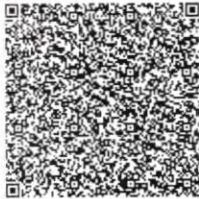
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IN-DL89151814473326V

Agreement for Provision of CNS/ATM Facilities and Services at Bhogapuram International Airport

Between

Airports Authority of India (AAI)

and

GMR Visakhapatnam International Airport Limited (GVIAL)

On 16<sup>th</sup> May, 2023

S. Swaminathan  
GM (ATM-ATS)

[Signature]



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GMR VISHAKHAPATNAM INTERNATIONAL AIRPORT LIMITED GMR VISHAKHAPATNAM INTERNATIONAL AIRPORT LIMITED GMR VISHAKHAPATNAM INTERNATIONAL AIRPORT LIMITED GMR VISHAKHAPATNAM INTERNATIONAL AIRPORT LIMITED GMR VISHAKHAPATNAM INTERNATIONAL AIRPORT LIMITED

## **AGREEMENT FOR THE PROVISION OF CNS/ATM FACILITIES AND SERVICES**

This Agreement is made on 16<sup>th</sup> May 2023 between:

- 1) **Airports Authority of India**, hereinafter called **AAI** an authority constituted under the Airports Authority of India Act, 1994 whose corporate office is at Rajiv Gandhi Bhavan, Safdarjung Airport, New Delhi -110 003, India ("**AAI**"); and
- 2) **GMR Visakhapatnam International Airport Limited** a company incorporated with limited liability under the Indian Companies Act, 1956, having its registered office at 10-1-43, Flat No. 202, Second Floor, Siripuram Fort, Siripuram, Visakhapatnam-530003, Andhra Pradesh, India hereinafter called "**GVIAL**".

The expressions "**AAI**" and "**GVIAL**" shall wherever the context appears mean and include their respective successor-in-interest and permitted assigns and shall collectively be referred to as the "**Parties**" and individually as the "**Party**".

### **Whereas:**

- A. GVIAL proposes to develop design, finance, construct, complete and operate a Greenfield airport at Bhogapuram, Vizianagaram District in the State of Andhra Pradesh, for flight operations.
- B. Pursuant to the Airports Authority of India Act 1994, AAI is responsible for the provision of air traffic services within Indian airspace and at all civil airports in India.
- C. In accordance with the above Act, AAI will provide air traffic services at the Airport on the terms and conditions set out in this Agreement.

It is agreed as follows:

### **1. Definitions and Interpretation**

#### **1.1. Definitions**

In this Agreement unless the context otherwise requires:

"**AAI Commissioning Services**" means the services to be provided by AAI in accordance with Clause 4.3;

"**AAI Equipment**" means all equipment, other than the GVIAL Equipment, required by AAI to enable AAI to perform the AAI Services in accordance with the provisions contained in the relevant ICAO Annexes and documents (as amended from time to time);

"**AAI Operative Services**" means the services to be provided by AAI in accordance with Clause 5.1;

  
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"**AAI Pre-Commissioning Services**" means the services to be provided by AAI in accordance with Clause 3.2;

"**AAI Services**" means the AAI Pre-Commissioning Services, the AAI Commissioning Services and the AAI Operative Services;

"**Affected Party**" shall have the meaning given to it in Clause 9;

"**Affiliate**" means

- a) A person that is a subsidiary of a party
- b) A person of which a party is a subsidiary
- c) A person that is a subsidiary of a person of which a party is a subsidiary

For the purposes of this definition, a person is a "subsidiary" of another person if the latter owns legally or beneficially, directly or indirectly, the shares of the former that are sufficient to cast 51% or more of the votes under ordinary circumstances in a General Meeting of the Shareholders.

"**Airfield Lighting System**" means the lighting systems at the Airport (including those in respect of the runway, taxiway, apron and approach) required for the proposed aircraft operations and aerodrome category in accordance with the provisions contained in the relevant ICAO Annexes and documents (as amended from time to time);

"**Airport**" means the Greenfield International Airport at Bhogapuram in the State of Andhra Pradesh and includes all its buildings, equipment, facilities and systems and including, where circumstances require, any Expansion thereof.

"**Airport Opening Date**" means the date upon which the commencement of commercial operation of the Initial Phase occurs;

"**Airport Opening Target Date**" means the date falling thirty-six (36) months immediately after the Financial close or a date as revised by GVIAL from time to time;

"**Chicago Convention**" means the Chicago Convention 1944 as amended and/or supplemented from time to time; and references to an "**Annexe**" to the Chicago Convention shall mean such Annexe as amended and/or supplemented from time to time;

"**Clearance**" means the written consent, licence, approval, permit, ruling, exemption, no objection certificate or other authorization or permission of whatsoever nature which is required to be obtained from and/or granted by GOI required from time to time in connection with the Project.

"**CNS/ATM Services**" means Communication, Navigation and Surveillance and AirTraffic Management Services as more particularly described in Schedule 3;

"**Concession Agreement**" means the Concession Agreement dated 12<sup>th</sup> June 2020 entered

  
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into between the Andhra Pradesh Airports Development Corporation Limited (APADCL) and GVIAL under which the APADCL has granted to GVIAL a concession for the Project.

**"Competent Authority"** means any agency, authority, department, inspectorate, or statutory person (whether autonomous or not) established and has jurisdiction over this Agreement under the laws of India;

**"Debt"** means the outstanding debt due to the Lenders of GVIAL under the Financing Agreements for the Project;

**"DGCA"** means the Director General of Civil Aviation, Government of India;

**"Effective Date"** shall have the meaning given to it in Clause 2.3;

**"EPC Contractors"** mean any one or more parties so named in the EPC contracts;

**"EPC Contracts"** means the agreements entered into or to be entered into between GVIAL and the EPC Contractors under which the EPC Contractors will design, procure, construct and complete the Airport;

**"Existing Airport"** means the existing Civil Enclave at the existing Vizag Naval Airfield (INS Dega) known as Visakhapatnam International Airport.

**"Expansion"** means the expansion of the facilities at the airport from time to time as per the Master Plan;

**"Facility"** means the Air Traffic Services complex to be constructed by GVIAL at the Airport, which shall include a control tower, technical block and office accommodation for AAI personnel as well as buildings for Navigational Aids / Radar on site and/or off site with provision for Air-conditioning, continuous supply of electricity & water and house-keeping, as more comprehensively set out in Schedule 2;

**"Financial Close"** means the date upon which the Financing Agreements (in so far as they relate to the development and construction of the Initial Phase) have been executed and delivered by all the parties there to and conditions precedent there under shall have been fulfilled to such extent as may be necessary to permit GVIAL to have immediate access, subject only to giving the notices of drawdown required thereby, to funding required by GVIAL.

**"Financing Agreements"** means any of (i) GVIAL agreements with Lenders for the making available to GVIAL of Debt and (ii) the security documents, direct agreements and other ancillary undertaking in favour of Lenders required pursuant to the agreements referred to in (i) above;

**"Force Majeure"** shall have the meaning set out in Schedule 4;

**"Future Commissioning Date"** means the date on which any Future Commissioning Period shall commence as notified to AAI by GVIAL pursuant to Clause 4.1;

  
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"**Future Commissioning Period**" means any Future Commissioning Period as may be agreed between the Parties in respect of any additional AAI Equipment required for any expansion of the Airport;

"**GOI**" means the Government of India and any of its duly Authorized agency, authority (including any regulatory authority), department, inspectorate, ministry or statutory person (whether autonomous or not) under the direct control and direction of the Ministry of Civil Aviation;

"**GVIAl Commissioning Obligations**" means those obligations to be met by GVIAl in accordance with Clause 4.2

"**GVIAl Equipment**" means the items set out in Part 1 of Schedule I;

"**GVIAl Obligations**" means the GVIAl Pre-Commissioning Obligations, GVIAl Commissioning Obligations and GVIAl Operative Obligations;

"**GVIAl Operative Obligations**" means those obligations to be met by GVIAl in accordance with Clause 5.3;

"**GVIAl Pre-Commissioning Obligations**" means those obligations to be met by GVIAl in accordance with Clause 3.1;

"**Initial Commissioning Date**" means the date on which the Initial Commissioning Period shall commence, as notified to AAI by GVIAl pursuant to Clause 4.1;

"**Initial Commissioning Period**" means the period of three (3) months commencing on the Initial Commissioning Date;

"**ICAO**" means the International Civil Aviation Organization formed by the Chicago Convention and any successor thereof;

"**Incident Reporting Procedure**" means the procedure to be agreed from time to time by AAI and GVIAl for reporting incidents and emergencies.

"**Initial Phase**" means the design, financing, construction, completion and commissioning of the initial phase of the Airport as provided for in the Concession Agreement;

"**Land Lease Agreement**" means the agreement dated ..... entered into between Govt. of ..... and \_\_\_\_\_ (Name of Airport Company) pursuant to which the Govt. of ----- has granted to \_\_\_\_\_ (Name of Airport Company) leasehold rights and interests in the site;

**\*Note:** *GVIAl has stated that there is no "Land Lease Agreement"*

"**Lenders**" means the banks, financial institutions, NBFC and similar bodies to whom debt is owed under the Financing Agreements for financing (which shall for these purposes include any re-financing) the initial Phase and/or any Expansion, provided, that Schedule 5 shall not apply to the Lenders of the Expansion Phase;

  
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"**Loss**" means any losses, liabilities, costs, expenses, claims, proceedings, actions, demands, obligations, deficiencies, lawsuits, judgments, injunctions, awards or damages;

"**Master Plan**" means the Master Plan prepared by GVIAL and annexed to the Concession Agreements, as may be revised from time to time;

"**Office Accommodation**" means the accommodation and car parking spaces as set out in Schedule 2 to this Agreement;

"**Operating Reporting Procedure**" means the procedure to be agreed from time to time by AAI and GVIAL for the communication of information regarding the day to day discharge of provision relating to the AAI Services and the GVIAL Obligations;

"**Personnel**" means AAI personnel performing the AAI Services and the CNS/ATM Services;

"**Project**" means the design, financing, construction, completion, commissioning, maintenance, operation, management and development of Airport.

"**RESA**" or "**Runway End Safety Area**" means an area symmetrical about the extended runway centre line and adjacent to the end of the strip primarily intended to reduce the risk of damage to an aeroplane undershooting or overrunning the runway.

"**Route Navigation Facilities Charges**" means amounts charged by AAI to airlines and/or aircraft operators for the provision of Route Navigation Facilities in accordance with the current orders of AAI;

"**Security**" includes any mortgage, pledge, lien, security interest or other charge or encumbrance and any other agreement or arrangement having substantially the same economic effect;

"**Service Provider Right Holders**" shall have the meaning given to it in the Concession Agreement;

"**Site**" means the land in which GVIAL has or shall have interest pursuant to the Concession Agreement, measuring approximately 2203.26 acres, on over and under which the Airport is to be constructed.

*\*Note: GVIAL has stated that there is no "Land Lease Agreement" and the word "Site" is predicated to Concession Agreement, as requested.*

"**State Support Agreement**" means the agreement dated 22.12.2021 entered into between the Govt. of Andhra Pradesh and GVIAL;

"**Target Commissioning Date**" shall have the meaning given to it in Clause 4.1;

"**Terminal Navigation Landing Charges**" means amounts charged or to be charged by AAI to airlines for the provision of CNS/ATM Services.

  
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## 1.2. Interpretation

In this Agreement except to the extent that the context requires otherwise:

- 1.2.1. Any reference to an Act of Parliament or any Section of, or Schedule to, or other provision of, an Act of Parliament shall be construed, at the particular time, as including a reference to any modification, extension or re-enactment thereof then in force and to all rules, orders or regulations then in force and made under or deriving validity from the relevant Act or provision;
- 1.2.2. Reference to a "judgment" includes any order, injunction, determination, decree or other judicial or arbitral tribunal measure in the Indian jurisdiction which is final and binding;
- 1.2.3. A reference to a "law" includes common law, the Constitution of India and any decree, judgment, legislation, order, ordinance, regulation, by-law, statute, notification, circular, guideline, statutory instrument or other legislative measure, in each case of any jurisdiction whatever (and "lawful" and "unlawful" shall be construed accordingly);
- 1.2.4. References in the singular shall include references in the plural and vice versa;
- 1.2.5. A reference to a "day" means a calendar day;
- 1.2.6. References to a particular Clause, paragraph, sub-paragraph or Schedule shall, except where the context otherwise requires, be a reference to that Clause, paragraph, sub- paragraph or Schedule in or to this Agreement;
- 1.2.7. The headings are inserted for convenience and are to be ignored for the purposes of construction;
- 1.2.8. Terms defined in the Schedules hereto shall have the meanings ascribed thereto in the Schedules when used elsewhere in this Agreement;
- 1.2.9. The Schedules to this Agreement form part of this Agreement and will be of full force and effect as though they were expressly set out in the body of this Agreement;
- 1.2.10. Any reference to any agreement, deed, instrument, licence code or other document of any description shall be construed, at the particular time, as a reference to that agreement, deed, instrument, licence code or other document as the same may then have been amended, varied, supplemented, modified, suspended or novated;
- 1.2.11. The words "written" and "in writing" include a facsimile transmission and any means of reproducing works in a tangible and permanently visible form;
- 1.2.12. The words "include" and "including" are to be construed without limitation;
- 1.2.13. References to "construction" include, unless the context otherwise requires, design, procurement, delivery, installation, testing, completion, commissioning and other activities incidental to the process of construction;

  
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- 1.2.14. References to a party shall include its successors and permitted assigns.
- 1.2.15. Definitions within Clauses have the meaning ascribed thereto; and
- 1.2.16. References to "person" includes (as the context requires) any natural and/or judicial entity (including the Gol or the Govt. of Andhra Pradesh).

## **2. Conditions Precedent**

### **2.1. Conditions Precedent to Services**

The provisions of this Agreement (other than those contained in Clauses 1, 2, 11 to 13 and 15 to 20 inclusive which shall be binding on the parties as from the date of this Agreement) shall take effect and become binding on the parties from the date on which the following conditions precedent shall have been satisfied in full:

- i. the receipt by AAI of irrevocable notice from GVIAL that the Concession Agreement shall have been executed and delivered by all the parties thereto and all the conditions precedent set out there in shall have been satisfied or waived which notice shall be final and binding on the parties;
- ii. the receipt by AAI of irrevocable notice from GVIAL that the EPC Contracts have been executed and delivered by all the parties thereto and all the conditions precedent set out therein (excluding any condition precedent relating to this Agreement) shall have been satisfied or waived which notice shall be final and binding on the parties;
- iii. the receipt by AAI of irrevocable notice from GVIAL that Financial Close has occurred which notice shall be final and binding on the parties, provided that any such condition precedent may be waived by agreement in writing between AAI and GVIAL.

### **2.2. Non-fulfilment of Conditions Precedent**

#### **2.2.1. Termination on Non-fulfilment**

If the conditions precedent set out in Clause 2.1 have not been satisfied in full or not been waived by the date falling twelve (12) months after the date of this Agreement,

GVIAL and AAI shall, subject to Clause 2.2.2 have the right to terminate this Agreement by giving twenty-one (21) days' notice in writing to the other party and upon expiry of such notice this Agreement shall terminate, provided that in case the conditions precedent are satisfied or waived during the notice period then the Agreement shall come into force as contemplated under Clause 2.1.

#### **2.2.2. Extension of Time for Fulfilment**

At any time prior to the date specified in Clause 2.2.1, the parties shall have the right to extend the date for satisfaction or waiver of the conditions precedent by a further three (3) months by mutual agreement.

  
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### 2.3. Effective Date

Subject to clause 2.1, this agreement will become effective on the date of signature hereof by the parties hereto (the Effective Date).

### 3. Scope of Services - Pre-Commissioning Phase

#### 3.1. GVIAL Pre-Commissioning Obligations

Following the Financial Close, GVIAL shall:

- i. design and construct, at its own cost by no later than 180 days prior to the Initial Commissioning Date, the Facility except the provision of Air Conditioning which shall be provided 90 days prior to the Initial Commissioning Date;
- ii. design, acquire and install, at its own cost, GVIAL Equipment, which shall be owned by GVIAL, on the Site, or if required in connection with the approach to the Airport, off the Site. AAI shall not be responsible for the testing and/or commissioning of GVIAL Equipment, which shall be the responsibility of GVIAL. If required by GVIAL, GVIAL shall co-ordinate with AAI the calibration flights to enable GVIAL to calibrate GVIAL Equipment;
- iii. install at its own cost, the provision for water, power & Air-conditioning, telephone, crash alarm and other service media as are necessary and to be mutually agreed, to operate the Facility;
- iv. ensure that the GVIAL Equipment is installed, tested and commissioned, at its own cost, by the Initial Commissioning Date or in the case of any additional GVIAL Equipment required for any expansion of the Airport, by the future Commissioning Date;
- v. identify to AAI the interfaces between the AAI Equipment and the GVIAL Equipment; and
- vi. Provide AAI with such access to the Airport or its Personnel, vehicles and agents as AAI reasonably requires for the performance of the AAI Pre-Commissioning Services;
- vii. The GVIAL prior to designing runway(s) and planning location of various CNS/ATM facilities, shall carry out a survey of an area of 30 NMs from the near geographical centre of the proposed greenfield airport through the Survey of India or the agencies Authorized by the Survey of India. The above survey reports shall be submitted to AAI while obtaining concurrence of AAI for finalizing the position of CNS/ATM facilities and for issuance of NOC for various structures etc.

#### 3.2. AAI Pre-Commissioning Services

Following the Financial Close AAI shall:

- i. AAI shall design, procure and install the AAI Equipment, which shall be owned by AAI, in the Facility, on the Site, or if required in connection with the approach to the Airport off the Site.

  
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- ii. Ensure that the AAI Equipment is installed, tested and commissioned by the Initial Commissioning Date or Future Commissioning Date. Cost of such equipment including upgradation (if any) shall be borne by the GVIAL as provided in clause 7.4 of this agreement.
- iii All expenditure incurred by AAI during pre-commissioning phase arising due to deployment of manpower and/or any other services provided by AAI to GVIAL, will be applicable for recovery by AAI from GVIAL from the date of placing the resources required for meeting AAI's obligations during such periods.
- iv. Coordinate and ensure compatibility between AAI and GVIAL equipment and interfaces. In respect of requirement of interfaces by either party, the costs for the said interface(s), shall be borne by GVIAL
- v. At GVIAL cost, participate in any benchmark testing conducted by the EPC Contractors in respect of any GVIAL Equipment, if required by GVIAL.
- vi. Prepare maps, charts, survey, instrument flight procedures design\*, make site visits and associated works at GVIAL cost, on work deposit basis.

*\*Note: This includes IAL procedures, PBN flight procedures, SIDS/STARS etc., as applicable.*

### 3.3. Co-ordination

AAI and GVIAL acknowledge that, in order for either party to comply with its obligations under Clauses 3.1, 3.2, 3.4, 4.2, 4.3, 5.1, 5.2 and 5.3 of this agreement, each Party will need to co-ordinate with the other and to that effect:

- i. Commencing with the first month following Financial Close, the Parties shall establish a Joint Co-ordination Committee-CNS/ATM ("JCC-CNS/ATM") which shall meet at Visakhapatnam on a quarterly basis or on a more regular basis if required to be called-for by any member of JCC-CNS/ATM;
- ii. the JCC shall be chaired by GVIAL;
- iii. the JCC-CNS/ATM shall comprise of four members with each Party nominating and appointing two members. The Parties shall have deemed to have delegated to the members of JCC-CNS/ATM full authority to represent and bind the respective Party in respect of all matters being put-before JCC- CNS/ATM. The Committee members can also nominate and propose alternate names of members to attend the meeting on their behalf;
- iv. If the JCC-CNS/ATM is unable to reach a conclusion on any matter in a manner that is satisfactory to the Parties, either Party shall be entitled, in the first instance, to refer such matter to the Chief Executive Officer of GVIAL and the Chairman of AAI. If the aforesaid Senior Executives are unable to resolve the matter within 15 business days from the date such matter was referred to them, then either Party shall be entitled to refer the matter for resolution under Clause 13.

  
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### 3.4. AAI's General Obligations

AAI Shall in Connection with the performance of this Agreement:

- i. provide such information to and interact with the EPC Contractors and at such times as to enable the EPC contractors to design and complete the Facility and Office Accommodation in a timely, orderly, logical and consistent manner along with the completion of the Airport;
- ii. be fully responsible for the safety at its work site and care of the works in accordance with good industry practice;
- iii. cooperate with the EPC Contractor in any reprogramming required in respect of the Facility and/or the Office Accommodation due to a delay for any reason;
- iv. cooperate with the EPC Contractor in any acceleration measures adopted by the EPC Contractor to expedite progress in respect of the Facility and/or the Office Accommodation; and
- v. suspend work at the Facility and/or the Office Accommodation upon an order by GVIAL necessitated by reason of design or execution of the Facility and/or the Office Accommodation or if an unsafe condition exists or is likely to result or if it is necessary by conditions on the Site or if it is necessary by reason of any action of the Government of India in accordance with the Concession Agreement.

## 4. Scope of Services - Commissioning Phase

### 4.1. Commencement of Initial Commissioning Period and Future Commissioning Period

- 4.1.1. GVIAL shall, as soon as practicable and at the latest by the date falling three hundred and sixty-five days (365) days from the Financial Close notify AAI of the date upon which GVIAL anticipates the Initial Commissioning Period will commence (the "Target Commissioning Date").
- 4.1.2. GVIAL shall further notify AAI at least one hundred and eighty (180) days prior to the Target Commissioning Date notified by GVIAL to AAI pursuant to Clause 4.1.1 above of the date on which GVIAL then anticipates the Initial Commissioning Date will occur and the Target Commissioning Date shall be revised accordingly.
- 4.1.3. GVIAL shall notify AAI at least three hundred and sixty-five days prior to the date on which GVIAL anticipates any Future Commissioning Date will occur.

### 4.2. GVIAL Commissioning Obligations

- 4.2.1. At least thirty (30) days prior to the Initial Commissioning Date or Future Commissioning Date, as the case may be, GVIAL shall confirm in writing to the AAI that:

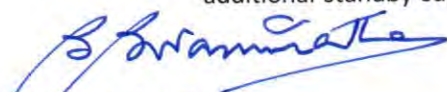
  
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- i) the runway, taxiway, apron and approach in respect of the Initial Phase shall be constructed by the Initial Commissioning Period in accordance with the relevant provisions contained in the relevant ICAO Annexes and documents (as amended from time to time) as appropriate for the proposed aircraft operation at the Airport and shall be available for aircraft operation by the Airport Opening Date;
- ii) the strips, shoulders, stop way and RESA for runway and strips & shoulders for taxiways for the Initial Phase shall be constructed by the Initial Commissioning Period and thereafter shall be maintained in accordance with the relevant provisions contained in the relevant ICAO Annexes and documents (as amended from time to time) as appropriate for the proposed aircraft operation;
- iii) from the Initial Commissioning Period the obstacle limitation surfaces of the Airport and approach and take-off area shall be maintained free from obstructions or the obstructions shall be limited to the permissible limits in accordance with the relevant provisions contained in the relevant ICAO Annexes and documents (as amended from time to time) as contained in GOI Gazette GSR 751(E) amended by GSR 770(E) in MoCA website for which AAI will be approached for accord of NOC of structures;
- iv) from the Initial Commissioning Period the appropriate category of rescue and firefighting services shall be made available in accordance with the relevant provisions contained in the relevant ICAO Annexes and documents (as amended from time to time);
- v) from the Initial Commissioning Date GVIAL shall provide adequate space in the Fire Watch tower to enable AAI Personnel to establish an alternative facility for the provision of CNS/ATM Services in case of any contingency situation;
- vi) from the Airport Opening Date appropriate arrangements shall be in place at the Airport to prevent bird/animal nuisance in and around the operational area.

4.2.2. During the Initial Commissioning Period or Future Commissioning Period, as the case may be, GVIAL shall:

- i) within fourteen (14) days of the commencement of the Initial Commissioning Period or Future Commissioning Period, as the case may be, confirm in writing to AAI that the GVIAL Equipment has been supplied and installed. GVIAL shall also confirm in writing to the AAI that by the Airport Opening Date such equipment required for the Initial Phase has been tested and approved for operations;
- ii) provide AAI with such access to the Airport for its Personnel, vehicles and agents as AAI reasonably requires for the performance of the AAI Commissioning Services;
- iii) provide AAI with a continuous supply of electrical power and water sufficient to enable it to perform the AAI Commissioning Services.
- iv) to the extent that AAI determines that, as a result of the expansion of the Airport, additional standby supplies of electrical power are required at the Airport, AAI shall

  
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notify GVIAl of its additional requirements and the Parties shall meet to discuss and seek to reach agreement regarding the additional standby supply required by AAI; and

- v) Provide AAI and/or its Personnel with such information as they may reasonably require for the performance of the AAI Commissioning Services.
- vi) Provide AAI with transports and accommodation (office, residential and buildings for navigational aids/Radar) to enable AAI to perform its obligations.
- vii) Provide AAI with direct telephone with STD facility in ATC.

#### **4.3. AAI Commissioning Services**

4.3.1. During the Initial Commissioning Period and any Future Commissioning Period, and during the Airport operation trials as determined by GVIAl AAI shall;

- i. within fourteen (14) days of receipt of the notice received from GVIAl in accordance with Clause 4.2.1 confirm in writing to GVIAl that all the AAI Equipment has been supplied and installed and that the AAI Equipment is compatible with the equipment provided by the EPC Contractors;
- ii. test and commission all AAI Equipment such that it is fully operational;
- iii. take all steps necessary to integrate the AAI Equipment with any relevant air navigation and meteorological equipment and systems operated by AAI and with the GVIAl Equipment to the extent required. Any costs of such integration with GVIAl Equipment shall be borne by GVIAl;
- iv. Carry out such calibration flights as are necessary to commission the AAI Equipment and, to the extent practicable, shall coordinate those flights with GVIAl to enable GVIAl to calibrate the GVIAl Equipment at the same time. For the avoidance of doubt, AAI shall not be liable for the cost incurred by GVIAl to calibrate the GVIAl Equipment. The cost incurred by AAI to calibrate GVIAl equipment shall be recovered from GVIAl.
- v. where appropriate, assist GVIAl and DGCA in the performance of any checks and procedures which are required to be performed to commission the Airport;
- vi. prepare and publish all such procedures, manuals and charts related to the AAI Services as are necessary in order to ensure the safe, expeditious and orderly operation of aircraft at the Airport and in the airspace in the vicinity of the Airport in accordance with ICAO Annexes and documents (as amended from time to time);
- vii. mutually agree with GVIAl the Operating Reporting Procedure and the Incident Reporting Procedure in accordance with ICAO Annexes and documents and in conformity with the overall airspace management, requirements of defence and the Flight Information Region in which it operates; and
- viii. provide GVIAl and other agencies with such assistance as may be reasonably

  
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required during any trial operations at the Airport.

- 4.3.2. AAI shall, during performance of the AAI Commissioning Services, provide such reasonable assistance as may be necessary to EPC Contractors to ensure that the AAI Equipment is adequately integrated with the GVIAL Equipment.
- 4.3.3. Following performance of the AAI Commissioning Services in accordance with Clause 4.3.1 and prior to the end of the Initial Commissioning Period or Future Commissioning Period, as the case may be, AAI shall confirm to GVIAL in writing that the AAI Equipment is fully operational and integrated with the GVIAL Equipment and that the AAI Equipment is such that AAI can perform the AAI Operative Services in accordance with the relevant standards prescribed in the relevant ICAO Annexes and documents (as amended from time to time).

## **5. Scope of Services - Operation Phase**

### **5.1. AAI Operative Services**

- 5.1.1. AAI shall start with one shift operation or shall extend its CNS/ATM services to cater to multi-shift operation based on mutual agreement between AAI and GVIAL, from and including the Airport Opening Date, in accordance with the relevant standards prescribed in the relevant ICAO Annexes and documents (as amended from time to time).
- 5.1.2. AAI shall provide on quarterly cost recovery basis of the operational expenses (OPEX), the CNS/ATM Services as defined in Scheduled 3. Capital expenditure (CAPEX) shall be recovered either on work deposit basis or be recovered as Annual Yearly Instalment(s), at an Annual Percentage Rate (APR) of 12%, amortized over a ten-year period.
- 5.1.3. Maintain the AAI Equipment including carrying out periodic flight calibration of the AAI Equipment and other tests;
- 5.1.4. Upgrade the AAI Equipment from time to time (i) as a minimum to comply with the relevant provisions contained in the relevant ICAO Annexes and documents (as amended from time to time).
- 5.1.5. Procure such equipment as may be required from time to time to enable AAI to provide the relevant CNS/ATM Services at the Airport.
- 5.1.6. Relocate at GVIAL cost, AAI Equipment for its GVIAL operative convenience for reasons of modification/ expansion/ upgradation required by GVIAL at the airport provided such relocation does not affect the GVIAL obligations and or smooth operation of the airport.
- 5.1.7. Review from time to time such procedures as are necessary for safe, expeditious and orderly flow of air traffic;
- 5.1.8. Provide to GVIAL all statistics of the air traffic movements for daily, weekly and monthly movements in the agreed format, frequency and method of delivery through the Airport community network as agreed from time to time; and

  
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5.1.9. Provide and keep record of such information and issue notices to GVIAL and Airmen as is required under the Operating Reporting Procedure and the Incident Reporting Procedure including breakdown of CNS/ATM Service.

5.1.10. Provide at GVIAL cost such en-route equipment, if required, to provide CNS/ATM services to the Airport bound traffic.

**5.2. ATM - En-route and other Services (if required)**

If AAI requires, it may, subject to receiving the prior consent of GVIAL, which will not be unreasonably withheld, install at the Airport or on the Site any equipment or facilities necessary for the provision of en-route air navigation services. In installing such equipment or other facilities at the Airport, AAI shall take appropriate measures to avoid any disruption to the normal operation of the Airport. For avoidance of doubt, AAI shall not be held liable for any disruption in the normal operation of the Airport arising on account of actions directly attributable to GVIAL. AAI shall ensure that all buildings, works or facilities (if any) constructed, operated or maintained by them conform to design and architecture guidelines and the Master Plan from time to time.

**5.3. GVIAL Operative Obligations**

Following the Airport Opening Date, GVIAL shall:

5.3.1. Ensure that the runway, taxiway, apron and approach for the Initial Phase have been constructed and shall be maintained in accordance with the provisions contained in the relevant ICAO Annexes and documents (as amended from time to time) as appropriate for the proposed aircraft operation at the Airport and are available for aircraft operation;

5.3.2. Ensure that the strips, shoulders, stop way and RESA for runway and strips and shoulders for taxiways for the Initial Phase have been constructed and shall be maintained in accordance with the provisions contained in the relevant ICAO Annexes and documents (as amended from time to time) as appropriate for the proposed aircraft operation;

5.3.3. Ensure that the obstacle limitation surfaces of the Airport and approach and take-off area shall be maintained free from obstructions or the obstructions shall be limited to the permissible limits in accordance with the provisions contained in the relevant ICAO Annexes and documents (as amended from time to time) as contained in GOI Gazette GSR 751(E) amended by GSR 770(E) in MoCA website for which AAI will be approached for accord of NOC of structures;

5.3.4. Ensure that the sensitive and critical areas as identified by AAI for the various CNS/ATM equipment/ facilities shall be maintained free of any obstruction and no obstruction shall be allowed in these zones which may hamper the functioning of these equipment/ facilities and endanger the safety of aircraft operations.

5.3.5. Ensure that the appropriate category of rescue and firefighting services shall be made available and maintained in accordance with the provisions contained in the relevant ICAO

  
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Annexes and documents (as amended from time to time);

- 5.3.6. Ensure that appropriate arrangements are in place at the Airport to prevent bird/animal nuisance in and around the operational area;
- 5.3.7. Ensure that suitable contingency arrangements are in place at the Airport to deal with the following events:
- i. removal of disabled aircraft from the runway;
  - ii. bomb threat to aircraft or the Airport;
  - iii. aircraft accidents in and around the vicinity of the Airport;
  - iv. non-scheduled aircraft forced to land at the Airport;
  - v. fires at the Airport;
  - vi. natural calamities and disasters;
  - vii. Industrial unrest at the Airport and surrounding areas;
  - viii. Anti-hijacking measures to handle unlawful interference with Civil Aviation at the Airport.
  - ix. Militants attack on the Terminal Building or any operational area at the Airport.
- 5.3.8. Ensure that emergency alarm bells have been installed to link the Facility to the emergency services (fire, medical and police) and to the Airport manager;
- 5.3.9. Provide AAI with such access to the Airport and all operational areas for its Personnel, Vehicles and agents as AAI reasonably requires for the performance of the AAI Operative Services;
- 5.3.10. Provide AAI at GVIAl's cost
- a. with a continuous supply of electrical power and water sufficient to enable it to perform the AAI Operative Services.
  - b. Transport facility sufficient to enable it to perform AAI operating services. Number of transports to be provided will be decided by GVIAl & AAI mutually.
  - c. EPABX extensions, Auto telephone with STD facility, Fax, hotline, cell phone in ATC.
- 5.3.11. To the extent that AAI determines that, as a result of the expansion of the Airport, additional standby supplies of electrical power are required at the Airport, AAI shall notify GVIAl of its additional requirements and the Parties shall meet to discuss and seek to reach agreement regarding the additional standby supply required by AAI;
- 5.3.12. provides AAI and/or its Personnel with such information as they reasonably require for the performance of the AAI Operative Services;

  
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- 5.3.13. Make the Office, residential Accommodation and buildings for navigational aids/Radar the Facility available at all times to AAI Personnel and agents of AAI deployed at the Airport in the provision of the AAI Services;
- 5.3.14. At its cost, maintain the Airfield Lighting System, the main and standby power supply systems in accordance with the relevant standards prescribed in the relevant ICAO Annexes and documents (as amended from time to time);
- 5.3.15. Ensure that its employees and agents report, in accordance with the Operating Reporting Procedure, any failure or defects in the Airfield Lighting System and the non-availability of any GVIAL Equipment to AAI as soon as they become aware of such failure or defect;
- 5.3.16. Notify AAI of any proposed closure or withdrawal of any infrastructure or facilities provided by GVIAL except in an emergency, as per Operating Reporting Procedure as mutually agreed between the Parties in writing as amended from time to time;
- 5.3.17. On the instruction of AAI, remove, at GVIAL's cost, any obstructions from the runway or the movement areas and ensure that its employees and agents notify AAI, in accordance with the Operating Reporting Procedure or Incident Reporting Procedure, as the case may be, on becoming aware of any such obstruction;
- 5.3.18. At the GVIAL's cost, relocate AAI Equipment for the reasons of any alteration or modification at the airport.
- 5.3.19. In case of an upgrade or expansion GVIAL bears the total costs for AAI equipment which is over and above ICAO recommendations and which is requested by GVIAL.
- 5.3.20. Allocate parking bays and aero bridges for the aircrafts on receipt of aircraft ETA and inform AAI and AAI shall guide the aircraft accordingly.'

## **6. Variations to the Facility**

### **6.1. Request for Variation**

If AAI requires any alteration or variation to the Facility and/or the Office Accommodation after the Effective Date, then it shall notify GVIAL in writing of such requirements providing full details of the alteration or variation being requested and the reasons for such alteration or variation.

### **6.2. Variations not affecting GVIAL's Costs**

If the alteration or variations requested by AAI pursuant to Clause 6.1 will not impact, delay or disrupt, the initial Phase, then GVIAL shall take such steps as are reasonably necessary to implement the variation.

## **7. Revenues and Charges**

### **7.1. Route Navigation Facilities Charges (RNFC)**

  
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AAI shall, in consideration of it performing the relevant services, be entitled to recover the Route Navigation Facilities Charges (RNFC) directly from airlines and GVIAL shall incur no liability in respect of such charges.

#### **7.2. Terminal Navigation Landing Charges (TNLC)**

Terminal Navigation Landing Charges (TNLC) payable by airlines shall be paid directly by the airlines to AAI and GVIAL shall incur no liability in respect of such charges.

#### **7.3. Collection**

The failure by AAI to collect and/or any airline to pay either the Route Navigation Facilities Charges or the Terminal Navigational Landing Charges shall not excuse AAI in any way whatsoever or howsoever from the performance of the AAI Services or its obligation to pay the fee set out in Clause 7.4. Provided in the event of failure by any particular airline(s) repeatedly defaulting in paying Route Navigation Facilities Charges and/or the Terminal Navigational Landing Charges to AAI, AAI shall have all the rights not to provide AAI Services to such airline(s) and that it shall not amount to default on the part of AAI in the performance of the AAI Services, as provided in this agreement.

#### **7.4. CNS-ATM Service Charges**

The provision of CNS-ATM services as mentioned in Para 5.1 shall be on cost recovery basis. The mechanism of cost recovery will be as provided below:

##### **i CAPEX:**

GVIAL to incur all expenses in relation to the provision of AAI Services or AAI Equipment by way of work deposit.

or

Capital expenditure (CAPEX) costs shall be recovered from GVIAL as Annual Yearly Instalment(s), at an Annual Percentage Rate (APR) of 12%, amortized over a ten-year period

##### **ii OPEX:**

The GVIAL shall deposit in advance the quarterly, estimated cost (OPEX) of CNS/ATM services which include manpower, equipment maintenance, frequency spectrum costs, overhead charges etcetera, by 15th January/April/July/October of every year.

The TNLC revenues collected by AAI during previous year shall be deducted from the annual OPEX costs. In case of any deficit the same shall be borne by the GVIAL.

##### **iii In addition, GVIAL shall give separate Bank Guarantees equivalent to the:**

- a) six months' cost (OPEX) of CNS/ATM services. This BG shall be initially for a period 2 years, to be renewed from time to time, at the expiry of period.

  
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(and)

- b) Two years' equivalent of CAPEX recovery amortized at an APR of 12% over a ten-year period. This BG shall be valid for the period of 2 years to be renewed from time to time before the expiry of the period, till entire CAPEX value is recovered so that at any point of time, AAI has a BG of 2 years recovery of amortized CAPEX.

Both the Bank Guarantees shall be submitted by the GVIAL to AAI during AAI commissioning phase.

**Note:**

- 1 All expenditure incurred by AAI during pre-commissioning phase and commissioning phase, arising due to deployment of manpower and/or any other services provided by AAI to GVIAL, will be applicable for recovery by AAI from GVIAL from the date of placing the resources required for meeting AAI's obligations during such periods.
- 2 All expenses incurred by AAI as stated in note 1, will be recovered from GVIAL prior to the commencement of operational phase in accordance with para 3.2 (iii).
- 3 Recovery shall be accordance with para 3.2 (ii),3.2(iii) & 5.1.2.

**7.5. Rental Fee Payable by AAI**

No rental fee shall be payable by AAI to GVIAL in consideration for providing the Facility and Office Accommodation as set out in Schedule 2 except for residential accommodation.

**8. Standards of Services and Failure to Perform**

**8.1. Standards of Services**

8.1.1. AAI shall at all times provide the AAI Services in accordance with the relevant standards prescribed in the relevant ICAO Annexes and documents (as amended from time to time).

8.1.2. AAI shall ensure that its Personnel shall participate, at GVIAL cost, in any quality improvement measures initiated by GVIAL at any time, if required, and shall assist GVIAL in achieving and maintaining the service level standards required by Concession Agreement.

**8.2. Non-Interference**

AAI shall not, and shall ensure that, its Personnel, and agents do not intervene in, interrupt or cause any disruption to the design, construction, commissioning, completion, development, financing and/or maintenance of the Airport and following the Airport Opening Date, and except as is necessary for the provision of the AAI Services, intervene in or interrupt in any way the operation of the Airport.

**8.3. Indemnity**

8.3.1. Each Party shall indemnify, defend and hold harmless the other Party and its contractors,

  
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principals and agents, from and against any and all payments equal to the loss, cost, expense, liability or damage asserted against, imposed upon or incurred by the suffering Party and its contractors, principals and agents by reason of failure or delay or resulting from claims of third parties arising directly or indirectly, in whole or in part out of the performance (whether by act or omission) of either Party's obligations (the occurrence of an event of a Force Majeure being exempted), including claims for injury towards death of persons or for Loss or claims for Loss of damage to property.

### **8.3.2. Liability**

The Parties intend that the rights, obligations and liabilities contained in this Agreement shall be an exhaustive description of the rights, obligations and liabilities of the parties arising out of or in connection with this Agreement. Accordingly, the remedies expressly stated in this Agreement and any document entered into pursuant to it shall be the sole and exclusive remedies of the Parties for liabilities to one another arising out of or in connection with this Agreement, including any representation, warranty or undertaking given in connection with it, notwithstanding any remedy otherwise available at law or in equity.

## **9. Force Majeure**

### **9.1. Force Majeure**

Clause 9 shall apply if the performance by any party (the "Affected Party") of its obligations under this Agreement is prevented, hindered or delayed in whole or in part by reason of Force Majeure as defined in Schedule 4.

### **9.2. Consequences of Force Majeure**

#### **9.2.1. Performance Obligation**

The Affected Party shall not be liable for any failure to comply, or delay in complying, with any obligation under or pursuant to this Agreement and it shall not be required to perform its obligations to the extent that such failure or delay has been caused directly by any event of Force Majeure and, in particular, but without limitation, the time allowed for performance of any such obligations shall be extended accordingly.

#### **9.2.2. Notification**

If the Affected Party claims that it has been prevented from fulfilling any of its obligations under this Agreement by reason of any event of Force Majeure, it shall notify the other Parties as soon as reasonably practicable in writing, stating the basis for the claim and the consequences.

#### **9.2.3. Mitigation**

The Affected Party shall take all reasonable steps to mitigate the effect of the event of Force Majeure.

  
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## 10 Term

This agreement shall be deemed to be in force between its date of commencement and a period of thirty (30) years from that date, renewable thereafter for similar periods and shall be liable to be reviewed in the event of change in Government of India or AAI policies.

## 11. Termination

### 11.1. GVIAL Termination Events

AAI shall be entitled to issue a notice of termination to GVIAL, if:

- i GVIAL fails to pay when due and payable any amount payable to it under this Agreement and such failure is not remedied within twenty (20) days of receipt of a notice from AAI specifying the default and requiring it to be remedied;
- ii An order being made or a resolution being passed for the liquidation, bankruptcy or dissolution of GVIAL which is not, if capable of being so, discharged or, as the case may be, revoked within ninety (90) days thereafter,
- iii GVIAL fails to perform or comply with any obligation in this Agreement (other than an obligation to pay money) to an extent which has a material and adverse effect on the rights and obligations of AAI and if capable of being remedied, such failure continues for a period of 7 days after receipt of notice from AAI, specifying the default and requiring it to be remedied. Provided that AAI shall not be entitled to issue such notice of termination if the events and/or circumstances set out at (i), (ii) and/or (iii) above are the result and/or consequence of Force Majeure.
- iv It is directed by GOI to terminate this agreement;
- v The Concession Agreement is terminated.
- vi And further provided in each case that timely remedial action by GVIAL has not been prevented by GOI, the Government of Andhra Pradesh or AAI.

### 11.2. AAI Termination Events

GVIAL shall be entitled to issue a notice of termination to AAI, if the applicable law permits GVIAL to perform the CNS/ATM Services, subject to suitable amendments to the Concession Agreement.

### 11.3. Effect of a Termination Notice

If a notice of termination is served by AAI or GVIAL pursuant to this Clause 11, then at any time after the expiry of a period of Ninety (90) days after the date of service of the notice of termination, unless the circumstances giving rise to the issue of the notice of termination have been fully remedied or have ceased to apply, the Party that issued the notice of termination may terminate this Agreement with immediate effect.

### 11.4. Consequences of Termination

  
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If this Agreement terminates pursuant to this Clause 11.2 by GVIAL and to ensure that the operations of the Airport is not closed down on account of non-availability of AAI Services, AAI shall forthwith hand-over to GOI all AAI Equipment, manuals, charts and other memoranda prepared by AAI in the performance of AAI Services in "as-is-where-is" condition on mutually agreed terms in order to enable GOI to immediately act in accordance with Section 38 of AAI Act, 1994. AAI shall render all necessary co-operations to GOI to achieve the aforesaid purpose.

Thereafter it shall be the sole discretion of GVIAL to consult GOI to take appropriate steps that it deems fit in order to be rendered, through a third party, the services equivalent to AAI Services provided by AAI in the Airport. AAI shall render all necessary co-operations to GVIAL to achieve the aforesaid purpose.

This shall be without prejudice to either Party's right or remedies available under this Agreement.

## **12. Assignment**

### **12.1. Assignment by AAI**

Notwithstanding anything herein to the contrary, AAI shall not assign or otherwise transfer all or any of its rights or obligations under this Agreement without the prior written consent of GVIAL provided such assignment or transfer of AAI's rights or obligations is pursuant to the enactment of statute. Such assignee or transferee shall be bound by the terms and conditions of this Agreement.

### **12.2. Assignment by GVIAL**

Notwithstanding anything herein to the contrary, but subject to Clause 17.5, GVIAL shall not assign or otherwise transfer all or any portion of its rights or obligations under this Agreement without the prior written consent of AAI; provided, however, that GVIAL may, without such prior written consent, but upon prior written notice to AAI:

- i. Transfer all or substantially all of its rights and obligations hereunder to an Affiliate of GVIAL;
- ii. Transfer all or any part of its rights and obligations hereunder to a purchaser of ownership interests in GVIAL.
- iii. Transfer to Lenders, GVIAL's rights under this Agreement as collateral security for amounts payable under any financing agreement under which GVIAL has borrowed money; or
- iv. Transfer all or substantially all of its rights and obligations hereunder to GOI pursuant to the terms of the Concession Agreement.

## **13. Dispute Resolutions**

### **13.1. Negotiation and Conciliation**

  
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The Parties shall use their respective reasonable endeavors to settle any dispute, difference claim, question or controversy between the Parties arising out of, in connection with or in relation to this Agreement ("Dispute") amicably between them through negotiation.

### **13.2. Reference to Arbitrator**

Subject to anything contained in the relevant Independent Regulatory Authority legislation regarding the settlement of disputes, any Dispute which the Parties are unable to resolve pursuant to Article 13.1 within sixty (60) days (or such longer period as the Parties may agree) of the written notification by one Party to the other of the existence of a Dispute shall be finally determined by arbitration in accordance with the Indian Arbitration and Conciliation Act 1996 ("Act") and/or any statutory modification thereof and in accordance with the UNCITRAL rules (the "Rules") by three arbitrators appointed in accordance with the Act .

### **13.3. Miscellaneous**

The venue of arbitration shall be New Delhi. Each Party shall pay the expenses of the arbitration in accordance with the Rules and the eventual liability for the costs shall be in terms of the arbitral award. No arbitrator shall be the present or former employee or agent of, or consultant or counsel to either Party or in any way related or closely connected with the Parties. The language of the arbitration shall be English.

### **13.4. Decision/Award**

Any decision or award of an arbitral tribunal appointed pursuant to this Clause 13 shall be final and binding upon the Parties. The Parties waive any rights to appeal or any review of such award by any court or tribunal of competent jurisdiction insofar as such waiver can validly be made. The Parties agree that any arbitration award made may be enforced by the Parties against assets of the relevant Party, wherever those assets are located or may be found, and judgement upon any arbitration award (wherever necessary) may be entered by any court of competent jurisdiction thereof. The Parties expressly submit to the jurisdiction of any such court for the purposes of enforcement of any arbitration award.

## **14. Maintenance of Insurance**

**14.1.** AAI shall effect and maintain on cost recovery basis or work deposit basis from GVIAL, at all times the required insurances to cover loss or damage to its property, third party liability, workmen's compensation policy and any other insurance considered necessary or prudent in accordance with good industry practice, GVIAL and the Lenders shall be names co-insured under AAI's insurance policies under this agreement.

### **14.2. Policies**

With thirty (30) days of receiving any insurance policy certificates in respect of insurances required to be obtained and maintained under Clause 14.1, AAI shall inform GVIAL that such insurances have been obtained and shall furnish to GVIAL, if requested by the Lenders, copies of such policy certificates, copies of the insurance policies and evidence

  
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that the insurance premia have been paid in respect of such insurance. No insurance shall be cancelled, modified or allowed to expire lapse until the expiration of at least forty-five (45) days' notice of such cancellation, modification or non-renewal has been provided by AAI to GVIAL.

**14.3. Remedy for Failure to Insure**

If AAI fails to effect and keep in force all insurances for which it is responsible pursuant hereto, GVIAL shall have the option to keep in force any such insurances, and pay such premia and recover the costs thereof from AAI.

**14.4. Application of Insurance Proceeds**

All insurance claims paid to AAI under the Agreement shall be applied for reconstruction of the damaged property except for insurance proceeds unrelated to physical damage.

**15. Notices**

**15.1. Communications in writing**

Except in respect of the Operating Reporting Procedure and Incident Reporting Procedure, any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by fax or letter.

**15.2. Addresses**

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication or document to be made or delivered under or in connection with this Agreement is as follows:

**GVIAL:**

Attention: Chief Executive Officer

Address:

GMR Visakhapatnam International Airport

10-1-43, Flat No. 202, Second Floor,

Siripuram Fort, Siripuram,

Visakhapatnam 530003, Andhra Pradesh, India

**AAI:**

Attention: Chairman

Address:

Rajiv Gandhi Bhavan

Safdarjung Airport, New Delhi -110 003 India

Fax: [011 24641088]

  
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Or any substitute address, fax number or department or officer as the party may notify to the other party, by not less than five business days' notice.

**16. Deemed Delivery**

Subject as otherwise provided in this Agreement, any communication under or pursuant to this Agreement shall be deemed to be received by the recipient (if sent by email to [edasm@aai.aero](mailto:edasm@aai.aero) and [gmatschq@aai.aero](mailto:gmatschq@aai.aero)) on the next working day in the place to which it is sent or (in any other case) when left at the address required by Clause 15.2 or within 10 such working days after being sent by registered post postage prepaid and addressed to that address. For these purposes, working days are days other than Saturdays, Sundays and gazetted holidays.

**17. Miscellaneous**

**17.1. Severability**

The invalidity or unenforceability, in whole or in part, of any of the foregoing sections or provisions of this Agreement shall not affect the validity or enforceability of the remainder of such sections or provisions. In the event any material provision of this Agreement is held invalid or unenforceable, the parties shall promptly renegotiate in good faith new provisions to replace such invalid or unenforceable provision so as to restore this Agreement as nearly as possible to its original intent and effect.

**17.2. Entire Agreement**

This Agreement, including any Schedules or exhibits hereto, contains the entire agreement between AAI and GVIAl with respect to the subject matter of this Agreement and supersedes all other agreements, whether written or oral, with respect to such subject matter.

**17.3. Amendment**

No modification, amendment, or other change will be binding on any party unless consented to in writing by both parties.

**17.4. Additional Documents and Actions**

17.4.1. GVIAl shall take all necessary steps to obtain an airport licence from DGCA for an initial period of two years to enable it to commence commercial operations, and thereafter for its renewal for a further period of two years or more, as decided by DGCA, prior to the expiry of the airport licence issued for immediately preceding two-year period. For obtaining, renewing and maintaining such licence from time to time, AAI shall fulfil all its responsibilities as may be required for obtaining any licence and assist GVIAl and DGCA in the performance of any checks and procedures and conform to all the prescriptions of DGCA in respect of CNS-ATM services.

17.4.2. Each party agrees to execute and deliver to the other party such additional documents, and to take such additional actions and provide such cooperation, as may be reasonably

  
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required to consummate the transactions contemplated by, and to effect the intent of, this Agreement.

**17.5. Direct Agreement**

AAI shall, upon a request from the Lenders enter into a direct agreement with the Lenders substantially in the form attached as Schedule 5 to this Agreement whereby, amongst other things, AAI agrees to give prior notice of any intention it may have to exercise its rights of termination under the Agreement, to allow such Lenders the right to cure a default on the part of GVI AL, and/or to allow such Lenders under certain circumstances to substitute themselves or appoint a third party substitute to carry out the obligations and enjoy the benefits of GVI AL under the Agreement.

**17.6. Interest for Late Payment**

Any amount properly due to a Party pursuant to this Agreement and remaining unpaid after the date when payment was due shall bear interest (both before and after judgment), such interest to accrue from day to day from the date such payment was due until such amount is paid in full at a rate of two (2) percentage points above the State Bank of India Prime Lending Rate in effect from time to time.

**17.7. No Partnership**

Neither this Agreement nor any other agreement or arrangement of which it forms part, nor the performance by the Parties of their respective obligations under any such agreement or arrangement, shall constitute a partnership between the Parties. No Party shall have any authority (unless expressly conferred in writing by virtue of this Agreement or otherwise and not revoked) to bind any other Party as its agent or otherwise.

**17.8. No Third-Party Beneficiary**

This Agreement is for the sole and exclusive benefit of the Parties hereto and, except for the rights expressly granted to the Lenders hereunder, shall not create a contractual relationship with, or cause of action in favour of, any third party.

**17.9. Counterparts**

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

**17.10. Time is of the Essence**

Time shall be of the essence in this Agreement, both as regards the dates, periods or times of day mentioned and as regards any dates, periods or times of day which may be substituted for them in accordance with this Agreement.

**17.11. Computation of Time**

Times referred to in this Agreement are times in Indian Standard Time (IST). In computing

  
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any period of time prescribed or allowed under this Agreement, the day of the act, event or default from which the designated period of time begins to run shall be included. If the last day of the period so computed is not a business day, then the period shall run until the end of the next business day.

**18. Governing Language**

The language which governs the interpretation of this Agreement is the English language. All notices required to be given by either Party to the other and all other communications and documentation which is in any way relevant to this Agreement and which is relevant to the execution, implementation and termination of this Agreement, including but not restricted to any dispute resolution proceedings, shall be in the English language.

**19. Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of India.

**20. Covenants by AAI**






AAI unconditionally and irrevocably:

- i. agrees that, should any proceedings be brought against it or its assets in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity from such proceedings shall be claimed by or on behalf of itself or with respect to its assets;
- ii. consents generally in respect of the enforcement of any judgment or award against it in any such proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings (including the making, enforcement or execution of any such judgment or award or any order arising out of any such judgment or award against or in respect of any property whatsoever irrespective of its use or intended use).

  
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In witness whereof, this Agreement has been entered into on the date stated at the beginning.

<p><b>For and on behalf of AAI</b></p> <p></p> <p><b>(S. Swaminathan)</b> <b>General Manager (ATM-ATS)</b></p> <p>एस. स्वामीनाथन / S. SWAMINATHAN महानिबंधक (ए.टी.एम.-ए.टी.एस.) / General Manager (ATM-ATS) भारतीय विमानपत्तन प्राधिकरण / Airports Authority of India राजीव गांधी भवन / Rajiv Gandhi Bhawan सफदरजंग हवाई अड्डा / Safdarjung Airport नई दिल्ली-110003 / New Delhi-110003</p>	<p><b>Witnessed by:</b></p> <p></p> <p><b>(Anil Krishna Deva)</b> <b>J. G.M (ATM)</b></p>
<p><b>For and on behalf of GVIAL</b></p> <p></p> <p><b>(Manomay Rai)</b> <b>Chief Executive Officer</b></p> <p></p>	<p><b>Witnessed by:</b></p> <p></p> <p><b>(RAMIT CHOUDHARY)</b> <b>G.M.</b></p>

## Schedule 1

### Part 1: GVIAL Equipment

1. Runway
2. Runway lighting and marking
3. Taxiway
4. Taxiway lighting and marking
5. Signage
6. Apron
7. Apron lighting and marking
8. Facility
9. Civil works (foundation only) related to AAI Equipment
10. PAPI and approach lighting
11. Aerodrome beacon (on the tower)
12. Landing day and night marking
13. Wind direction indicator (Lighted)
14. Isolation bay
15. Secondary power supply
16. Hot lines between ATC and airport fire brigade
17. Crash bell, cabling and siren
18. Control panel and monitoring system for airfield lighting
19. upgrade visual aids (future)
20. Approach roads to the operational area besides approach roads to site airport navigation aids/Radar.
21. Office and residential accommodation for AAI personnel and its agents.
22. Buildings for navigational aids/radar installations.
23. EPABX extension, Auto telephone with STD facility, Fax, hotline and cell phone in ATC.
24. Signal area as per ICAO specification.
25. Computer with printer and Internet connection in ATC Tower

  
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## Part 2: AAI Equipment

AAI would provide the CNS-ATM equipment (indicative list) in accordance with the provisions contained in the relevant ICAO Annexure and documents (as amended from time to time) as required for the proposed aircraft operations:

S. No.	Description
1.	VHF
2.	Manpacks
3.	DATIS
4.	DVR
5.	VCS
6.	DVOR/HP-DME
7.	ILS/LP-DME
8.	ADS B
9.	ASR/MSSR
10.	A-SMGCS
11.	AMSS
12.	Automation System
13.	UPS for Nav-aids
14.	UPS for Tower
15.	UPS for Terminal building
16.	GPS Clock/CCTV/RF Link
17.	Instrument Approach Procedures

  
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S. No.	GVIAL obligations in respect of CNS Infrastructure installations
1	Installation & Upkeep of Fire Detection & Suppression Systems.
2	Installation & Upkeep gas suppression system at all the CNS/ATM installations
3	Installation & Upkeep of Electrical Surges Protection System.
4	Supply & laying/terminations of OFC/RC Cables from all CNS remote sites and Fire Station to Technical block
5	Establishment of IT Infra i.e. intra/internet at CNS/ATM Sites.
6	CNS/ATM Furniture fixers and all the basic amenities.
7	Installation & Upkeep of Digital Hybrid EPABX System
8	Installation & upkeep of Walkie-Talkie base stations and handset.
9	Purchase/ laying/terminations of Equipment Earthing System at all the CNS/ATM Sites.

  
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## Schedule 2

Office and residential Accommodation, Car Parking and Standby Power Supply for AAI Personnel and AAI Equipment

1. Control Tower & Technical Block: GVIAL shall make available an area of 4468\* square meters (Total Area) for control tower and technical block to house various ATS units as per the requirement other than Nav-Aids and Radar building
2. Offices: GVIAL shall make available an area of suitable dimension for office space in Technical Block
3. Car Parking: GVIAL shall make available 75 (seventy-five) car parking spaces at the Airport.
4. Standby Supply: GVIAL shall make available to AAI adequate standby electrical capacity at the Airport for provision of the AAI Services.
5. Residential accommodation to AAI personnel and its agent. \*\*
6. Additional requirements \*\*\* (above the standard requirements) may be provisioned for the following spaces as per the recommendation of CAP Dte., AAI:

Sl. No.	Room Type	Dimension in Metres
1.	Examination Room	7M x 5M
2.	Class cum meeting room	15M x 10M
3.	Evaluation Room	5M x 4M
4.	Record room	7M x 5M
5.	Compactor room	15M x 10M
6.	Sample Collection room	5M x 4M
7.	Room for Breath Analyzer testing	5M x 4M
8.	Room for Aviation English Language Training & Testing	10M x 8M

\* Airport Operator to coordinate with IMD for finalizing area/apace to be allocated to IMD for the provision of Aviation MET services.

\*\* Licence fee for residential accommodation to be paid by AAI, on behalf of the AAI employees, shall be as per DPE guidelines.

\*\*\* It is expected that some of these requirements are already part of area given under point 1 above. Accordingly, the total area required is expected to be around 4700 square meters.

  
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### Schedule 3

#### CNS/ATM Services

AAI shall provide and coordinate the following services at the Airport as appropriate to the airspace configuration within the lateral and vertical limits of such air space:

- i) Aerodrome Control Service including surface movement control / apron control service;
- ii) Approach Control/Approach Radar Control Service (if planned);
- iii) Area Control/Area Radar Control Service (if planned);
- iv) Associated services such as Aeronautical Mobile Service (AMS), Aeronautical Fixed Services (AFS), Aeronautical Information Service (AIS), Flight Information Service, Advisory Service, Alerting Service and Search & Rescue Coordination Services as appropriate, all in accordance with the provisions contained in the relevant ICAO Annexes and documents (as amended from time to time) and as required for the proposed aircraft operations

  
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#### Schedule 4

##### Definition of Force Majeure

In this Agreement, "Force Majeure" means any act, event or circumstance or a combination of acts, events and circumstances, referred to in paragraph (A) which are beyond the reasonable control of the Affected Party and which the Affected Party could not have prevented by Good Industry Practice or by the exercise of reasonable skill and care in relation to the construction of any facilities, and which, or any consequences of which prevent, hinder or delay in whole or in part the performance by any Party of its obligations under this Agreement.

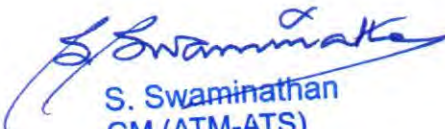
"Force Majeure" includes the following events and circumstances to the extent that they, or their consequences, satisfy the above requirements:

- A. Acts, events or circumstances of the following types:
- i. Strikes, lock-outs or other industrial action or labour disputes involving any party or its contractors, or their respective sub-contractors, servants or agents, in any such case employed on the execution of work within India or the supply of goods or services within India;
  - ii. Lightning, earthquake, tempest, cyclone, hurricane, whirlwind, storm, flood, washout, land slide, soil erosion, subsidence, drought or lack of water, and other unusual or extreme adverse weather or environmental conditions or actions of the elements, meteorites or objects falling from aircraft or other aerial devices, the occurrence of pressure waves caused by aircraft or other aerial devices travelling at supersonic speeds, fire or explosion, chemical or radioactive contamination or ionizing radiation (excluding circumstances where the source or cause of the explosion or contamination or radiation is brought or has been brought onto or near the Site by the Affected Party or those employed or engaged by the Affected Party unless it is or was essential for the construction or operation of any part of the Airport);
  - iii. Any accidents at the Airport;
  - iv. Any accidental loss of or damage to cargo in the course of transit by any means and intended for incorporation into the Airport, occurring prior to the Airport Opening Date;
  - v. Loss of or serious accidental damage to the Airport;
  - vi. Epidemic;
  - vii. Act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, bombs or civil commotion;
  - viii. Sabotage, terrorism or the threat of such acts;
  - ix. Act of God; or
  - x. Any act, event or circumstance of a nature analogous to the foregoing;

  
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- B. provided that none of the following matters or their consequences shall be capable of constituting or causing Force Majeure:
- i. Failure or inability to make any payment; or
  - ii. The effects of market conditions unless such market conditions were themselves caused by or were a result of a Force Majeure event.
- C. And further provided that an act, event or circumstance referred to in paragraph (A) above which primarily affects a third party or third parties (including without limitation, the construction, contractor or operator(s) of the Airport, an affiliate of a Party or a Party's or it's affiliate's subcontractors) which prevents, impedes or delays a Party in the performance of its obligations, shall constitute Force Majeure hereunder as to such Party as appropriate if and to the extent that it is of a kind or character that, if it had happened to the Party wishing to rely on this Clause, would have come within the definition of Force Majeure under this Schedule 4.

  
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**Schedule 5**

**Form of AAI Direct Agreement**

**GMR Visakhapatnam International Airport Limited**

**ADDRESS:** 10-1-43, Flat No. 202, Second Floor,  
Siripuram Fort, Siripuram,  
Visakhapatnam-530003, Andhra Pradesh

[Date]

[The Chairman]

Airports Authority of India  
Rajiv Gandhi Bhavan  
Safdarjung Airport Complex  
New Delhi 110 003

Dear [Chairman]

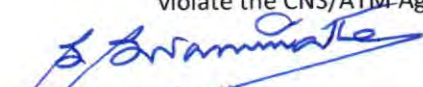
We refer to the Agreement for the Provision of CNS/ATM Facilities and Services (the "**CNS/ATM Agreement**") dated [•] between the Airports Authority of India ("**AAI**") and **GVI**AL (the "**Company**").

As contemplated in the CNS/ATM Agreement, the Company proposes to enter into the Financing Agreements (as defined in the CNS/ATM Agreement and copies of which have been delivered to you), pursuant to which the Secured Parties (as defined below) have agreed to provide financing to the Company for the development of a greenfield airport at Bhogapuram in the State of Andhra Pradesh.

As security for such financing, we hereby notify you that pursuant to the Mortgage (the "**Mortgage**") to be entered into in favour of [ ] as trustee (the "**Mortgage Trustee**") for the benefit of certain banks and financial institutions (the "**Lenders**") the Company has granted to the Mortgage Trustee for the benefit of the Lenders a first priority security interest in all of the assets of the Company (the "**Collateral**"), including, inter-alia, the CNS/ATM Agreement.

The Lenders together with the Mortgage Trustee are herein called the "**Secured Parties**". The Company requests that, by signing and returning the enclosed copy of this acknowledgment and consent (the "**Agreement**"), AAI confirm and agree, for the benefit of the Secured Parties, the following:

- a) AAI
  - i. Acknowledges receipt of a copy of the Mortgage,
  - ii. Consents to the assignment (and to the extent not capable of assignment under the Mortgage, the charge) under the Mortgage for the benefit of the Secured Parties of all of the Company's right, title and interest in the CNS/ATM Agreement as security for the obligations due to the Secured Parties,
  - iii. Agrees that such assignments (or charge as the case may be) do not or will not contravene or violate the CNS/ATM Agreement and

  
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- iv. Agrees that its execution and delivery of this Agreement constitutes its proper written consent to such assignment (or charge as the case may be) and prospective assignment as provided for in Clause 12.2 of the CNS/ATM Agreement.
- b) AAI agrees that if the Mortgage Trustee has elected to exercise its rights pursuant to the security interests granted by the Company to have itself or its designee substituted for the Company under the CNS/ATM Agreement, then such Mortgage Trustee or its designee shall be substituted for the Company.
- c) AAI agrees that it will recognize the Mortgage Security Trustee as the true and lawful attorney of the Company pursuant to the Mortgage.
- d) AAI agrees that it shall not terminate the CNS/ATM Agreement or suspend performance of its obligations there under without issuing a Notice to the Mortgage Trustee.
- e) AAI agrees that the Mortgage Trustee shall be entitled at any time to take or procure the taking of action consistent with the terms of the CNS/ATM Agreement as may be necessary to remedy the event which has given rise to the Notice
- f) AAI Agrees that that it shall notify the Security Trustee immediately upon the occurrence of any of the events which entitle AAI to exercise its rights under Clause 11.1 of the CNS/ATM Agreement and shall provide to the Security Trustee (simultaneously with the issue of such notice to the Company) a copy of any notice of the occurrence of such events including any notice prior to and after the expiry of the cure periods there under.
- g) This Agreement shall be governed by and construed in accordance with the laws of India.
- h) Any dispute or difference arising out of or in connection with this Agreement, shall regardless of the nature thereof, be referred to dispute resolution pursuant to the provisions of Clause 13 of the CNS/ATM Agreement, which provisions are incorporated herein by reference and made a part hereof as if such provisions were fully set forth herein.
- i) The provisions of Clause 19 of the CNS/ATM Agreement shall apply to this Agreement and are incorporated herein by reference and made a part thereof as if such provisions were fully set forth herein.
- j) This Agreement will terminate without further action by any party hereto on the date on which there is no outstanding debt owed to the Lenders.
- k) This Agreement shall become effective on the Effective Date.

Yours faithfully,

**Airport Company**

**By:**

**Name:**

**Title:**

  
S. Swaminathan  
GM (ATM-ATS)



Airports Authority of India hereby acknowledges and agrees to be bound by the foregoing terms of this Agreement as of this [•] day of [•].

**By**

**Name:**

**Title:**

Acknowledged, accepted and agreed as of the date this Agreement is executed by Airports Authority of India.

[•], as Mortgage Trustee.

**By**

**Name:**

**Title:**

  
S. Swaminathan  
GM (ATM-ATS)

