

# **Concession Agreement**

**Development of Greenfield Noida International Airport on**

**Design, Build, Finance, Operate and Transfer**

**At**

**Jewar, Gautam Buddh Nagar, Uttar Pradesh**

**7<sup>th</sup> October, 2020**

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Part 1

Preliminary

CONCESSION AGREEMENT

THIS AGREEMENT is entered into on this the 7<sup>th</sup> day of October, 2020.

BETWEEN

- 1 The Governor of Uttar Pradesh represented by Noida International Airport Limited and having its principal office at office no. 1-15 block P-2-sector Omega -1, Greater Noida, Gautam Buddha Nagar, Uttar Pradesh (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of the One Part;

AND

- 2 Yamuna International Airport Private Limited (YIAPL), a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at Esc House, 155, 1st & 2nd Floor, Okhla Industrial Estate, Phase 3, New Delhi 110020, (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 Other Part.

As the context may require, the Authority and the Concessionaire will hereinafter be referred to individually as a “Party” and collectively as the “Parties”.

WHEREAS:

- A. Government of Uttar Pradesh had procured the in-principle approval from Government of India (GOI) (hereinafter referred to as the “In-Principle Approval) for the establishment of an international airport for public use in North of Jewar village, District Gautam Buddh Nagar, in the State of Uttar Pradesh (herein referred to as the “**Airport**”), subject to the terms and conditions stipulated in the in-Principle Approval, and had resolved to establish the Airport on design, build, finance, operate and transfer (the “DBFOT”) basis in accordance with the terms and conditions to be set forth in a concession agreement.
- B. The Government of Uttar Pradesh (“GoUP”) vide its Government Resolution No. 2533 dated 12th December 2018 (“GoUP Approval”), approved the implementation of the Project and assigned Noida International Airport Limited as Authority.
- C. Based upon the representations and submissions made by the Authority, the Applicable Permits that are required prior to the implementation of the Project were granted to the Authority from the concerned Government Instrumentalities.
- D. The Authority, had prescribed the technical and commercial terms and conditions, and invited Bids (“the Request for Qualification cum Proposal” or “RFQ cum RFP for development, operation and maintenance of the Airport on DBFOT basis, and invited applications by its Request for Qualification cum Proposal No. NIAL-02/43/2019 dated 25<sup>th</sup> September 2019, as amended from time to time (collectively, “Request for Qualification cum Proposal” or “RFQ cum RFP”).
- E. After evaluation of the Bids received, the Authority had accepted the Bid of the Selected bidder, inter alia, the selected bidder Zurich Airport International AG. Authority issued its Letter of Award No. NIAL-02/62/2019 dated 4<sup>th</sup> May 2020 (hereinafter called the “**LOA**”) to the Selected bidder; and subsequent to the GoUP GO number 1418/Chappan-2020-31/2016 (PMIC) dated 14<sup>th</sup> August 2020 requiring, inter alia, the execution of this Concession Agreement by 15<sup>th</sup> October 2020.
- F. The selected bidder has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 2013, and has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the

rights of the Selected bidder under the LOA, including the obligation to enter into this Concession Agreement pursuant to the LOA for undertaking the Project.

- G. By its letter dated June 2<sup>nd</sup>2020, 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 Concession Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the selected bidder/ Consortium for the purposes hereof.
- H. The Authority has agreed to the said request of the selected bidder and the Concessionaire, and has accordingly agreed to enter into this Concession Agreement with the Concessionaire for implementation of the Project on DBFOT basis, subject to and on the terms and conditions set forth hereinafter.

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

## ARTICLE 1

### 1. Definitions and Interpretation

#### 1.1. Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 53) 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 the State, laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- c. references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- d. the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- e. the words “**include**” and “**including**” are to be construed without limitation and shall be deemed to be followed by “**without limitation**” or “**but not limited to**” whether or not they are followed by such phrases;
- f. references to “**construction**” or “**building**” include, unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “**construct**” or “**build**” shall be construed accordingly;
- g. references to “**development**” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and “**develop**” shall be construed accordingly;
- h. any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- i. any reference to “**hour**” shall mean a period of 60 (sixty) minutes commencing either on the hour or on the half hour of the clock, which by way of illustration means 5.00 (five), 6.00 (six), 7.00 (seven) and so on being hours on the hour of the clock and 5.30 (five thirty), 6.30 (six thirty), 7.30 (seven thirty) and so on being hours on the half hour of the clock;
- j. any reference to day shall mean a reference to a calendar day;
- k. reference to a “**business day**” shall be construed as a reference to a day (other than a Sunday) on which banks in the State are generally open for business;
- l. any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;



- m. 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;
- n. 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;
- o. the words importing singular shall include plural and vice versa;
- p. references to any gender shall include the other and the neutral gender;
- q. “**lakh**” means a hundred thousand (100,000) and “**crore**” means ten million (10,000,000);
- r. “**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;
- s. references to the “**winding-up**”, “**dissolution**”, “**insolvency**”, or “**reorganisation**” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
- t. save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause (t) shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
- u. any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Independent Engineer, as the case may be, in this behalf and not otherwise;
- v. 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;
- w. references to Recitals, Articles, Clauses, Sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisos and Schedules of or to this Agreement; reference to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs; and reference to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;
- x. the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”); and
- y. 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 3 (three) copies, and if the Authority and/or the Independent Engineer is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.
- 1.2.3. The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.
- 1.2.4. Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

### **1.3. Measurements and arithmetic conventions**

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

### **1.4. Priority of agreements, clauses and schedules**

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

- a. this Agreement; and
- b. all other agreements and documents forming part hereof or referred to herein,

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

1.4.2. Subject to the provisions of Clause 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 Specifications and Standards, the latter shall prevail;
- e. between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- f. between any value written in numerals and that in words, the latter shall prevail.

## **Part II**

### **The Concession**

## ARTICLE 2

### 2. Scope of Project

#### 2.1. Scope of Project

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

- (a) design, development, construction and expansion of the Airport on the Site set forth in Schedule A and as specified in Schedule B together with provision of respective Project Facilities as specified in Schedule C, and in conformity with the Specifications and Standards set forth in Schedule D;
- (b) operation, maintenance and management of the Airport in accordance with the provisions of this Agreement;
- (c) development, operation and maintenance of City Side on the Site as specified in Schedule–A and Schedule–B, and in accordance with the provisions of this Agreement; and
- (d) performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

## ARTICLE 3

### 3. GRANT OF CONCESSION

#### 3.1. The Concession

3.1.1. Subject to and in accordance with the provisions of this Agreement, 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 develop, operate and maintain the Airport (“Concession”) for an initial period of 40 years commencing from the Appointed Date, and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.

Provided further that, at any time not earlier than 35th (Thirty fifth) anniversary of the Appointed Date and no later than 37th (Thirty seventh) anniversary of the Appointed Date, intimate the Authority about its interest and request for renewing/ extending the term of this Concession by another period of 30 (thirty) years in accordance with the provisions in Clause 42.5. While making such request, the Concessionaire shall submit a confirmation that it is agreeable to participate in the international competitive bidding process for the determination of the Premium for an additional period of 30 (thirty) years, in the form and manner, as may be prescribed by the Authority, at such time, and in any such case of international competitive bidding:

- a. the Concessionaire shall have a right to match the highest bid, if its bid is within 10.00% of the highest bid that may be offered at that time in accordance with the terms and conditions of the bidding documents issued at such time,
- b. the Affiliate(s) of the Concessionaire shall not be qualified, either directly or indirectly, participating in any such bidding process; and
- c. it is clarified the Concessionaire shall be deemed to be qualified to submit the financial bid without being required to participate in the pre- qualification process and shall not be required to submit any documents for pre-qualification

Provided further that, in the event the Airport is not expanded by the Concessionaire in accordance with the provisions of this Agreement or the Concessionaire has been in material default of the provisions of this Agreement, then, the Authority shall not be under any obligation to extend the Concession Period or provide the right to match the highest bid to the Concessionaire in accordance with this Clause 3.1.1.

In any event, at all times, any decision concerning the extension of the Concession Period shall vest with the Authority.

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

- (a) Right of Way, access and licence to the Site for the purpose of and to the extent conferred by the provisions of this Agreement;
- (b) design, finance and construct the Airport;
- (c) operate, manage and maintain the Airport and regulate the use thereof by third parties;
- (d) demand, collect and appropriate Fee from Users liable for payment of Fee for using the Airport or any part thereof and refuse entry of any User if the Fee due is not paid;
- (e) perform and fulfil all of the Concessionaire’s obligations under and in accordance with this Agreement;

- (f) save as otherwise expressly provided in this Agreement, 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
- (g) neither assign, transfer or sublet or create any lien or encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Airport nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement.

### **3.2. City Side Development**

Subject to and in accordance with the provisions of this Agreement and Applicable Laws, the Concession hereby granted shall, without prejudice to the provisions of Clause 3.1.2, entitle the Concessionaire to undertake development, operation and maintenance of the real estate specified in Schedule-A, subject to the conditions stipulated in Schedule-B and Schedule-D, and to exploit such development for commercial purposes in accordance with the provisions of Article 28 (the “City Side Development”) with the right to sub-license any or all parts thereof by means of Project Agreements.

## ARTICLE 4

### 4. CONDITIONS PRECEDENT

#### 4.1. Conditions Precedent

4.1.1. Save and except as expressly provided in Articles 4, 5, 6, 7, 8, 9, 10, 29, 39, 49 and 52, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the “Conditions Precedent”). Provided, however, that a Party may grant waiver from satisfaction of any Condition Precedent by the other Party in accordance with the provisions of Clauses 4.1.2 or 4.1.3, as the case may be, and to the extent of such waiver, that Condition Precedent shall be deemed to be fulfilled for the purposes of this Clause 4.1.1.

4.1.2. The Concessionaire may, upon providing the Performance Security to the Authority in accordance with Article 9, at any time after 90 (ninety days) days from the date of this Agreement or on an earlier day acceptable to the Authority, by notice require the Authority to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 30 (thirty) days of the notice, or such longer period not exceeding an additional 60 (sixty) days, and the Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:

- (a) procured for the Concessionaire the Right of Way to the Site in accordance with the provisions of Clauses 10.3.1 and 10.3.2;
- (b) procured all Applicable Permits relating to environmental protection and conservation in respect to atleast 90% (ninety percent) of the land required for the Project and forming part of the Site; and
- (c) procured forest clearance for and in respect of at least 90% (ninety per cent) of the land required for the Project and forming part of the Site, save and except permission for cutting trees.
- (d) caused the execution of the following relevant agreements:
  - i. Escrow agreement in the form provided in Schedule T
  - ii. Substitution Agreement in the form provided in Schedule W
  - iii. Shareholders Agreement in the form provided in Schedule X
  - iv. CNS/ATM Agreement in the form provided in Schedule Y
  - v. Memorandum of Understanding in the form provided in Schedule Z
  - vi. State Government Support Agreement in the form provided in Schedule AA,

by itself, GoI or other Government Instrumentalities, as the case may be, upon receiving its duly executed copy from the Concessionaire and compliance of all the terms thereunder respectively, which may be necessary for the execution thereof.

Provided that upon request in writing by the Authority, the Concessionaire may, in its discretion, grant extension of time, not exceeding 180 (one hundred and eighty) days, for fulfilment of the Conditions Precedent set forth in this Clause 4.1.2.

4.1.3. The Conditions Precedent required to be satisfied by the Concessionaire within a period of 180 (one hundred and eighty) days from the date of this Agreement shall be deemed to have been fulfilled when the Concessionaire shall have:

- a. provided Performance Security to the Authority;
- b. executed and procured execution of the Escrow Agreement in the form provided in Schedule T;
- c. executed and procured execution of the Substitution Agreement in the form provided in Schedule W;
- d. executed and procured execution of the Shareholders’ Agreement in the form provided in Schedule X;

- e. procured all the Applicable Permits as specified in Part I of Schedule-E unconditionally, or if subject to conditions, then all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full, and such Applicable Permits are in full force and effect;
- f. executed the Financing Agreement for Phase I and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;
- g. delivered to the Authority 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders;
- h. delivered to the Authority from the selected bidder, /its confirmation of the correctness of the representations and warranties set forth in Sub-clauses (j), (k), (l) and (m) of Clause 7.1 of this Agreement;
- i. delivered to the Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof;
- j. executed the agreement to be entered into between the Concessionaire and IMD, as per the format prescribed by IMD or an agreement provided by AAI wherein the metrological services shall be part of AAI services. In case of such agreement with AAI, the Concessionaire shall not be required to sign a separate agreement with IMD for provision of aviation metrological services; and
- k. executed the agreement to be entered into between the Concessionaire and BCAS, as per the format provided by BCAS;
- l. executed the Memorandum of Understanding to be entered into between the Government of India and the Concessionaire in the form provided in Schedule Z,
- m. executed and procured execution of the State Government Support Agreement in the form provided in Schedule AA
- n. executed the CNS-ATM Agreement in the format prescribed by Airports Authority of India.

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

- 4.1.4. Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.
- 4.1.5. The Parties shall notify each other in writing at least once in a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

#### **4.2.Damages for delay by the Authority**

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

#### **4.3.Damages for delay by the Concessionaire**

In the event that (i) the Concessionaire does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the period specified in that Clause, and (ii) the



delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.2 or other breach of this Agreement by the Authority or due to Force Majeure, the Concessionaire shall pay to the Authority Damages in an amount calculated at the rate of 0.3% (zero point three per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum amount equal to the Bid Security, and upon reaching such maximum, the Authority may, in its sole discretion and subject to the provisions of Clause 9.2, terminate the Agreement. Provided that in the event of delay by the Authority in procuring fulfilment of the Conditions Precedent specified in Clause 4.1.2, no Damages shall be due or payable by the Concessionaire under this Clause 4.3 until the date on which the Authority shall have procured fulfilment of the Conditions Precedent specified in Clause 4.1.2.

#### **4.4. Deemed Termination upon delay**

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

## ARTICLE 5

### 5. OBLIGATIONS OF THE CONCESSIONAIRE

#### 5.1. Obligations of the Concessionaire

- 5.1.1. Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Airport, in accordance with the provisions of this Agreement and the Master Plan, and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2. The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.3. The Concessionaire shall, at all times during the subsistence of this Agreement, comply with all the conditions stipulated in the Applicable Permits/Approvals including In-Principle Approval or any substitute and/ or consequential approvals necessary to fulfil its obligations under this Agreement.
- 5.1.4. Save and except as otherwise provided in this Agreement or Applicable Laws, as the case may be, the Concessionaire shall, in discharge of all its obligations under this Agreement, conform with and adhere to Good Industry Practice at all times.
- 5.1.5. The Concessionaire shall, from time to time, undertake expansion or augmentation of the Aeronautical Assets, Terminal Building and Non-Aeronautical Assets in accordance with the provisions of this Agreement and Good Industry Practice
- 5.1.6. The Concessionaire shall, at all times (including during the Construction Period), comply with all instructions and requirements of DGCA and BCAS and allow DGCA and BCAS to inspect the Site and the Airport from time to time at their own cost and with reasonable advance notice to the concessionaire.
- 5.1.7. Save and except as expressly provided in this Agreement, the Concessionaire shall, at all times during the subsistence of this Agreement, pay all taxes, levies, duties, cesses and all other statutory charges, dues, assessments or outgoings payable in respect of the Airport, any Aeronautical Services, Non-Aeronautical Services and other services, or in respect of the materials stored therein, which may be levied by any Government Instrumentality.
- 5.1.8. The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
  - (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits, other than those set forth in Clause 4.1.2, and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws;
  - (b) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the Airport;
  - (c) perform and fulfil its obligations under the Financing Agreements;
  - (d) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
  - (e) Deleted
  - (f) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
  - (g) always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner be violative of any of the provisions of this Agreement;

- (h) procure that all facilities and amenities within the Airport are operated and maintained in accordance with Good Industry Practice and the Users have non-discriminatory access for use of the same in accordance with the provisions of this Agreement and Applicable Laws;
- (i) ensure that Users are treated with due courtesy and consideration and provided with ready access to services and information;
- (j) provide or cause to be provided, Ground Handling Services at the Airport in accordance with the provisions of this Agreement and Applicable Laws;
- (k) provide all support and assistance to the Authority or the Designated GOI Agency, as the case may be, for provision and operation of Reserved Services at the Airport;
- (l) procure the supply of electricity to the Airport from the grid, including procuring standby arrangements for supply of electricity necessary for maintenance of Aeronautical Services and Non-Aeronautical Services in the event of outages or failure of electricity supply from the grid;
- (m) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
- (n) transfer the Project Assets to the Authority upon Termination of this Agreement, in accordance with the provisions thereof.

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

- 5.2.1. It is expressly agreed that the Concessionaire shall, at all times during the Concession Period, 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 Agreements 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 any failure or omission of the Authority to review and/or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Authority. No review and/ or observation of the Authority and/ or its failure to review and/ or convey its observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.
- 5.2.3. The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire.
- 5.2.4. The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (“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(s) of each of the Project Agreements, where under such counter party(s) 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 all EPC Contractors or O&M Contractors and execution of all EPC Contracts or O&M Contracts shall be subject to the prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such selection or contract without prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire or its Contractors from any liability or obligation under this Agreement.

### **5.3. Obligations relating to Change in Ownership**

- 5.3.1. The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior written approval of the Authority.
- 5.3.2. Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that:
- (a) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of 25% (twenty five per cent) or more of the total Equity of the Concessionaire; or
  - (b) acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him,

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

For the purposes of this Clause 5.3.2:

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

- b. the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and
- c. power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situate in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of 25% (twenty five per cent) or more of the Equity of the Concessionaire shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.

#### **5.4. Obligations relating to Golden Share**

- 5.4.1. The Concessionaire and the selected bidder shall execute an agreement with the Authority, substantially in the form specified at Schedule-X (the “Shareholders’ Agreement”), providing for the issue and allotment of one non-transferable equity share of the Company (the “Golden Share”) in favour of the Authority, and shall provide for the following:
- (a) appointment of two nominees of the Authority on the Board of Directors of the Company;
  - (b) an irrevocable undertaking that the rights vested in the Authority shall not be abridged, abrogated or in any manner affected by any act done or purported to be done by the Company or any of its Associates or Affiliates;
  - (c) an irrevocable undertaking that any divestment of equity in the Company shall not in any manner affect the rights of the Authority herein and that the successors, assigns and substitutes of the Company shall be bound by such undertaking; and
  - (d) any other matter mutually agreed upon between the Parties.
- 5.4.2 The Parties expressly agree that the Shareholders’ Agreement shall further provide that so long as the Authority holds the Golden Share, an affirmative vote of the Authority or the Directors appointed by the Authority shall be necessary and required for the passing of, by the General Meeting of the Company or the meeting of Board of Directors thereof, as the case may be, any resolution providing for all or any of the following or any matter incidental or consequential thereto:
- (a) to alter or add to the provisions of the memorandum;
  - (b) to alter or add to the articles of association;
  - (c) to change the name of the Company;
  - (d) to purchase the Company’s own shares or specified securities;
  - (e) to issue sweat equity shares;
  - (f) to issue further shares without pre-emptive rights to non-members or to convert loans or debentures into shares;
  - (g) to reduce the share capital;
  - (h) to remove the registered office of the Company outside the limits of the State;
  - (i) to commence any new lines of business;
  - (j) to keep registers and returns at any other place than within city, town or village in which the registered office is situated;
  - (k) to consent to a director or his relative or partner or firm or private company holding an office or place of profit, except that of managing director, manager, banker, or trustee for debenture-holders of the Company;
  - (l) to make inter-corporate-loans and investments or guarantee/security to be given, etc., if the aggregate amount thereof, exceeds the limit of 10% (ten per cent) of the Company’s paid-up share capital;
  - (m) to apply to a court to wind-up the Company;
  - (n) to wind-up the Company voluntarily;
  - (o) for various other matters pertaining to the winding up of the Company;

- (p) to change the name of the Airport; and
- (q) any other matter which is required by the Companies Act, 2013 (or the relevant Act in force) or any statutory re-enactment thereof to be passed by a special resolution of the shareholders of the Company.

5.4.3 The Parties agree that the Shareholders' Agreement shall provide that till the time the Authority holds the Golden Share, it shall be entitled to nominate two persons of its choice for appointment as non-retiring Directors on the Board of the Concessionaire, and upon such nomination, the Concessionaire shall appoint such persons as Directors in accordance with Applicable Laws.

#### **5.5. Obligations relating to DGCA licence**

- 5.5.1. The Concessionaire shall procure and keep current the Applicable Permits from DGCA, and if such Applicable Permits are issued subject to conditions, then the Concessionaire shall at all times comply with all such conditions.
- 5.5.2. At the request of the Concessionaire, the Authority shall endeavour to, provide necessary support to the Concessionaire for obtaining the Applicable Permits from DGCA no later than 60 (sixty) days from the date of filing of the application by the Concessionaire with the DGCA; provided that on the date of such application the Concessionaire shall have completed construction of the Airport in accordance with the provisions of this Agreement and shall have complied with (i) the requirements of Rule 83 of the Aircraft Rules, 1937; (ii) any special directions or guidelines issued by the DGCA pursuant to Rule 133A of the Aircraft Rules, 1937; and (iii) any other requirement of the DGCA in connection with the issuance of an airport licence.
- 5.5.3. The provisions of Clauses 5.5.1 and 5.5.2 shall apply, mutatis mutandis, to the renewal of Applicable Permits until Termination of this Agreement.

#### **5.6. Obligations relating to procurement of goods and services**

- 5.6.1. The Concessionaire agrees and undertakes that it shall procure contracts, goods and services for the construction and operation of the Airport in a fair, transparent and efficient manner, and without any undue favour or discrimination in this behalf. In pursuance hereof, it shall frame a procurement policy specifying the principles and procedures that it shall follow in awarding contracts for supply of goods and services, and shall place the policy on its website for the information of general public and all interested parties. The policy shall also include the principles and procedures to be followed for leasing, licensing, sub-licensing, or grant or allocation of any space, building, rights or privileges to private entities.
- 5.6.2. For procurement of goods, works or services and for award of leases, licences, sub-licences or any other rights or privilege where the consideration exceeds Rs. 25 Crore (Rupees Twenty Five Crore) in any Accounting Year (collectively the "Contracts"), the Concessionaire shall invite offers through open competitive bidding by means of e-tendering and shall select the awardees in accordance with the policy specified under Clause 5.6.1. For the avoidance of doubt, the Parties agree that the Concessionaire may, in its discretion, pre-qualify and short-list the applicants in a fair and transparent manner for ensuring that only experienced and qualified applicants are finally selected in a manner that is commercially prudent and protects the interests of the Users. The Parties further agree that the Concessionaire shall not enter into any Associated Firm except with the prior consent of the Authority, which consent shall not be unreasonably withheld. The Parties also agree that before granting any consent hereunder, the Authority shall be entitled to seek such information as it may reasonably require in relation to the Contract and the Associated Firm with whom the Contract is proposed to be executed and in the event the Authority does not approve or reject the proposal within 30 (thirty) days of the date on which the required information has been provided, it shall be deemed that the Authority has no objection to such Contract.

Explanation:

As used in this Clause, the expression "Associated Firm" shall have the same meaning as ascribed to the expression "Associate", provided that the reference to 50% (fifty percent) of voting shares in respect of an Associate shall be read as 10% (ten per cent) of voting shares in the case of an Associated Firm.

**5.7. Obligations relating to employment of foreign nationals**

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

**5.8. Obligations relating to employment of trained personnel**

The Concessionaire shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective functions. The Concessionaire shall comply with the Applicable Laws and the Applicable Permits in relation to the hiring of local personnel, and shall endeavor to employ as many local personnel preferably members of **Project Affected Families** during the implementation, development and operations of the Project.

**5.9. Obligations relating to security clearance**

Notwithstanding anything to the contrary contained in this Agreement, the engagement of employees, staff and personnel of the Concessionaire and of its Contractors and subcontractors shall always be subject to security clearance by the Designated GOI Agency and only persons having a valid security clearance shall be permitted on the Site. For the avoidance of doubt, it is agreed that 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 a 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. It is further agreed that the restriction herein shall not apply to City Side Development forming part of the Site.

**5.10. Obligations relating to non-discriminatory access**

The Concessionaire shall manage and operate the Airport on a common user basis and provide non-discriminatory access to all airlines, aircrafts, and other persons in accordance with the provisions of this Agreement and shall refrain from adopting any unfair or discriminatory practice against any User or potential user thereof.

**5.11. Deleted**

**5.12. Obligations relating to medical aid**

For providing emergency medical aid to Users, the Concessionaire shall set up and operate a medical aid post at the Airport equipped to render first aid and to assist in accessing emergency medical aid from hospitals in the vicinity.

**5.13. Obligations related to aesthetic quality of the Airport**

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

**5.14. 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 Airport and its impact on Users and the neighborhood.

**5.15. 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 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.

**5.16. Branding of the Airport**

The Airport or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Concessionaire or its shareholders. Save and except as may be necessary in the normal course of business, the Concessionaire undertakes that it shall not, in any manner, use the name or identity of the Airport 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 the spots where other public notices are displayed for the Users. It is further agreed that the Airport shall be known, promoted, displayed and advertised by the name ..... Airport.

**5.17. Facilities for differently abled and elderly persons**

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



## ARTICLE 6

### 6. OBLIGATIONS OF THE AUTHORITY

#### 6.1. Obligations of the Authority

- 6.1.1. The Authority shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 6.1.2. The Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and Applicable Laws, the following:
- (a) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for construction, operation and management of the Airport, at the cost and expense of the Concessionaire;
  - (b) upon written request from the Concessionaire, provide reasonable assistance to the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Concessionaire than those generally available to similar utility customers receiving substantially equivalent services;
  - (c) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, procure Applicable Permits, if any, relating to environmental protection and conservation of the Airport, excluding the City Side Development, at the cost and expense of the Concessionaire;
  - (d) procure that no barriers are erected or placed on or about the Airport by any Government Instrumentality or persons claiming through or under it, except for reasons of Safety Requirements, Emergency, national security, or law and order;
  - (e) make best endeavours to procure that no local Tax, toll or charge is levied or imposed on the use of whole or any part of the Airport;
  - (f) subject to and in accordance with Applicable Laws, grant to the Concessionaire the authority to regulate traffic at the Site;
  - (g) assist the Concessionaire in procuring assistance from appropriate GOI agency for regulation of traffic, removal of trespassers and security on or at the Airport;
  - (h) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
  - (i) support, cooperate with and facilitate the Concessionaire in the construction, operation and maintenance of the Project in accordance with the provisions of this Agreement and in accordance with Applicable Laws;
  - (j) upon written request from the Concessionaire and subject to the provisions of Clause 5.7, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for discharging their respective obligations under this Agreement and the Project Agreements;
  - (k) procure a 4 (four) lane access road to the Airport before COD for Phase I;
  - (l) assist the Concessionaire in procuring at Concessionaire's cost, Right of Way for setting up of water pipes and electric cables to the Site.

#### 6.2. Maintenance obligations prior to Appointed Date

During the Development Period, the Authority shall maintain the Site, at its own cost and expense, so that its condition is at no time materially inferior as compared to its condition 7 (seven) days prior to the Bid Date. For the avoidance of doubt, the Authority shall undertake only routine maintenance of the Site during the Development Period, and it shall undertake special repairs only in the event of excessive deterioration or damage caused due to unforeseen events such as floods or torrential rain.

### **6.3. Obligations relating to Reserved Services**

- 6.3.1. Subject to and in accordance with the provisions of this Agreement and Applicable Laws, the Authority shall provide, or cause to be provided through the Designated GOI Agency, the CNS/ATM Services in accordance with the provisions of Article 22, and shall at all times procure that the Designated GOI Agency empowered to control and regulate air traffic shall enable movement of aircrafts on the Runway in accordance with Applicable Laws and Good Industry Practice.
- 6.3.2. Subject to the provisions of Article 22, the Authority shall perform, or cause to be performed, all the Reserved Services in accordance with the provisions of this Agreement and Applicable Laws; provided that nothing in this Agreement shall restrict the Authority from requiring the Concessionaire to undertake any or all the Reserved Services on such terms and conditions as may be mutually agreed between the Parties.
- 6.3.3. The Authority agrees and undertakes that in order to enable the Concessionaire to discharge its obligations under this Agreement and Applicable Laws, the Authority shall discharge its own functions efficiently and in accordance with Good Industry Practice.

### **6.4. Obligations relating to refinancing**

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

## **ARTICLE 7**

### **7. REPRESENTATIONS AND WARRANTIES**

#### **7.1. Representations and warranties of the Concessionaire**

The Concessionaire represents and warrants to the Authority that:

- (a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (f) the information furnished in the Bid by the Selected Bidder and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (g) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (h) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or 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) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3; and that the selected bidder, together with its Associates, hold not less than 51% (fifty one per cent) of its issued and paid up Equity as on the date of this Agreement and until 7th anniversary of the COD for Phase I of the Project; and that no Consortium Member whose technical and financial capacity was evaluated for the purposes of pre-qualification and short-listing in response to the Request for Qualification cum Proposal shall together with its Associates, for a period of 7 (seven) years from the COD for Phase I of the Project, hold less than 26% (twenty-six per cent) of such Equity; and that no O&M Member or Airport Operator, as the case may be, whose O&M experience was evaluated for the purposes of pre-qualification and short-listing in response to the Request for Qualification cum Proposal shall commit to operate the Airport for a period of not less than 7 years from the date of commercial operations of the Airport, failing which the Concession Agreement is liable to be

terminated. For avoidance of doubt, it is clarified that if the O&M Member or Airport Operator, as the case may be, is unable to meet the performance standards set forth in the Concession Agreement then the Concessionaire can replace the operator of the Airport with prior written approval from the Authority. The substitute operator shall continue to meet the O&M Experience defined in the RfQ-cum-RfP. ;

- (k) the Selected Bidder/ its Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- (l) the Selected bidder is duly organised and validly existing under the laws of the jurisdiction of its incorporation or registration, as the case may be, and has requested the Authority to enter into this Agreement with the Concessionaire pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (m) no scheduled airline, cargo airline, or its Associates shall hold more than 26%(twenty six percent) of the total equity ownership of the Concessionaire; and such scheduled airline, cargo airline, or its Associates cannot appoint any director in the board of directors of the Concessionaire.
- (n) all its rights and interests in the Airport shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;
- (o) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (p) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith;
- (q) all information provided by the selected bidder in response to the Request for Qualification cum Proposal or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects; and
- (r) all undertakings and obligations of the Concessionaire arising from the Request for Qualification cum Proposal or otherwise shall be binding on the Concessionaire as if they form part of this Agreement.
- (s) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association or 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.

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

The Authority represents and warrants to the Concessionaire that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary actions under Applicable Laws to authorise the execution, delivery and performance of this Agreement;

- (c) it has the financial standing and capacity to perform its obligations under this Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Authority's ability to perform its obligations under this Agreement;
- (f) it has complied with Applicable Laws in all material respects; and
- (g) it has good and valid right to the Site, and has power and authority to grant a licence in respect thereto to the Concessionaire.

### **7.3. Disclosure**

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

## ARTICLE 8

### 8. DISCLAIMER

#### 8.1. Disclaimer

- 8.1.1. The Concessionaire acknowledges on its behalf and on behalf of the Selected Bidder/Consortium members and their associates that prior to the execution of this Agreement, the Selected Bidder/Consortium members and their associates and the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Qualification cum Proposals, Scope of the Project, Specifications and Standards, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, traffic volumes and all information provided by the Authority or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumption, statement or information provided by it herein or under the Applicable Laws and the Concessionaire confirms on its behalf and on behalf of the Selected Bidder that they shall have no claim whatsoever against the Authority in this regard.
- 8.1.2. The Concessionaire acknowledges and hereby accepts on its behalf and on behalf of the Selected Bidder/Consortium members and their associates, 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 Selected Bidder/Consortium members and their Associates or any person claiming through or under any of them.
- 8.1.3. The Parties including Selected Bidder/Consortium members and their associates 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 including Selected Bidder/Consortium members and their associates becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the Authority contained in Clause 8.1.1 and shall not in any manner shift to the Authority any risks assumed by the Concessionaire pursuant to this Agreement.
- 8.1.5. Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Authority shall not be liable in any manner for such risks or the consequences thereof.

**Part III**  
**Development and Operations**

## **ARTICLE 9**

### **9. PERFORMANCE SECURITY**

#### **9.1. Performance Security**

- 9.1.1. The Concessionaire shall, for the performance of its obligations hereunder, provide to the Authority no later than 180 (one hundred and eighty days) from the date of issue of the LOA, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs. 100 crore (one-hundred crore) in the form set forth in Schedule-F (the "Performance Security"). Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Concessionaire.
- 9.1.2. Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Concessionaire within a period of 180 (one hundred and eighty ) days from the date of the LOA, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

#### **9.2. Appropriation of Performance Security**

Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate from the Performance Security the amounts due to it for and in respect of such Concessionaire Default or for failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to the original level of the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 42. Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Concessionaire shall be entitled to an additional Cure Period of 120 (one hundred and twenty) days for remedying the Concessionaire Default or for satisfying any Condition Precedent, and in the event of the Concessionaire not curing its default or meeting such Condition Precedent within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 42.

#### **9.3. Release of Performance Security**

The Performance Security shall remain in force and effect until the end of 2 (two) years from COD of the Phase I of the project; provided, however, that the Performance Security shall not be released if the Concessionaire is in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars which establish satisfaction of the requirements specified under this Clause 9.3, the Authority shall release the Performance Security forthwith.

#### **9.4. Deemed Performance Security**

The Parties expressly agree that upon release of the Performance Security in accordance with the provision of Clause 9.3, a substitute Performance Security for a like amount shall be deemed to be



created under this Clause 9.4, as if it is a Performance Security under Clause 9.1 for and in respect of the entire Concession Period (the “Deemed Performance Security”). The Deemed Performance Security shall be unconditional and irrevocable, and shall, notwithstanding anything to the contrary contained in Clause 36.3, constitute the first and exclusive charge on an equivalent balance in the Escrow Account and on all amounts due and payable by the Concessionaire to the Authority, and the Authority shall be entitled to enforce the Deemed Performance Security through a withdrawal from the Escrow Account or by making a deduction from the amounts due and payable to it by the Concessionaire in accordance with the provisions of Clause 9.5. For the avoidance of doubt, the Parties agree that no amounts shall be earmarked, frozen or withheld in the Escrow Account for securing payment of any potential Damages that may fall due at a subsequent date, and only the amounts which shall have become due and payable by the Concessionaire upon occurrence of a Concessionaire Default shall be liable to appropriation hereunder.

#### **9.5. Appropriation of Deemed Performance Security**

Upon occurrence of a Concessionaire Default, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the relevant amounts from the Deemed Performance Security as Damages for Concessionaire Default. For the avoidance of doubt, the Parties expressly agree that upon the Deemed Performance Security being appropriated, in whole or in part, it shall be deemed to be replenished to the extent of such appropriation.

#### **9.6. References to Performance Security**

References to Performance Security occurring in this Agreement for and in respect of any period prior to the delivery of the Performance Security by the Concessionaire to the Authority, or in respect of any period subsequent to the expiry or release thereof, as the case may be, shall be construed solely for the purposes of calculating the amount of Damages payable by the Concessionaire, and the amount so determined shall be appropriated from the Bid Security or Deemed Performance Security, as the case may be.

## **ARTICLE 10**

### **10. RIGHT OF WAY**

#### **10.1. The Site**

The site of the Airport 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 licence under and in accordance with this Agreement (the "Site"). For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the real estate required for the Airport as set forth in Schedule-A and shall include City Side Development.

#### **10.2. Licence, Access and Right of Way**

- 10.2.1. The Authority hereby grants to the Concessionaire, subject to security restrictions and other terms of this Agreement, 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 as the Site, on an "as is where is" basis, free of any Encumbrances, to develop, operate and maintain the said Site, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Site, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.
- 10.2.3. The licence, access and right of way granted by this Agreement to the Concessionaire shall always be subject to existing rights of way and the Concessionaire shall perform its obligations in a manner that the Airport is open to Users at all times during the Concession Period, save and except during the hours for which closure thereof shall have been permitted by the Authority.
- 10.2.4. It is expressly agreed that the licence granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the licence, upon the Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Site by the Concessionaire or its sub-licensees, the licence in respect of the Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.
- 10.2.5. The Concessionaire hereby irrevocably appoints the Authority (acting directly or through a nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the licence granted hereunder at any time after the Concession Period has expired or has been terminated earlier in terms hereof, a sufficient proof of which will be the declaration of any duly authorised officer of the Authority, and the Concessionaire consents to it being registered for this purpose.
- 10.2.6. It is expressly agreed that trees on the Site are property of the Authority except that the Concessionaire shall be entitled to exercise usufructory rights thereon during the Concession Period.

### **10.3. Procurement of the Site**

- 10.3.1. Pursuant to the notice specified in Clause 4.1.2, the Authority Representative and the Concessionaire shall, on a mutually agreed date and time, inspect the Site and prepare a memorandum containing an inventory of the Site including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Site. Such memorandum shall have appended thereto an appendix (the "Appendix") specifying in reasonable detail those parts of the Site to which vacant access and Right of Way has not been granted to the Concessionaire. Signing of the memorandum, in 2 (two) counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall, subject to the provisions of Clause 10.2.2, be deemed to constitute a valid licence and Right of Way to the Concessionaire for free and unrestricted use and development of the vacant and unencumbered Site during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For the avoidance of doubt, it is agreed that valid licence and Right of Way with respect to the parts of the Site as set forth in the Appendix shall be deemed to have been granted to the Concessionaire upon vacant access thereto being provided by the Authority to the Concessionaire.
- 10.3.2. Without prejudice to the provisions of Clause 10.3.1, the Parties hereto agree that on or prior to the Appointed Date, the Authority shall have granted vacant access and Right of Way such that the Appendix shall not include more than 10% (ten per cent) of the total area of the Site required and necessary for the Airport, and in the event Financial Close is delayed solely on account of delay in grant of such vacant access and Right of Way, the period for the achievement of the Financial Close shall be extended by the Authority in accordance with the provisions of Clause 4.1.2. For the avoidance of doubt, the Authority acknowledges and agrees that the Appendix shall not include any land which may prevent or delay the construction of Aeronautical Assets and the Terminal Building without which the Completion Certificate or Provisional Certificate may not be granted. The Parties also acknowledge and agree that the conditions specified in this Clause 10.3.2 shall not be modified or waived by either Party.
- 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 such portion of the Site as has been handed over to the Concessionaire and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.
- 10.3.4. The Authority shall make best efforts to procure and grant, no later than 180 (one hundred and eighty) days from the Appointed Date, the Right of Way to the Concessionaire in respect of all land included in the Appendix and in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Concessionaire, and any such delay adversely affects the Construction Works, then, the Authority shall consider granting the reasonable extension in the Concession Period at the written request of the Concessionaire. Provided that, in any such case, the extension to the Concession Period shall not be longer than the delayed period. Provided that, the occurrence of any such delay in the grant of Right of Way, will not have any impact whatsoever on the rights, interests, entitlements, benefits, etc. of the Authority that it may have under and in accordance with this Agreement.
- 10.3.5. Upon receiving Right of Way in respect of any land included in the Appendix, the Concessionaire shall complete the Construction Works thereon within a reasonable period to be determined by the Independent Engineer in accordance with Good Industry Practice; provided that the issue of Provisional Certificate shall not be affected or delayed on account of vacant access to any part of the Site not being granted to the Concessionaire or any construction on such part of the Site remaining incomplete on the date of Tests on account of the delay or denial of such access thereto. For the avoidance of doubt, it is expressly agreed that Construction Works on all lands for which Right of Way is granted within 180 (one

hundred and eighty) days of the Appointed Date shall be completed on or before the Scheduled Completion Date. It is also expressly agreed that completion of the respective Construction Works within the time determined by the Independent Engineer hereunder shall be deemed to be Project Milestones for the purposes of levy and recovery of Damages under and in accordance with the provisions of Clause 12.4.2.

- 10.3.6. The Authority shall procure any additional land that may be required for Aeronautical Assets, Non-Aeronautical Assets or City Side Development or for construction of works specified in Change of Scope Order issued under Article 16, in accordance with the provision of this Agreement, and upon procurement thereof, such land shall form part of the Site; provided that the land to be acquired by the Authority hereunder shall be deemed to be included in the Appendix referred to in this Clause 10.3 and dealt with accordingly, save and except that Damages for delay in procurement thereof shall commence after a period of 270 (two hundred and seventy) days from Appointed Date, instead of 180 (one eighty) days as specified in Clause 10.3.4. For the avoidance of doubt, the Parties agree that any land required for City Side Development, in addition to the land included in Schedule- A, shall be acquired at the sole discretion of the Authority and the Concessionaire shall have no right or claim in the event the Authority declines any such acquisition in whole or in part.

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

Subject to the provisions of Clause 10.3, the Site shall be made available by the Authority to the Concessionaire pursuant hereto free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Concession Period, except insofar as otherwise expressly provided in this Agreement. For the avoidance of doubt, it is agreed that existing rights of way, easements, privileges, liberties and appurtenances to the Site 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 Encumbrances**

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**

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 Airport and the performance of its obligations under this Agreement.

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

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 their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under the Agreement.

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

It is expressly agreed that mining, geological or archaeological rights do not form part of the licence granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Site shall vest in and belong to the 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 Authority or the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Concessionaire hereunder shall be reimbursed by the Authority. It is also agreed that the Authority shall procure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period so as to enable the Concessionaire to continue its Construction Works with such modifications as may be deemed necessary.

## **ARTICLE 11**

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

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

Notwithstanding anything to the contrary contained herein, the Concessionaire shall ensure that the respective entities owning the 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 utility, and the Authority shall, upon written request from the Concessionaire, initiate and undertake the 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 development, operation or maintenance of the Airport. The cost of such shifting shall be borne by the Authority in accordance with the payment terms specified in Clause 11.2.2, or by the entity owning such utility, if the Authority so directs, 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.
- 11.2.2. The Concessionaire shall, after commencement of work in accordance with Clause 11.2.1, 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 90 (ninety) days of receipt of such bills, the Authority shall disburse to the Concessionaire such amounts as are certified by the Independent Engineer as reasonable, and in the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure.

#### **11.3. New utilities and transport systems**

- 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; provided that the laying of such telephone lines, water pipes, electric cables or other public utilities do not in any way adversely impact the operations of the Airport. 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 11.3 shall not in any manner relieve the Concessionaire of its obligation to maintain the Airport in accordance with this Agreement and any damage caused by such use shall be restored forthwith.
- 11.3.2. The Authority may, by notice require the Concessionaire to connect any adjoining transport system, including a mass rapid transit system, approach roads, overbridges/underbridges, overpasses or under-passes, to the Airport. Upon receipt of a notice hereunder, the connecting portion thereof falling within the Site shall be constructed by the Concessionaire in accordance with Article 16, and the maintenance thereof shall be undertaken by the Concessionaire at the Authority's cost in accordance with the provisions of Clause 17.1.3. Provided further that in case such cost are approved by AERA for the purpose of determination of tariff, the same shall not be payable by Authority. In case payment or part payment has already been paid by the Authority to the Concessionaire, the same shall be refunded by the Concessionaire to the Authority in accordance with Clause 16.1.5. For the avoidance of doubt, the provisions of this Clause 11.3.2 shall not apply to a rail link which

may be constructed on such terms as the Parties may mutually determine. Provided further that the provisions of this clause shall not apply to any utilities and transport systems that have been specified in the scope of the Project, or is necessary in meeting the obligations of the Concessionaire.

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

The Authority shall assist the Concessionaire in obtaining the Applicable Permits for felling of trees to be identified by the Authority for this purpose if and only if such trees cause a material adverse effect on the construction, operation or maintenance of the Airport. 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 costs and expense in respect of felling of trees shall be borne by the Concessionaire and any revenues thereof shall be paid to the Authority.

## **ARTICLE 12**

### **12. CONSTRUCTION OF THE AIRPORT**

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

- 12.1.1. Prior to commencement of Construction Works, the Concessionaire shall:
- (a) submit to the Authority and the Independent Engineer its detailed design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in Schedule-G;
  - (b) appoint its representative duly authorised to deal with the Authority and the Independent Engineer in respect of all matters under or arising out of or relating to this Agreement;
  - (c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, Applicable Laws and Applicable Permits; and
  - (d) make its own arrangements for quarrying and procurement of materials needed for the Airport under and in accordance with Applicable Laws and Applicable Permits.
- 12.1.2. The Concessionaire shall, prior to commencement of construction of the Terminal Building, furnish to the Authority and to the Independent Engineer, the architectural parameters, controls, building profiles, facades, dimensions, designs and building materials (the "Architectural Design"), which shall be procured from an architect of international repute.
- 12.1.3. Within 30 (thirty) days of the receipt of the Architectural Design, the Authority and/ or 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 or the aesthetic quality thereof and its harmony with the environment. If the aforesaid observations of the Authority or the Independent Engineer indicate that the Architectural Design is not in conformity with the Scope of the Project or the Specifications and Standards or require improvement in aesthetic quality or harmony with the environment, it shall be revised by the Concessionaire and resubmitted to the Authority and the Independent Engineer for review. The Authority and/ or the Independent Engineer shall give their observations, if any, within 7 (seven) days of receipt of the revised Architectural Design.
- 12.1.4. In the event that any modifications to the Architectural Design shall have been determined under and in accordance with Clause 12.1.3, the Architectural Design shall be deemed to be modified to the extent thereof.
- 12.1.5. The Concessionaire shall not be obliged to await the observations of the Authority on the Architectural Design submitted pursuant hereto beyond the period of 30 (thirty) days specified in Clause 12.1.3, and may begin Construction Works at its own discretion and risk. For the avoidance of doubt, no review and/or observation of the Authority or the Independent Engineer and/or their failure to review and/or convey their observations on the Architectural Design shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority or the Independent Engineer be liable for the same in any manner.
- 12.1.6. In the event that the Concessionaire or the Authority, as the case may be, proposes to modify any element of Architectural Design subsequent to the process specified in Clauses 12.1.2, 12.1.3 and 12.1.5, and notifies the other Party of its intent, a Dispute shall be deemed to have arisen and the provisions of Article 49 shall apply mutatis mutandis for resolution thereof; provided that the Board of Arbitrators to be appointed under the provision of the Clause 49.3 shall only consist of eminent architects of international repute. The fee payable by the Authority for such arbitrators shall, in case the modifications has been proposed by the Concessionaire, be reimbursed by the Concessionaire subject to a limit of Rs. 5,00,000



(Rupees five lakhs) per day. For the avoidance of doubt, the Parties agree that the modifications pursuant to this Clause 12.1.6 shall be deemed to be Change of Scope and shall be undertaken in accordance with the provisions of Article 16.

## **12.2. Master Plan for the Site**

- 12.2.1. The Concessionaire shall at all times procure and ensure that the Airport is constructed and developed in accordance with the Master Plan set forth in Schedule-A.
- 12.2.2. The Concessionaire may, with prior written consent of the Authority, use any area earmarked for future expansion of the Airport, for other purposes incidental to or associated with the Airport, until the same is required for the expansion specified in the Master Plan, subject to the condition that only temporary structures may be constructed in such area and the use thereof shall at all times be in conformity with Applicable Laws and Good Industry Practice.
- 12.2.3. The Concessionaire may, at any time during the Concession Period, seek approval of the Authority for modifications in the Master Plan to improve or augment the Aeronautical Services and upon receipt of any request hereunder, the Authority may grant such approval to the extent reasonably required.

## **12.3. Drawings**

In respect of the Concessionaire's obligations relating to the Drawings of the Airport 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, 3 (three) three hard copies and 1 (one) soft copy of 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 the field construction criteria related thereto, are in conformity with the Scope of the Project, Specifications and Standards, Applicable Laws and Good Industry Practice.
- (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 not relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Engineer or the Authority be liable for the same in any manner.
- (f) Without prejudice to the foregoing provisions of this Clause 12.3, the Concessionaire shall submit to the Authority for review and comments, its Drawings relating to the alignment of Runway, finished Runway level, location and layout of the Aeronautical Assets and Terminal Building and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, within 30 (thirty) days of the receipt of such Drawings. The provisions of this Clause 12.3 shall apply mutatis mutandis to the review and comments hereunder.
- (g) Within 90 (ninety) days of COD for each Phase, the Concessionaire shall furnish to the Authority and the Independent Engineer a complete set of as-built Drawings, in 2 (two)

hard copies and in its editable digital format or in such other medium and manner as may be acceptable to the Authority, reflecting the Airport as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Airport and setback lines, if any, of the buildings and structures forming part of Project Facilities.

#### **12.4. Construction of the Airport**

- 12.4.1. On or after the Appointed Date, the Concessionaire shall undertake construction of the Airport as specified in Schedule-B and Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D and the Master Plan. The 1095th (One thousand and ninety fifth) day from the Appointed Date shall be the scheduled date for completion of Phase-1 of the Project (the “Scheduled Completion Date”) and the Concessionaire agrees and undertakes that construction of the Airport shall be completed on or before the Scheduled Completion Date. For the avoidance of doubt, it is agreed that the Project Completion Schedule and Scheduled Completion Date shall not apply to City Side Development.
- 12.4.2. The Concessionaire shall construct the Airport in accordance with the Project Completion Schedule set forth in Schedule-G. In the event that the Concessionaire fails to achieve any Project Milestone defined for Phase I within a period of 90 (ninety) days from the date set forth for such Project Milestone in Schedule-G, unless such failure has occurred due to Force Majeure or for reasons attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until such Project Milestone is achieved; provided that if any or all Project Milestones or the Scheduled Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-G shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-G has been amended as above; provided further that in the event COD for Phase I is achieved on or before the Scheduled Completion Date, the Damages paid under this Clause 12.4.2 shall be refunded by the Authority to the Concessionaire, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.4.2 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.
- 12.4.3. In the event that the Airport is not completed and COD for Phase I does not occur within 270 (two hundred and seventy) days from the Scheduled Completion Date, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.

#### **12.5. Development of Terminal building**

- 12.5.1. Subject to provisions of Clause 12.4, the Concessionaire shall undertake development of the Terminal Building as specified in Schedule-B together with provision of Project Facilities as specified in Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D.
- 12.5.2. Any development, addition or modification to the Terminal Building and its surrounding areas shall be in accordance with the Architectural Design and Master Plan, and in harmony with the overall design and environment of the Airport.

#### **12.6. Development of Car Park**

- 12.6.1. Subject to the provisions of Clause 12.4, the Concessionaire shall undertake or cause to undertake the development of the Car Park as specified in -B for parking of vehicles (the “Car Park”) together with provision of Project Facilities as specified in Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D.
- 12.6.2. Any development, addition or modification to the Car Park and its surrounding areas shall be in accordance with the Master Plan and in harmony with the overall design and environment of the Airport.

### **12.7. Development of Cargo Facilities**

- 12.7.1. Subject to the provisions of Clause 12.4 and clause 21.1, the Concessionaire shall undertake or cause to undertake the development of Cargo Facilities as specified in Schedule-B together with provision of Project Facilities as specified in Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D.
- 12.7.2. Any development, addition or modification to the Cargo Facilities and its surrounding areas shall be in accordance with the Master Plan and in harmony with the overall design and environment of the Airport.

### **12.8. Expansion of the Airport**

- 12.8.1. As and when the existing Phase(s) of the Airport achieves the traffic trigger as specified in the Master Plan (As per Annexure II of Schedule A), the Applicable Laws, including the DGCA guidelines and regulations prescribed by AERA, Good Industry Practice and the provisions of this Agreement or fall short of the norms and standards specified by ICAO Documents and Annexes, the Concessionaire shall undertake capacity addition and expansion thereof, to meet such shortfall and/or future requirements as described in the Master Plan, Schedule A, Schedule B and other terms of this Agreement.
- 12.8.2. Without prejudice to the provisions of this Article 12, the Concessionaire shall ensure and procure that expansion of the Terminal Building and its surrounding areas shall be in accordance with the Architectural Design and Master Plan, and in harmony with the overall design and environment of the Airport. It shall also ensure and procure that in terms of quality, reliability, efficiency, passenger convenience and aesthetic value, such development is no inferior than the existing Terminal Building.
- 12.8.3. The additional assets and facilities required to be constructed in pursuance of the provisions of Clause 12.8.1 shall be completed and placed into operation within a period not exceeding 3 (three) years from the date on which the shortfall specified therein occurred. For the avoidance of doubt, any assets and facilities constructed under this Clause 12.8 shall be deemed to form part of the Project Assets.
- 12.8.4. The provisions of this Agreement, insofar as they relate to Construction Works, shall apply, mutatis mutandis, to the expansion of the Airport, save and except where express provisions to the contrary have been made in respect thereof.

### **12.9. Deleted**

### **12.10. Development of MRO Facilities**

- 12.10.1. Subject to the provisions of this Clause 12.10 the Concessionaire shall have to mandatorily undertake the development of the MRO Facilities latest by 10th anniversary of the COD of Phase I, as specified in Schedule B together with provision of Project Facilities as specified in Schedule C, in conformity with the Specifications and Standards set forth in Schedule D and in accordance with the provisions of this Agreement, Applicable Laws, relevant ICAO Documents and Annexes, CAR Guidelines and Good Industry Practice.
- 12.10.2. Any development, addition or modification to the MRO Facilities and its surrounding areas shall be in accordance with the Master Plan and in harmony with the overall design and environment of the Airport.

## **ARTICLE 13**

### **13. MONITORING OF CONSTRUCTION**

#### **13.1. Monthly progress reports**

During the Construction Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority and the Independent Engineer a monthly report on progress (both physical and financial) of the Construction Works executed and next month's construction plan along with other relevant information as may be required by the Independent Engineer or the Authority.

#### **13.2. Inspection**

During the Construction Period, the Independent Engineer shall inspect the Airport works,, 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 Project Completion Schedule, Scope of the Project and Specifications and Standards. It shall send a copy of the Inspection Report to the Authority and the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Independent Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever. For the avoidance of doubt, the Parties expressly agree that the functions of the Independent Engineer under this Article 13 shall not include City Side Development.

#### **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, Applicable Laws, Applicable Permits and terms of this Agreement for quality assurance. The size of sample for such tests shall, to the extent possible, not exceed 10% (ten per cent) of the quantity and/or number of tests that the owner or builder of such works would normally undertake in accordance with Good Industry Practice, Applicable Laws, Applicable Permits and terms of this Agreement. 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. Provided, however, that the Independent Engineer may, instead of carrying out the tests specified hereunder, at its option decide to witness, or participate in, any of the tests to be undertaken by the Concessionaire for its own quality assurance in accordance with Good Industry Practice, and in such an event, the Concessionaire shall cooperate with, and provide the necessary assistance to, the Independent Engineer for discharging its functions hereunder. 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 the Specifications and Standards, and the procedure set forth in this Clause 13.3 shall be repeated until such Construction Works conform to the Specifications and Standards. For the avoidance of doubt, it is agreed that tests pursuant to this Clause 13.3 shall be undertaken in addition to and independent of the tests that shall be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy

of the results of such tests shall be sent by the Concessionaire to the Independent Engineer forthwith.

#### **13.4. Delays during construction**

Without prejudice to the provisions of Clause 12.4.2, if the Concessionaire does not achieve any of the Project Milestones or the Independent Engineer shall have reasonably determined that the rate of progress of Construction Works is such that the Airport is not likely to be completed by the Scheduled Completion Date, notify the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Authority and the Independent Engineer in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve COD for Phase I.

#### **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 or any other person on or about the Airport. Provided, however, that in case of an emergency, the Authority may suo moto issue the notice referred to hereinabove.
- 13.5.2. The Concessionaire shall, pursuant to the notice under Clause 13.5.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works and the Users. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Independent Engineer, the Authority shall either revoke such suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this Clause 13.5 shall be repeated until the suspension hereunder is revoked.
- 13.5.3. Subject to the provisions of Clause 39.7, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (the "Preservation Costs") shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the Authority, the Preservation Costs shall be borne by the Authority.
- 13.5.4. If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine any extension of the dates set forth in the Project Completion Schedule to which the Concessionaire is reasonably entitled, and shall notify the Authority accordingly whereupon the Authority shall extend such Project Completion Schedule dates in accordance with the recommendations of the Independent Engineer. In the event that the Scheduled Completion Date is extended pursuant hereto, the Concession Period shall be deemed to be extended by a period equal in length to the period of extension of the Scheduled Completion Date.

#### **13.6. Video recording**

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

## **ARTICLE 14**

### **14. COMPLETION CERTIFICATE**

#### **14.1. Tests**

- 14.1.1. No later than 90 (ninety) days prior to the likely completion of the respective phase of the Airport, the Concessionaire shall notify the Authority and the Independent Engineer of its intent to subject the Airport to Tests. The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Concessionaire, and notified to the Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Engineer failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) days' notice to the Independent Engineer, and in the event the Independent Engineer delays the Tests hereunder, the Authority shall impose exemplary penalties on the Independent Engineer and shall ensure that Tests are completed in time either by the Independent Engineer or any substitute thereof. For the avoidance of doubt, it is agreed that the provisions of this Article 14 shall not apply to City Side Development.
- 14.1.2. All Tests shall be conducted in accordance with Schedule-I at the cost and expense of the Concessionaire. The Independent Engineer shall observe, monitor and review the results of the Tests to determine compliance of the Airport with Specifications and Standards and if it is reasonably anticipated or determined by the Independent Engineer during the course of any Test that the performance of the Airport or any part thereof does not meet the Specifications and Standards, Applicable Laws, Applicable Permits and terms of this agreement, it shall have the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Independent Engineer shall provide to the Concessionaire and the Authority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent Engineer may require the Concessionaire to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Airport with Specifications and Standards, Applicable Laws, Applicable Permits and terms of this agreement.

#### **14.2. Completion Certificate**

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

#### **14.3. Provisional Certificate**

- 14.3.1. The Independent Engineer may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Schedule-J (the "Provisional Certificate") if the Tests are successful and the Airport can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. In such an event, the Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire (the "Punch List"); provided that the Independent Engineer shall not withhold the Provisional Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the Authority.
- 14.3.2. The Parties hereto expressly agree that a Provisional Certificate under this Clause 14.3 may, upon request of the Concessionaire to this effect, be issued for operating part of the Airport, if it can be safely and reliably placed in commercial operation in accordance with the

provisions of Clause 14.3.1. Upon issue of such Provisional Certificate, the provisions of this Agreement shall apply to such completed part of the Airport, and the rights and obligations of the Concessionaire for and in respect of such completed part of the Airport shall be construed accordingly.

#### **14.4. Completion of Punch List items**

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

#### **14.5. Withholding of Provisional or Completion Certificate**

- 14.5.1. If the Independent Engineer determines that the Airport or any part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in commercial operation, it shall forthwith make a report in this behalf and send copies thereof to the Authority and the Concessionaire. Upon receipt of such a report from the Independent Engineer and after conducting its own inspection, if the Authority is of the opinion that the Airport is not fit and safe for commercial service, it shall, within 7 (seven) days of receiving the aforesaid report, notify the Concessionaire of the defects and deficiencies in the Airport and direct the Independent Engineer to withhold issuance of the Provisional Certificate or Completion Certificate, as the case may be. Upon receipt of such notice, the Concessionaire shall remedy and rectify such defects or deficiencies and thereupon Tests shall be undertaken in accordance with this Article 14. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.
- 14.5.2. Notwithstanding anything to the contrary contained in Clause 14.5.1, the Authority may, at any time after receiving a report from the Independent Engineer under that Clause, direct the Independent Engineer to issue a Provisional Certificate under Clause 14.3 or Completion Certificate under Clause 14.2, and such direction shall be complied forthwith.

#### **14.6. Rescheduling of Tests**

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

## **ARTICLE 15**

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

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

- 15.1.1. Each Phase of the Airport shall be deemed to be complete when the Completion Certificate or the Provisional certificate for such Phase, as the case may be, is issued under the provision of Article 14, and accordingly the commercial operation date of the respective Phase of the Airport shall be the date on which such Completion Certificate or the Provisional Certificate is issued and the Concessionaire shall have obtained the Applicable Permits, including the licence from DGCA to operate the respective Phase of the Airport (“the COD”). The Airport shall enter into commercial service on COD for Phase I whereupon the Concessionaire shall be entitled to demand and collect Fee in accordance with the provisions of Article 32.
- 15.1.2. In the event that the Authority prevents, or causes to be prevented, or in any manner delays the entry of the Airport into commercial service after issuance of Completion Certificate or the Provisional Certificate, as the case may be, or where such delay occurs in the issuance of such certificate by the Independent Engineer for any reason attributable to the Independent Engineer or the Authority, as the case may be, the Concessionaire may declare COD for respective Phase and notify the Authority forthwith. In the event of any Dispute relating to the declaration of COD for respective Phase hereunder, the Dispute Resolution Procedure shall apply.

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

Subject to the provisions of Clause 12.4 and 12.8, if COD for respective Phase does not occur prior to the 91st (ninety first) day after the Scheduled Completion Date, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until COD for respective Phase is achieved.



## **ARTICLE 16**

### **16. CHANGE OF SCOPE**

#### **16.1. Change of Scope**

- 16.1.1. The Authority may, notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 16.1.4, require the provision of additional works and services which are not included in the Master Plan as set out in Schedule A and are necessary for the performance of the Aeronautical Services, shall be considered as change of scope (the "Change of Scope"). Any such Change of Scope shall be made in accordance with the provisions of this Article 16 and the costs thereof shall be expended by the Concessionaire and reimbursed to it by the Authority in accordance with Clause 16.3.
- 16.1.2. If the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved services to the Users, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 15 (fifteen) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefor in accordance with this Article 16 or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope.
- 16.1.3. Any works or services which are provided under and in accordance with this Article 16 shall form part of the Airport and the provisions of this Agreement shall apply mutatis mutandis to such works or services.
- 16.1.4. The Concessionaire acknowledges and agrees that any expansion of the Airport, including expansion of Aeronautical Assets and Non-Aeronautical Assets, which is necessary for compliance of the provisions of this Agreement, shall not form part of Change of Scope and shall be undertaken at the cost and expense of the Concessionaire.
- 16.1.5. Subject to the provisions of Clause 32.5.2 and 32.6, if the Capital expenditure or part thereof incurred due to a Change of Scope order is accepted and considered by AERA for the determination of tariff, then all such approved expenditure for the implementation of such Change of Scope order shall be borne by the Concessionaire. Further if the Concessionaire has received any payment from the Authority under the provisions of Article 16 for Change of Scope and the Change of Scope order or part thereof is accepted and considered by AERA for the determination of tariff, the Concessionaire shall refund the amounts (or part thereof in the ratio of expenditure approved by AERA vis-à-vis total expenditure as per change in Scope order) received from the Authority for such Change of Scope in not more than 60 days of AERA accepting such Capital expenditure for the determination of tariff. It is further clarified that such refunded amount shall not bear any interest if the payment is done within 60 days of AERA accepting such capital expenditure for the determination of tariff. Beyond 60 days, an interest rate as per ongoing Bank rate plus 3 percent shall be applicable for each additional day of delay.

#### **16.2. Procedure for Change of Scope**

- 16.2.1. In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder (the "Change of Scope Notice").
- 16.2.2. Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Authority within a period of 45 (forty-five) days, 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 or Phase 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 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 as a Change of Scope under this Article 16.

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

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 as are certified by the Independent Engineer as reasonable and 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. Provided however that the Authority may instead of making a payment hereunder, procure such payment in accordance with the provisions of Clause 32.5.

### **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 Airport by the Scheduled Completion Date; provided that in the event that the Authority considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of or affected by such Order shall not be reckoned for purposes of determining completion of the Airport 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 10% (ten 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 25% (twenty-five 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 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 2.5% (two point five

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. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not undertake any works or services under this Clause 16.5.1 if such works or services cause a Material Adverse Effect on the Concessionaire.

- 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 disruption in operation and management of the Airport. 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.

## **ARTICLE 17**

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

- (a) ensuring to provide the Aeronautical Services, Non-Aeronautical Services and such other services, as are required as per the terms of this Agreement and Good Industry Practice;
- (b) permitting safe, smooth and uninterrupted movement of Users and flow of traffic on the Airport, including prevention of loss or damage thereto, during normal operating conditions;
- (c) collecting and appropriating the Fee;
- (d) minimising disruption to movement of Users and flow of traffic in the event of accidents or other incidents affecting the safety and use of the Airport by providing a rapid and effective response and maintaining liaison with emergency services of the State;
- (e) carrying out periodic preventive maintenance of the Airport;
- (f) ensuring that the Aeronautical Assets, including Runways, taxiways, aprons and approach areas are maintained and operated in accordance with the provisions contained in Applicable Laws, Applicable Permits and relevant ICAO Documents and Annexes;
- (g) ensuring that Runways, including the strips, shoulders, stop way and RESA for Runway and strips and shoulders for taxiways and isolation bays are maintained in accordance with the provisions contained in Applicable Laws, Applicable Permits and relevant ICAO Documents and Annexes;
- (h) ensuring that the obstacle limitation surfaces of the Airport and the approach and take-off areas shall be maintained free from obstructions or that the obstructions shall be limited to the permissible limits specified in Applicable Laws and relevant ICAO Documents and Annexes;
- (i) undertaking routine maintenance including prompt repairs of cracks, joints, drainage systems, embankments, structures, buildings, pavement markings, signaling systems, communication systems, lighting, road signs and other equipment;
- (j) undertaking major maintenance such as repairs to structures, repairs and refurbishment of equipment, signaling and communication system and major overhaul of equipment;
- (k) procuring that the sensitive and critical areas, as identified by the Authority or the Designated GOI Agency, as the case may be, for the operation of CNS/ATM Equipment and facilities shall be maintained free of any obstructions and that no obstruction which may hamper the safety or functioning of these equipments and facilities or endanger the safety of aircraft operations shall be permitted;
- (l) procuring that appropriate arrangements and precautions have been undertaken at the Airport to prevent bird and animal nuisance in and around the operational areas, Runway and taxiways;
- (m) maintaining the Airfield Lighting System and the main and standby power supply systems in accordance with the standards prescribed in Applicable Laws, latest DGCA CAR and relevant ICAO Documents and Annexes;
- (n) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on, unauthorized entry to or unauthorized use of the Airport;

- (o) protection and conservation of the environment and provision of equipment and materials therefor;
  - (p) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation and management of the Aeronautical and Non-Aeronautical Services;
  - (q) maintaining a public relations unit to interface with and attend to suggestions from the Users, Government Instrumentalities, media and other agencies in accordance with the Applicable Laws, for providing the requisite information;
  - (r) complying with Safety Requirements in accordance with Article 23;
  - (s) operation and maintenance of all Project Assets diligently and efficiently and in accordance with Good Industry Practice;
  - (t) maintaining punctuality and reliability in operating the Airport;
  - (u) maintaining a high standard of cleanliness and hygiene on the Airport;
  - (v) taking all measures relating to fire precautions in accordance with relevant ICAO standards, Applicable Laws, Applicable Permits and Good Industry Practice; and
  - (w) providing all the requisite information, data, operating statistics, etc., as may be required by the Authority, any of the Government Instrumentality, DGCA, GoUP or GOI, from time to time.
- 17.1.2. The Concessionaire shall promptly remove from the Airport 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 Airport in a clean, tidy and orderly condition, and in conformity with Applicable Laws, Applicable Permits and Good Industry Practice.
- 17.1.3. The Concessionaire shall maintain, in conformity with Good Industry Practice, all stretches of approach roads, over-bridges/ under-bridges, over-passes, under-passes or other structures situated on the Site but not forming part of the Airport.

### **17.2.Maintenance Requirements**

The Concessionaire shall procure that all times during the Operations Period, the Airport conform to the maintenance requirements set forth in Schedule-K (the “Maintenance Requirements”).

### **17.3.Maintenance Manual**

- 17.3.1. No later than 90 (ninety) days prior to the Scheduled Completion Date, the Concessionaire shall, in consultation with the Independent Engineer, evolve a repair, operation and maintenance manual (the “Maintenance Manual”) for the regular and preventive maintenance of the Airport in conformity with the Specifications and Standards, Maintenance Requirements, Safety Requirements, standards prescribed in the relevant ICAO Documents and Annexes, the applicable guidelines notified by the DGCA from time to time 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, to such revision. For the avoidance of doubt, the provisions of this Clause 17.3 shall not apply to City Side Development.
- 17.3.2. Without prejudice to the provision of Clause 17.3.1, the Maintenance Manual shall, in particular, include provisions for maintenance of Project Assets and shall provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Project Assets, including replacement thereof, such that their overall condition conforms to Good Industry Practice.

### **17.4.Maintenance Programme**

- 17.4.1. On or before COD for each Phase and no later than 45 (forty-five) days prior to the beginning of each Accounting Year during the Operation Period, as the case may be, the Concessionaire shall provide to the Authority and the Independent Engineer, its proposed annual programme of preventive, urgent and other scheduled maintenance (the “Maintenance Programme”) to

comply with the Maintenance Requirements, Maintenance Manual and Safety Requirements. 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 Airport;
  - (e) intervals at which the Concessionaire shall carry out periodic maintenance;
  - (f) arrangements and procedures for carrying out safety related measures; and
  - (g) intervals for major maintenance works and the scope thereof.
- 17.4.2. Within 15 (fifteen) days of receipt of the Maintenance Programme, the Independent Engineer shall review the same and convey its comments to the Concessionaire with particular reference to its conformity with the Maintenance Requirements, Maintenance Manual and Safety Requirements.
- 17.4.3. The Concessionaire may modify the Maintenance Programme as may be reasonable in the circumstances, and the procedure specified in Clauses 17.4.1 and 17.4.2 shall apply mutatis mutandis to such modifications.

### **17.5.Safety, breakdowns and accidents**

- 17.5.1. The Concessionaire shall ensure safe conditions for the Users, and in the event of unsafe conditions, damage to Runway or taxiway, disruption in Airfield Lighting System, breakdowns and accidents, it shall follow the relevant operating procedures and undertake removal of obstruction and debris without delay. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits, and the standards prescribed in the relevant ICAO Documents and Annexes and Good Industry Practice.
- 17.5.2. The Concessionaire's responsibility for rescue operations on the Airport shall include safe evacuation of all Users and staff from the affected area as an initial response to any particular incident and shall also include prompt removal of debris or any other obstruction, which may endanger or interrupt the smooth flow of traffic and movement of the Users. For this purpose, it shall maintain and operate 2 (two) round-the-clock rescue vehicles with rescue equipment and position the vehicles in a manner that allows prompt access to the accident site.

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

- 17.6.1. If, in the reasonable opinion of the Concessionaire, there exists an Emergency which warrants de-commissioning and closure of the whole or any part of the Airport, the Concessionaire shall be entitled to de-commission and close the whole or any part of the Airport to Users for so long as such Emergency and the consequences thereof warrant; provided that such de-commissioning 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 Airport or the affected part thereof as quickly as practicable after the circumstances leading to its de-commissioning and closure have ceased to exist or have so abated as to enable the Concessionaire to re-commission the Airport and shall notify the Authority of the same without any delay.
- 17.6.3. Any decommissioning or closure of any part of the Airport and the re-commissioning thereof shall, as soon as practicable, be brought to the notice of affected persons by means of public announcements/notice.
- 17.6.4. No claim or compensation shall be due and payable to the Concessionaire on account of de-commissioning or restricted use of the Airport or any part thereof during an Emergency or for reasons of national security and public interest.

### **17.7.Section closure**

- 17.7.1. Save and except as provided in Clause 17.6, the Concessionaire shall not close any section of the Airport for undertaking routine and preventive maintenance or repair works, not forming part of the Maintenance Programme, except with the prior written approval of the

- Independent Engineer. Such approval shall be sought by the Concessionaire through a written request to be made to the Independent Engineer, and a copy thereof furnished to the Authority, at least 7 (seven) days before the proposed closure of such section and shall be accompanied by particulars thereof. Within 3 (three) days of receiving such request, the Independent Engineer shall grant permission with such modifications as it may deem reasonable and necessary in conformity with the Maintenance Manual and Maintenance Programme and a copy of such permission shall be sent to the Authority.
- 17.7.2. The provisions of Clause 17.7.1 shall not apply to de-commissioning under Clause 17.6.1 or to closure of any section of the Airport for a period not exceeding 6 (six) hours in a day at any time of the day specified by the Independent Engineer as Off-Peak Period for this purpose.
- 17.7.3. Upon receiving the permission pursuant to Clause 17.7.1, the Concessionaire shall be entitled to close the designated section for the period specified therein, and in the event of any delay in re-opening such section, the Concessionaire shall pay Damages to the Authority calculated at the rate of 0.1% (zero point one per cent) of the Average Daily Revenue, for each day of delay until the section has been re-opened for traffic.

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

- 17.8.1. In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the higher of (a) 0.5% (zero point five per cent) of Average Daily Revenue, 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.
- 17.8.2. The Damages set forth in Clause 17.8.1 may be assessed and specified forthwith by the Independent Engineer; provided that the Authority may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Concessionaire is otherwise in compliance with its obligations hereunder. The Concessionaire shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution Procedure shall apply.

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

- 17.9.1. In the event the Concessionaire does not maintain and/or repair the Airport or any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual or the Maintenance Programme, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from the Authority or the Independent Engineer, as the case may be, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Concessionaire to the Authority as Damages. For the avoidance of doubt, the right of the Authority under this Clause 17.9.1 shall be without prejudice to its rights and remedies provided under Clause 17.8.
- 17.9.2. The Authority has the right, to recover the costs and Damages specified in Clause 17.9.1 directly from the Escrow Account as if such costs and Damages were O&M Expenses, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Authority under this Clause 17.9.2 and debit the same to O&M Expenses. The amount recovered as Damages shall not be considered for pass through for the determination of the Aeronautical Charges.

### **17.10. Overriding powers of the Authority**

- 17.10.1. If in the reasonable opinion of the Authority, the Concessionaire is in material breach of its obligations under this Agreement and, in particular, the Maintenance Requirements, and such breach is causing or likely to cause material hardship or danger to the Users, the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.
- 17.10.2. In the event that the Concessionaire, upon notice under Clause 17.10.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Clause 17.10.2 and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Authority shall be entitled to recover them from the Concessionaire in accordance with the provisions of Clause 17.9 along with the Damages specified therein. The amount so recovered as damages in accordance with provision of the Clause 17.9 shall not be considered for pass-through in the determination of the Aeronautical Charges.
- 17.10.3. In the event of a national emergency, civil commotion or any other act specified in Clause 39.3, the Authority may take over, or authorise any Designated GOI Agency to take over, the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it, and exercise such control over the Airport or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 39. It is also agreed that the Concessionaire shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause 17.10, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

### **17.11. Restoration of loss or damage to the Airport**

Save and except as otherwise expressly provided in this Agreement, in the event that the Airport 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 Airport conforms to the provisions of this Agreement. If such loss or damage has resulted due to any breach or default in the performance obligations of the Concessionaire under this Agreement, then, the costs undertaken by the Concessionaire on the repair or rectification of such loss or damage, shall not be taken into consideration for the purposes of the determination of the Aeronautical Charges.

### **17.12. Modifications to the Airport**

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



Requirements, Specifications and Standards, Applicable Laws, Applicable Permits, Good Industry Practice and the provisions of this Agreement.

17.12.2. The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply mutatis mutandis to the all Construction Works forming part of modification of the Airport.

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

The Concessionaire shall not be considered in breach of its obligations under this Agreement if any part of the Airport is not available to Users 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 Airport 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 Airport.

Provided that any such non-availability and particulars thereof shall be notified by the Concessionaire to the Authority and the Independent Engineer without any delay;

Provided further that the Concessionaire shall keep all unaffected parts of the Airport open to traffic, provided they can be operated safely.

### **17.14. Barriers and diversions**

The Authority shall procure that during the Operation Period, no barriers or obstructions are erected or placed by any Government Instrumentality on the Airport except for reasons of Emergency, national security, or law and order. The Authority shall also make best endeavours to procure that no Government Instrumentality shall undertake or cause to be undertaken, except for reasons of Emergency, national security or law and order, any diversions, or closing down of approach roads to the Airport that may cause a Material Adverse Effect on the movement to and from the Airport.

### **17.15. Use of Airport by Defence Forces**

17.15.1. The Concessionaire acknowledges and agrees that the Defence Forces shall, at all times have the right to use the Airport and all facilities thereof, without any restriction or constraint of any nature whatsoever, in accordance with Applicable Laws and subject to condition specified in Clause 17.15.3.

17.15.2. Without prejudice to the provisions of Clause 17.15.1, the Concessionaire's obligations to the Defence Forces in respect of allocation and closure of airspace and usage of the Airport during an Emergency shall be determined by GOI from time to time, and to the extent thereof, the Concessionaire shall be relieved of its obligations to provide services to civilian users of the Airport.

17.15.3. Notwithstanding anything contained contrary elsewhere, the Concessionaire shall:

- (a) make the Airport and the Project Facilities available, free of charge and to the extent necessary, for the use by military and paramilitary aircraft, for meeting exigencies such as war, natural disaster/ calamities, internal disturbances etc. in accordance with the provisions of the Union War Book of the GOI;
- (b) provide a separate apron of approximately 450Mx150M for parking wide bodied aircraft with office space for operation of IAF aircraft during hostilities/exercise/HADR missions;
- (c) provide uninterrupted landing and parking facilities for defence and other paramilitary aircrafts, free of landing and parking charges, and also provide the infrastructure facilities and equipment required for defence operations;
- (d) make available to the security agencies access to the Airport for periodic and surprise inspections;

- (e) obtain approval of the relevant Government Instrumentalities for hiring of foreign nationals for senior decision making positions in any position at Key Managerial Person;
- (f) provide 10 acres of land gratis for development of IAF enclave;
- (g) adhere to the security measures laid down by the BCAS and DGCA;
- (h) obtain prior verification of the credentials of foreign firms to be engaged for construction, ground handling or other important activities at the Site and the Airport;
- (i) obtain clearance relating to the foreign direct investment limits in the development of the Airport from concerned Government Instrumentalities, if so required, and any change in the control or ownership shall be subject to security clearance from national security angle;
- (j) ensure the requisite infrastructure for handling international passengers and crew who must pass through immigration and customs; and
- (k) ensure appropriate arrangements for health services and plant quarantine at the Airport.

#### **17.16. O&M of City Side Development**

The Parties expressly agree that the provisions of Article 17 shall not apply to City Side Development; provided, however, that the Concessionaire agrees and undertakes to maintain City Side Development at all times in accordance with Good Industry Practice and Applicable Laws.

#### **17.17. Use of Airport by Authority**

The Concessionaire shall provide adequate space for parking of 2 (two) Code C aircrafts (aeroplane and helicopter) of the Authority or its nominees including 1 (one) hangar in the Airport. The Concessionaire agrees and undertakes to cooperate with and assist the Authority and its nominees, in the movement of their aircraft at the Airport and to facilitate the use of the Airport, on priority basis.

#### **17.18. Electricity and water supply**

17.18.1. The Concessionaire shall procure water and electricity, as may be necessary for operation of the Airport, from the respective local utilities upon payment of charges in accordance with Applicable Laws. It is agreed that the Concessionaire shall install its own plant for standby supply of electricity as may be necessary for operation of the Airport.

17.18.2. The Concessionaire shall comply with the provisions of the Electricity Act, 2003 and the rules and regulations made thereunder for the purposes of the availing, generation or distribution of the electricity, for the purposes of the Project.

## ARTICLE 18

### 18. OPERATION OF AERONAUTICAL ASSETS

#### 18.1. Operation and management of Aeronautical Assets

- 18.1.1. Save and except as provided in this Agreement, the Concessionaire shall undertake the operation and management of the Aeronautical Assets in accordance with the provisions of this Agreement, Applicable Laws and Good Industry Practice.
- 18.1.2. The Concessionaire shall operate the Aeronautical Assets in accordance with the Specifications and Standards set forth in Schedule–D and the standards specified from time to time by the DGCA and ICAO or any successor thereof. Without prejudice to the generality of this Article 18, the Concessionaire shall procure that the Aeronautical Assets at all times comply with the regulations relating to the safety and security of aircrafts and passengers, and other persons at the Airport.
- 18.1.3. Save and except as provided in this Agreement, the Concessionaire shall regulate the use of the Aeronautical Assets by third parties and provide non-discriminatory access to all airlines and passengers in accordance with Applicable Laws and the provisions of this Agreement. For the avoidance of doubt, provision of different levels of services for identified categories of aircrafts and passengers shall not be construed as discrimination hereunder.
- 18.1.4. The Concessionaire shall at all times keep free from obstruction all areas meant for circulation and use by aircrafts.
- 18.1.5. The Concessionaire shall, subject to conformity with the standards for signage as may be specified by ICAO from time to time, provide directions, signs and signals for the safe and efficient use of Aeronautical Assets.
- 18.1.6. The space and access required for provision of Reserved Services shall be provided by the Concessionaire in accordance with the provisions of Clause 22.8.

#### 18.2. Ground Handling Services

- 18.2.1. The Concessionaire shall provide or cause to be provided, the infrastructure required for operation of the ground handling services required at the Airport for and in respect of aircrafts, passengers and cargo, which shall include ramp handling, traffic handling, aircraft handling, aircraft cleaning, loading and unloading (the “Ground Handling Services”). Such infrastructure shall include luggage conveyor belts, computer terminals, IT backbone and all other associated facilities in accordance with the provisions of this Agreement, Applicable Laws and Good Industry Practice.
- 18.2.2. The Concessionaire shall provide or cause to be provided Ground Handling Services in accordance with the provisions of this Agreement and Good Industry Practice. Further, Concessionaire shall procure additional 3rd party Ground handling service provider if required as per Applicable Laws.

#### 18.3. Aircraft Fueling Services

- 18.3.1. The Concessionaire shall provide, or cause to be provided, the infrastructure required for operation of fuelling services for aircrafts at the Airport (the “Aircraft Fuelling Services”). Such infrastructure shall include tank farms, common hydrant fuelling systems and associated facilities in accordance with the provisions of this Agreement, Applicable Laws and Good Industry Practice.
- 18.3.2. The Concessionaire shall provide or cause to be provided, Aircraft Fuelling Services in accordance with the provisions of this Agreement and Good Industry Practice. Further, Concessionaire shall procure additional 3rd party Aircraft Fuelling Services provider if required under Applicable Laws.

## ARTICLE 19

### 19. OPERATION OF TERMINAL BUILDING

#### 19.1. Operation and management of Terminal Building

- 19.1.1. The Concessionaire shall undertake the operation and management of the Terminal Building in accordance with the provisions of this Agreement, Applicable Laws and Good Industry Practice. Without prejudice to the generality of this Article 19, the Concessionaire shall procure that the spaces within the Terminal Building are used for the respective purposes specified in Schedule–B and Schedule–C.
- 19.1.2. The Concessionaire shall operate the Terminal Building in accordance with the Specifications and Standards set forth in Schedule-D and the standards specified from time to time by the IATA or any successor thereof.
- 19.1.3. The Concessionaire shall regulate the use of the Terminal Building by third parties and provide non-discriminatory access to all airlines and passengers in accordance with Applicable Laws and the provisions of this Agreement. For the avoidance of doubt, provision of different levels of services for identified categories of airlines and passengers shall not be construed as discrimination hereunder.
- 19.1.4. The Concessionaire shall at all times keep free from obstruction all areas meant for circulation and use by passengers.
- 19.1.5. The Concessionaire shall provide adequate number of conveyor belts for luggage such that a conveyor belt is available to 95% (ninety-five per cent) of all arriving aircrafts within 10 (ten) minutes of their arrival, and shall operate and maintain the conveyor belts to procure efficient movement of passenger baggage at the Terminal Building.
- 19.1.6. The Concessionaire shall provide and maintain an adequate supply of efficient baggage trolleys within easy reach of the baggage claim areas and at the entry points of the Terminal Building. For the avoidance of doubt, the Parties agree that advertisements may be displayed on the trolleys.
- 19.1.7. The Concessionaire shall, procure the availability of porter services for passengers on payment of charges.
- 19.1.8. The Concessionaire shall at all times provide, or cause to be provided, within the Terminal Building, all of the following:
  - (a) Free drinking water outlets for passengers at not less than 3 (three) locations, of which one shall be located within the security hold area for passengers;
  - (b) vending machines installed at not less than 5 (five) convenient locations for dispensing bottled water, packed food/snacks and beverages at maximum retail price; and
  - (c) not less than [4 (four)] kiosks or outlets for vending beverages and snacks to passengers, and operated by competing vendors.
- 19.1.9. The Concessionaire shall, subject to conformity with the standards for signage as may be specified by ICAO from time to time, provide directions, signs, signals, public announcement systems and enquiry counters to facilitate passengers and assist them in finding their way to airlines counters, travel facilities, passenger amenities and Cargo Facilities.
- 19.1.10. The Concessionaire shall ensure the availability of waiting areas for passengers such that seating capacity for atleast 30% (thirty per cent) of the Peak Hour Traffic is available at the Terminal Building.
- 19.1.11. The Concessionaire shall ensure that the Terminal Building is open to passengers during airport operating hours, including on public holidays, and at all times during 120 (one hundred and twenty) minutes before the scheduled departure of a flight and 60 (sixty) minutes after the arrival thereof, or as may be specified by the Authority in accordance with the security requirements and Good Industry Practice.

#### 19.2. Level of Service

- 19.2.1. The Concessionaire agrees and undertakes that the level of service in the Terminal Building shall, during the Peak Hour, be no inferior to ‘Level of Service optimum or similar standard

as specified by IATA from time to time and in the event it is observed that the level of service is inferior to IATA 'Level of Service Optimum during Peak Hours in any quarter and does not within 90 (ninety) days from the occurrence of such degradation of level of service improve to at least Level of Service – Optimum in any Accounting Year, the Concessionaire shall pay Damages to the Authority which shall be determined at the rate of 1% (One percent) of the total revenue from Fees of that Accounting Year. It may be clarified that such Damages shall not be treated as pass through cost for the determination of Aeronautical Tariff.

19.2.2. The Concessionaire shall publish and implement the Passenger Charter in accordance with the provisions of Clause 26.10.

### **19.3. Passengers who require special assistance**

19.3.1. The Concessionaire shall ensure that the Terminal Building shall meet the travelling needs of elderly persons, and physically or visually challenged passengers and visitors, including the provision of ramp ways, modified toilets, wheel chairs and earmarked parking slots in conformity with Good Industry Practice and at no extra cost to such passengers and visitors.

19.3.2. The Concessionaire shall ensure provision of child care room and facilities within the Terminal Building, at no additional cost to passengers.

19.3.3. The Concessionaire shall set up and operate first aid facilities within the Terminal Building in the manner specified in Clause 5.12.

### **19.4. Reserved Area**

19.4.1. The space for the following entities or purposes, shall constitute the Reserved Area in the Terminal Building:

- (a) the Authority;
- (b) security
- (c) DGCA;
- (d) VIP lounges;
- (e) immigration;
- (f) customs;
- (g) quarantine;
- (h) health; and
- (i) Government of UP, Government of India and any other designated agencies, as required by Applicable Laws.

19.4.2. Control over the Reserved Area shall vest in the Authority and the respective Designated GOI Agencies responsible for carrying out the functions for which the space has been earmarked under Clause 19.4.1 or for any other purpose analogous to the purposes specified in Clause 19.4.1. The obligations of the Concessionaire in respect of Reserved Areas and its access thereto shall be restricted to maintenance of civil works, structures and equipment forming part of the Reserved Area; provided that it shall have unrestricted access thereto in case of Emergency, fire or other similar event.

19.4.3. The Concessionaire shall supply electricity and water, at its own cost and expense, to the Reserved Area within the Terminal Building. For avoidance of doubt, it is clarified that the cost of serving electricity/water to the reserved area for operational requirement only that has been mutually agreed between the Concessionaire and the relevant Government Instrumentality in the Master Plan prepared by the Concessionaire as per Schedule G shall be treated as, aeronautical cost and pass through, provided, the Concessionaire provides electricity & water, free of cost to these Reserved Area. However, the Designated GOI agency or the Concessionaire as per their mutual agreement will have to bear the cost in case of areas allotted for non-operational (other than public places) areas.

19.4.4. To the extent central air conditioning is installed and operated in the Terminal Building, the Concessionaire shall not deny the benefit thereof to the Reserved Area; provided that this obligation shall not extend to the hours when general air conditioning is switched off for passenger lounges and other common areas within the Terminal Building.

- 19.4.5. Notwithstanding anything to the contrary contained in this Clause 19.4, the Authority may, with consent of the Concessionaire, transfer the Reserved Area or any part thereof to the Concessionaire on such terms and conditions as may be agreed upon. In such an event, the Concessionaire shall make best endeavours to cooperate with the Authority, including the agencies designated by it, for procuring a safe and efficient environment in the Reserved Area.
- 19.4.6. If and when additional space is required for the purposes specified in Clause 19.4.1, the Concessionaire shall, in consultation with the relevant Designated GOI Agency, provide additional space to form part of the Reserved Area, on such terms and conditions as may be mutually agreed upon. For the avoidance of doubt, the Parties expressly agree that in the event additional space is required for expansion of the Reserved Area, the Concessionaire shall be entitled to recover from the relevant Designated GOI Agency a monthly rent equivalent to 50% (fifty per cent) of the average monthly rent received by the Concessionaire for all the space rented out by it in the Terminal Building during the preceding Accounting Year, and such rent shall be revised once in every 3 (three) years. It is clarified that consideration of additional cost for the purpose of pass-through for the determination of aeronautical tariff by AERA, only to the extent this additional cost is provided free of cost by the Concessionaire to the Designated GOI Agencies, shall be assessed by AERA on the merits of the case.
- Provided, however, that in the event the Terminal Building is expanded for handling additional passenger traffic, the Concessionaire shall provide additional space, free of cost, on a proportionate basis for use as Reserved Area and the treatment of such cost for the purpose of aeronautical tariff determination shall be undertaken as specified in clause 19.4.3

#### **19.5. VIP Lounges**

The Concessionaire shall provide and maintain, at all times, VIP lounges in the Terminal Building for the use and comfort of the guests and personnel of GOI, Designated GOI Agencies and the Authority, as may be notified by GOI and/or the Authority to the Concessionaire from time to time.

#### **19.6. Check-in Services**

- 19.6.1. The Concessionaire shall provide or cause to be provided the infrastructure required for operation of check-in services at the Airport for and in respect of departing passengers (the "Check-in Services"). Such infrastructure shall include counters, self-service check-in kiosks, luggage conveyor belts, computer terminals, IT backbone and associated facilities in accordance with the provisions of this Agreement, Applicable Laws, relevant ICAO Documents and Annexes and Good Industry Practice.
- 19.6.2. The Concessionaire shall provide Check-in Services to the passengers, for and on behalf of airlines, in accordance with the provisions of this Agreement and Good Industry Practice.
- 19.6.3. Notwithstanding anything to the contrary contained in this Clause 19.6, the Concessionaire shall enable airline, at the option of such airline, to provide Check-in Services to the Users of that airline on payment of a service fees to the Concessionaire on mutually agreed amount and/or as determined by AERA as per Applicable Laws related to Aeronautical tariff determination.

#### **19.7. Commercial use of Specified Areas**

- 19.7.1. Subject to the provisions of this Agreement and Applicable Laws, the Concessionaire may utilise the Terminal Building for commercial purposes, such as travel facilities, amenities for Users, restaurants, accommodation, retail or any other Non-Aeronautical services prevalent in airports.
- 19.7.2. The Concessionaire shall not sub-license, assign or in any manner create an Encumbrance on any part of the Airport except in accordance with the provisions of Clause 5.2.
- 19.7.3. The Concessionaire shall ensure that its sub-licensees do not create public nuisance including excessive noise or cooking smells; do not tout for business; and do not offer counterfeit goods

for sale, and they perform their respective activities as per the Applicable Laws, Applicable Permits and Good Industry Practice.

**19.8. Commercial advertising**

The Concessionaire may undertake or cause to be undertaken commercial advertising or display in or about the Terminal Building in conformity with the provisions of Applicable Laws.

## **ARTICLE 20**

### **20. OPERATION OF CAR PARK**

#### **20.1. Operation and maintenance of Car Park**

- 20.1.1. The Concessionaire shall operate and maintain or cause to operate and maintain, the Car Park (including the Reserved Car Park) in accordance with the provisions of this Agreement, Applicable Laws and Good Industry Practice.
- 20.1.2. The Concessionaire shall regulate the use of Car Park by third parties in accordance with the provisions of this Agreement and shall permit non-discriminatory use thereof to all passengers and visitors provided that the Concessionaire may levy charges for the use of Car Park.
- 20.1.3. The Concessionaire shall:
- (a) procure that the Car Park is used only for parking of vehicles and for no other purpose, save and except advertising and provision of facilities and amenities for Users; and
  - (b) not sub-license, assign or in any manner create an Encumbrance on any part of the Car Park except in accordance with the provisions of Clause 5.2.
  - (c) plan the vehicular parking space keeping in mind passenger ease and convenience and the entry and exits are designed to ensure seamless movement of vehicles;
  - (d) provide parking for different usage like short term, long term and overnight parking;
  - (e) ensure that adequate parking space shall be provided for two wheelers, cars, private taxis, regular taxis, buses, auto-rickshaws, etc.;
  - (f) separate parking space for Reserved Parking and parking for the employees working at the Airport or any part thereof;

#### **20.2. Provision for Reserved Car Park**

The Concessionaire shall construct, operate and maintain or cause to operate and maintain a reserved car park (the "Reserved Car Park") as specified in Schedule-B, and shall facilitate free use thereof by Exempted Persons and persons who are entitled to use VIP lounges or any other person holding a pass issued by the Authority.

#### **20.3. Facilities at Car Park**

- 20.3.1. The Concessionaire shall at all times provide or cause to be provided, at the Car Park, all of the following:
- (a) free drinking water outlets at not less than 2 (two) convenient locations;
  - (b) food stalls/vending machines installed at not less than 2 (two) convenient locations for dispensing bottled water and popular beverages, hot and cold, at a price which shall not exceed the maximum retail price of each such product as prevalent in the market outside the Airport; and
  - (c) not less than 2 (two) kiosks or outlets for vending beverages and snacks to users of Car Park, and operated by competing vendors.

#### **20.4. Waiting area for drivers**

- 20.4.1. The Concessionaire shall, adjacent to the entry or exit point of the Car Park, provide a waiting hall for the drivers, with adequate seating facilities and toilets for at least 5% (five per cent) of the parking slots in the Car Park and shall also provide a public address system for passengers and visitors to call their respective drivers to the designated points at the Terminal Building.

#### **20.5. Unauthorised Parking**

- 20.5.1. The Concessionaire may remove any vehicle that is parked at a place not earmarked or authorised for parking, and park such vehicle in the Car Park. If the Concessionaire is not able to shift the vehicle to the Car Park for any reason, it may immobilise the vehicle at or



near the spot where it is parked. The Concessionaire shall be entitled to recover Fee for such vehicle and also charge a sum equivalent to 5 (five) times the Fee as the pre-determined and agreed cost of immobilising the vehicle or moving it to the Car Park, as the case may be. For the avoidance of doubt, the Concessionaire shall procure that any shifting or immobilising of vehicles under the provisions of this Clause 20.5.1 is undertaken in a manner that does not cause damage to such vehicles.

20.5.2. The Concessionaire shall not stop the movement of, or charge any Fee from vehicles that use the approach road to pass through any part of the Terminal but do not stop for more than 2 (two) minutes during the Peak Period and 5 (five) minutes during Off-Peak Period.

#### **20.6. Expansion of Car Park**

The Concessionaire shall procure that the parking slots provided in the Car Park are sufficient to meet the requirements of Users. In the event that 80% (eighty per cent) of the parking slots are on an average occupied during 8 (eight) Peak Hours for any continuous period of 6 (six) months, the capacity of the Car Park shall be deemed to be inadequate and the Concessionaire shall, at its own cost, undertake capacity addition and expansion thereof and construct additional parking space forthwith in accordance with Good Industry Practice and the provisions of this Agreement.

## **ARTICLE 21**

### **21. OPERATION OF CARGO AND MRO FACILITIES**

#### **21.1. Operation and maintenance of Cargo Facilities**

- 21.1.1. Subject to the Applicable Laws and the Applicable Permits, the Concessionaire shall or cause to, develop, operate and maintain, the Cargo Facilities which shall include the buildings, structures and equipment required for handling of incoming and outgoing cargo, including short-term warehousing thereof in accordance with the provisions of this Agreement, Applicable Laws, relevant ICAO Documents and Annexes and Good Industry Practice.
- 21.1.2. The Concessionaire shall procure that the Cargo Facilities to be provided hereunder include adequate cargo and parcel space, handling equipment, storage and handling of perishable cargo and dangerous goods, space for cargo agents and customers, inspection area, office space, automation systems, screening equipment, storage facilities, and facilities for mail handling and courier shipments in accordance with the provisions of this Agreement and Good Industry Practice.
- 21.1.3. The Concessionaire shall operate and maintain the Cargo Facilities and provide the associated services to airlines and consignors in accordance with the provisions of this Agreement, Applicable Laws and Good Industry Practice.
- 21.1.4. The Concessionaire shall provide, free of charge and in accordance with Good Industry Practice, office space and other facilities to customs, security, quarantine and other Designated GOI Agencies, as the case may be, for discharging their statutory functions, and for back office usage, charges shall apply mutually agreed rates to customs, security, quarantine and other Designated GOI Agencies, as the case may be, for discharging their statutory functions.

#### **21.2. Restrictions on use of Cargo Facilities**

- 21.2.1. The area earmarked for Cargo Facilities in the Master Plan shall be used only for handling of cargo and for associated activities. The Concessionaire shall install and keep operating in good working condition, the web-cams, at all the strategic locations, wherever, the cargo facilities are being handled or dealt with in any manner whatsoever.
- 21.2.2. The Concessionaire shall not assign or in any manner create an Encumbrance on any part of the Cargo Facilities except in accordance with the provision of Clause 5.2.

#### **21.3. Operation and maintenance of MRO Facilities**

As and when developed, the Concessionaire shall operate and maintain or cause to be operated and maintained the MRO Facilities.

## **ARTICLE 22**

### **22. RESERVED SERVICES**

#### **22.1. Reserved Services**

- 22.1.1. The Concessionaire acknowledges and agrees that only the Designated GOI Agencies are authorised to undertake the following services (“Reserved Services”) at the Airport:
- i. CNS/ATM Services
  - ii. security services;
  - iii. meteorological services;
  - iv. mandatory health services;
  - v. customs control;
  - vi. immigration services; and
  - vii. quarantine services;
  - viii. any other services, as may be notified by GOI, GoUP or any other designated Government Instrumentality, from time to time, in accordance with the Applicable Laws;

Provided that nothing in this Agreement shall restrict the Authority from requiring the Concessionaire to undertake any or all of the Reserved Services on such terms and conditions as may be mutually agreed between the Parties.

- 22.1.2. The Authority may from time to time require the Concessionaire to enter into bilateral agreements with any or all of the Designated GOI Agencies for the performance of Reserved Services in accordance with Applicable Laws and Good Industry Practice.

#### **22.2. CNS/ATM Services**

- 22.2.1. The Authority shall, upon fulfilment of the applicable terms and conditions by the Concessionaire, procure the execution of an agreement between AAI and the Concessionaire, substantially in the form set forth in Schedule–Y (the “CNS/ATM Agreement”), which shall ensure the provision of the CNS/ATM Services at the Airport, at all times during the Concession Period, in accordance with the practices established or recommended from time to time pursuant to the Chicago Convention and on the same terms as applicable to similar services at other airports in India, and in compliance with the directions of DGCA.
- 22.2.2. In the event the Authority or any Designated GOI Agency, as the case may be, deems it necessary, it may at its own cost, install at the Airport, any radars, equipment, buildings, works or facilities necessary for the provision of en-route air navigation services and the Concessionaire hereby undertakes that it shall provide all necessary support and assistance in respect thereof.
- 22.2.3. In the event that the Concessionaire shall require the Designated GOI Agency to upgrade the equipment deployed by it for the provision of Reserved Services, including the CNS/ATM Equipment, to a level which may be in excess of or higher than the requirements set forth in ICAO Documents and Annexes, then all costs incurred on such incremental upgradation of the equipment and the additional costs of operation thereof shall be borne by the Concessionaire and paid in advance annually to the Designated GOI Agency.
- 22.2.4. Upon the Concessionaire handing over the ATC Facility to the Authority or to the Designated GOI Agency, as the case be, the Authority or the Designated GOI Agency shall cause the ATC Facility to be equipped with the CNS/ATM Equipment for provision of the CNS/ATM Services in the manner specified in this Article 22 no later than 90 (ninety) days from the date of such handing over.
- 22.2.5. The Authority or the Designated GOI Agency shall at all times procure the standard of service required to ensure that the runway movements per hour shall be within the range being achieved at 5 (five) airports having the highest traffic, measured in terms of jet aircraft

movements, and operating under similar runway configurations and meteorological conditions within the Asia Pacific Region.

### **22.3. Other Reserved Services**

22.3.1. The Authority agrees and undertakes that in order to enable the Concessionaire to discharge its obligations under this Agreement and Applicable Laws, the Authority shall discharge or cause to be discharged, its own functions efficiently and in accordance with Good Industry Practice and shall at all times procure, on a best efforts basis, the deployment of necessary personnel by the Designated GOI Agencies, responsible for undertaking the Reserved Services at the Airport, including the customs, immigration and quarantine services at the Airport.

### **22.4. Airport security**

22.4.1. The Concessionaire shall procure the provision of security at the Airport, including for the prevention of terrorism, hijacking, sabotage and/or similar acts or occurrences, through the Designated GOI Agency, in accordance with the Applicable Laws.

22.4.2. The Concessionaire agrees and undertakes that the practices and procedures to be adopted for the security of the Airport, Users, persons working at the Airport and other persons or property at the Airport shall be in accordance with the guidelines prescribed by the BCAS.

22.4.3. The Authority shall procure that the personnel of the Concessionaire and all its contractors, suppliers, sub-contractors and agents and the Users of the Airport are allowed free entry into and exit from the Airport without any unreasonable interference by the security personnel or other personnel of the Authority or the Designated GOI Agency.

22.4.4. The Designated GOI Agency shall be entitled to inspect and search the Airport and to search any person or vehicle entering the Site or departing therefrom, without unduly or unreasonably disrupting the operations of the Airport.

22.4.5. The Concessionaire shall not be entitled to any compensation for disruption of its operations or loss or damage resulting from the actions of the Authority or any Designated GOI Agency, save and except those resulting from wilful or grossly negligent acts or omissions of the Authority or Designated GOI Agency, as the case may be.

22.4.6. The Authority and the Concessionaire shall jointly make best endeavours to ensure that the security of the Airport is maintained such that the level of risk premium under insurance covers (if any) that is to be borne by the Concessionaire shall be at the lowest possible rate. The Parties hereto agree that in the event of a significant rise in such risk premium arising out of a change in the security environment, the Concessionaire shall, notwithstanding anything to the contrary contained in this Agreement, be entitled to pass on 80% (eighty per cent) of such increase to the Users by means of a corresponding increase in Fees with prior approval of the Authority or Designated GOI Agency as applicable.

22.4.7. The cost of provision of security services as specified by the Designated Government Agency, under and in accordance with the provisions of this Article 22, shall be recovered by the Concessionaire from the Users, as allowed and limited by the Applicable Laws and determined by AERA and same shall be paid by the Concessionaire to the Designated GOI Agency. It may be clarified, in case the recovery of costs from Users as allowed/limited by Applicable Laws and determined by AERA are not sufficient to meet the cost of Designated GOI Agency, the shortfall hereunder shall be fully borne by the Concessionaire.

### **22.5. Police assistance**

For regulating the use of the Airport in accordance with Applicable Laws and this Agreement, the Authority shall assist the Concessionaire in procuring assistance from the Police, including for setting up of a Police aid post (the "Police Aid Post") at the Airport.

### **22.6. Meteorological services**

The Concessionaire shall procure that the meteorological facilities and services for provision of CNS/ATM Services at the Airport are provided by the Indian Metrological Department ("IMD")

accordance with the practices established or recommended from time to time pursuant to the Chicago Convention and on the same terms as IMD provides at other similar airports in India and based on the terms of the agreement entered into between the Concessionaire and IMD, as per the format prescribed by IMD. Alternatively, the Concessionaire may sign an agreement provided by AAI wherein the metrological services shall be part of AAI services. In case of such agreement with AAI, the Concessionaire shall not be required to sign a separate agreement with IMD for provision of Aviation Metrological services.

#### **22.7. Obligations in respect of Reserved Services**

The Concessionaire agrees and undertakes that it shall, at all times during the Concession Period:

- a. make the ATC Facility available to the Authority or Designated GOI Agency, as the case may be, for provision of the CNS/ATM Services;
- b. make available the Reserved Area for provision of the Reserved Services in accordance with the provisions of this Agreement;
- c. comply with all rules, regulations and guidelines prescribed by BCAS in connection with the security of the Airport and provide and maintain perimeter fencing or other appropriate protection around the Airport;
- d. provide and maintain all the security equipment as may reasonably be required by BCAS or the Designated GOI Agency from time to time;
- e. abide by and implement any instructions of the Authority and/or the Designated GOI Agency for enhancing the security within and around the Airport and to permit the Authority and/or the Designated GOI Agency to take such actions as reasonably deemed necessary by them, without unduly or unreasonably disrupting the operations of the Airport;
- f. ensure and procure that the equipment and manpower required for an effective and efficient response to the following events shall be available in accordance with Applicable Laws and Good Industry Practice:
  - i. removal of disabled aircraft from the runway;
  - ii. bomb threat to any 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. strikes at the Airport;
  - viii. unlawful interference with civil aviation; and
  - ix. any other emergency at the Airport.
- g. provide support and cooperation to the Authority and the Designated GOI Agencies in the discharge of their obligations under this Article 22;
- h. provide such information as the Authority and the Designated GOI Agency, may reasonably require for the provision of Reserved Services;
- i. provide at its own cost and expense, continuous supply of electricity and water that may be required by the Authority and the Designated GOI Agencies, as the case may be, for provision of Reserved Services;
- j. provide, on payment of cost thereof, any supply of electricity and water that may be required by the Authority and the Designated GOI Agencies, as the case may be, in addition to the supply specified in Sub-Clause (i) of this Clause 22.7; and
- k. notify the Authority and the Designated GOI Agency of any proposed closure or withdrawal of any infrastructure or facilities at the Airport, except in case of an Emergency, as per the operating procedures to be mutually agreed between the Parties from time to time.

## **22.8. Reserved Area**

- 22.8.1. Subject to the provisions of Clause 19.4.1, the Concessionaire undertakes that it shall, at all times during the Concession Period, provide to the Authority or its nominees and the Designated GOI Agencies, as the case may be, such Reserved Area, access and facilities at the Airport as may be necessary to enable them to perform the Reserved Services in accordance with the provisions of this Agreement and as described in Schedule–B.
- 22.8.2. The Reserved Area shall include such residential accommodation and parking as may be required for operational purposes of Designated GOI Agencies, and the Concessionaire shall build and maintain such residential accommodation and parking facilities as may be mutually agreed between the Concessionaire and respective Designated GOI Agency from time to time.
- 22.8.3. The Control over the Reserved Area shall vest in the respective Designated GOI Agencies responsible for carrying out the functions for which such area has been earmarked or for any other purpose analogous to such functions. The obligations of the Concessionaire in respect of Reserved Areas and access thereto shall be limited to maintenance of civil works, structures and equipment forming part of the Reserved Area; provided that it shall have unrestricted access thereto in case of Emergency, fire or other similar event.
- 22.8.4. The Concessionaire shall not reduce or restrict the access, space and facilities provided to the Authority and the Designated GOI Agency for the provision of Reserved Services, except with the prior consent of the Authority or the Designated GOI Agency, as the case may be.
- 22.8.5. Notwithstanding anything to the contrary contained in this Clause 22.8, the Authority may, with consent of the Concessionaire, transfer the Reserved Area or any part thereof to the Concessionaire on such terms and conditions as may be agreed upon. In such an event, the Concessionaire shall make best endeavours to cooperate with the Authority, including the agencies designated by it, for procuring a safe and efficient environment in the Reserved Area.
- 22.8.6. In the event of any expansion of the Airport requiring the shifting or reconfiguration of any space or facilities used for provision of the Reserved Services, the Concessionaire shall notify the Authority and the Designated GOI Agency, as the case may be, and mutually determine any modifications that may be required in respect thereof.
- 22.8.7. Subject to the provisions of Clause 19.4.6, in the event that additional space is required for discharging the specified functions in the Reserved Area, the Authority may, with the consent of the Concessionaire, increase the space comprising the Reserved Area on such terms and conditions as may be mutually agreed upon.

## **ARTICLE 23**

### **23. SAFETY REQUIREMENTS**

#### **23.1. Safety Requirements**

The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Users and other persons on or about the Airport. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Airport, and shall comply with the safety requirements prescribed in the relevant ICAO Documents and Annexes, the applicable guidelines prescribed by the DGCA from time to time and the requirements set forth in Schedule-M (the "Safety Requirements").

#### **23.2. Expenditure on Safety Requirements**

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

## **ARTICLE 24**

### **24. MONITORING OF OPERATION AND MAINTENANCE**

#### **24.1. Quarterly and Monthly status reports**

- 24.1.1. At all times during the Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each quarter, furnish to the Authority and the Independent Engineer a monthly report, in a form acceptable to the Authority, stating in reasonable detail the condition of the Airport including its compliance or otherwise with the Maintenance Requirements, Maintenance Manual, Maintenance Programme and Safety Requirements, and shall promptly give such other relevant information as may be required by the Independent Engineer or the Authority. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.
- 24.1.2. At all times during Operation Period, the Concessionaire shall, no later than 10 (ten) days after the close of each quarter, furnish to the Authority and the Independent Engineer a quarterly management report which shall be a summary of:
- (a) key performance indicators achieved in the quarter, along with an analysis of reasons for failures, if any, and proposals to remedy the same; and
  - (b) key operational hurdles and deliverables expected in the succeeding quarter along with strategies for addressing the same and for otherwise improving the Airport's operational performance.

#### **24.2. Reports of unusual occurrence**

The Concessionaire shall, prior to the close of each day, notify the Authority and the Independent Engineer, by facsimile or e-mail, a report stating accidents and unusual occurrences on the Airport relating to the safety and security of the Users and Airport. 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 24.2, accidents and unusual occurrences on the Airport shall include:

- (a) death or injury to any person;
- (b) damaged or dislodged fixed equipment;
- (c) any damage to or obstruction at the Airport, which results in a slowdown of the services being provided to the Users;
- (d) any damage or obstruction on the Runway, apron or taxiways;
- (e) air traffic congestion at the Airport leading to undue delay in scheduled aircraft operations or congestion at the Terminal Building;
- (f) any failure or defect in the Airfield Lighting System;
- (g) any obstruction or undue congestion in the provision of Reserved Services;
- (h) outages or failure of electricity supply or water supply at the Airport;
- (i) outages or failure of air-conditioning facilities at the Terminal Building;
- (j) disablement of any closed-circuit television system at the Airport;
- (k) communication failure affecting the operation of the Airport;
- (l) any incident of bird hits, near bird hits or animal nuisance in and around the operational area, Runway and taxiways;
- (m) any incident of theft or robbery at the Airport;
- (n) any incident of breach of security at the Airport;
- (o) smoke or fire;
- (p) flooding of the Airport; and
- (q) such other relevant information as may be reasonably required by the Authority or the Independent Engineer.



### **24.3. Airport Operator's Data Base**

The Concessionaire shall set up Airport Operation Data Base ("AODB") consisting of an airport operations database, communications layer and visual system that link various systems in the Airport together. The AODB must process all operations data at the Airport including but not limited to the data related to objective service quality requirement and parameters defining level of service of the terminal building and any other such information as may be required by the Authority and/ or any Designated GOI Agency pursuant to this Agreement. AODB shall generate daily, weekly, monthly, quarterly and annual reports as per the requirements of this Agreement. The AODB system should be capable to provide historical, real time data to assist in strategic decision making as well as to help the Concessionaire for various compliance requirements. The Concessionaire shall provide AODB access to the Authority for periodic review and generation of reports.

### **24.4. Inspection**

The Independent Engineer shall inspect the Airport at least once a month. It shall make a report of such inspection (the "O&M Inspection Report") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Requirements, Maintenance Manual, the Maintenance Programme and Safety Requirements, and send a copy thereof to the Authority and the Concessionaire within 7 (seven) days of such inspection.

### **24.5. Tests**

For determining that the Airport conforms to the Maintenance Requirements, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Independent Engineer and furnish the results of such tests forthwith to the Independent Engineer. For the avoidance of doubt, the costs to be incurred on any test which is undertaken for determining the adherence of the Airport to Maintenance Requirement shall borne solely by the Concessionaire.

### **24.6. Remedial measures**

- 24.6.1. 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 24.6 and furnish a report in respect thereof to the Independent Engineer and the Authority within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.
- 24.6.2. The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Airport into compliance with the Maintenance Requirements and the procedure set forth in this Clause 24.6 shall be repeated until the Airport conforms to the Maintenance Requirements. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Damages from the Concessionaire under and in accordance with the provisions of Clause 17.8. For avoidance of doubt, it may be clarified that cost of any such repeat test and Damages given by Concessionaire to Authority under this Clause 12.4 as the case may be shall not be considered as pass through cost for the purpose of Aeronautical tariff determination.

## **ARTICLE 25**

### **25. TRAFFIC REGULATION AND CENSUS**

#### **25.1. Traffic regulation by the Concessionaire**

- 25.1.1. The Concessionaire shall regulate the passengers and vehicular traffic within the Airport and on the roads approaching the Airport in accordance with Applicable Laws and subject to the supervision and control of the Authority and the Designated GOI Agencies or a substitute thereof empowered in this behalf under Applicable Laws.
- 25.1.2. The Concessionaire shall, in consultation with the Authority and representatives of Users, evolve and publicise a system based on Good Industry Practice such that no User or category of Users is discriminated against or unduly favoured, as the case may be, in the use of the Airport.
- 25.1.3. The Concessionaire shall have the right and obligation to manage, operate and regulate the Airport on a common carrier basis providing non-discriminatory services to all persons.

#### **25.2. Slot allocation guidelines**

The Concessionaire shall manage and allocate the aircraft landing and timetable slots at the Airport, and shall allocate such slots in consultation with the airlines and in conformity with IATA slot allocation guidelines and issued by Designated Government of India agency as per Applicable Laws from time to time.

#### **25.3. Traffic census**

The Concessionaire shall collect data relating to Passenger Traffic aircraft and cargo using the Airport. A monthly statement of such data shall be compiled and furnished forthwith by the Concessionaire to the Authority substantially in the forms specified in Schedule-N and AODB prepared in-line with Good Industry Practice as per Clause 24.3.

#### **25.4. Traffic sampling**

- 25.4.1. For determining the actual traffic on the Airport, the Authority shall be entitled to inspect the relevant records of the Concessionaire, and may, at its own cost, undertake traffic sampling substantially in the manner set forth in Schedule-O or in such manner as the Parties may agree upon. The Concessionaire shall provide such assistance as the Authority may reasonably require for such traffic sampling.
- 25.4.2. If the traffic sampling pursuant to this Clause 25.4 demonstrates that the actual traffic is more than the traffic reported by the Concessionaire, the traffic determined by the traffic sampling shall be deemed to be the traffic for purposes of this Agreement and in the event of any Dispute relating to the traffic sampling, the Dispute Resolution Procedure shall apply. For the avoidance of doubt, Realisable Fee for any comparable period shall be calculated with reference to the traffic determined hereunder.

#### **25.5. Computer systems and network**

The Concessionaire shall install, operate and maintain a computer system with round-the-clock connections to the networks of the Authority, Designated GOI Agencies and other related entities, as the case may be, for exchange of data and information useful or necessary for efficient and transparent regulation and management of traffic. For this purpose, it shall follow such protocol for Electronic Data Interchange (the "EDI") as the Authority or the Designated GOI Agency may specify from time to time. For the avoidance of doubt, it is agreed that the form specified in Schedule-N may be modified by the Authority from time to time for conforming to the requirements and output of EDI.

## **ARTICLE 26**

### **26. KEY PERFORMANCE INDICATORS**

#### **26.1. Key Performance Indicators**

Without prejudice to the obligations specified in this Agreement, the Concessionaire shall operate the Airport such that it achieves or exceeds the performance indicators specified in this Article 26 (the “Key Performance Indicators”).

#### **26.2. Operation of Aeronautical Assets**

26.2.1. The Concessionaire shall operate and maintain the Aeronautical Assets such that it conforms to the Key Performance Indicators specified in this Clause 26.2.

26.2.2. The Concessionaire shall, at all times during the Operation Period, operate and maintain the Runway, taxiways, apron and Airfield Lighting System in accordance with the relevant ICAO standards, guidelines of DGCA, Applicable Laws, Applicable Permits and Good Industry Practice.

#### **26.3. Operation of Terminal Building**

26.3.1. The Concessionaire shall operate and maintain the Terminal Building such that it conforms to the Key Performance Indicators specified in this Clause 26.3.

26.3.2. The Concessionaire shall, at all times during the Operation Period, procure that:

- (a) the whole of the Terminal Building including its toilets, specified areas, etc. are clean, spotless, hygienic and free of ordour;
- (b) there is adequate lighting within the Terminal Building in conformity with the Specifications and Standards;
- (c) the temperature in common areas within the Terminal Building is maintained at comfortable level with respect to outside temperature as per the Good Industry Practices;
- (d) the services provided at the Airport are as per AERA guidelines 2011 or as updated from time to time.

26.3.3. The Concessionaire shall operate and manage the Car Park such that it conforms to the Key Performance Indicators specified in this Clause 26.4.

26.3.4. The Concessionaire shall, at all times after COD for Phase I, procure that:

- (a) the average time taken from entry into the Car Park to parking at a vacant slot, including the time for payment of Fee, shall not be more than 5 (five) minutes for at least 95% (ninety-five per cent) of the Users thereof;
- (b) the average time taken to depart from the parking slot to the exit gate, including the time for payment of Fee, shall not be more than 5 (five) minutes for at least 95% (ninety-five per cent) of the Users thereof; and
- (c) the provision of space and equipment, and the use thereof, is such that handling of vehicles is safe and efficient in conformity with Good Industry Practice.

26.3.5. The Concessionaire shall procure that the Car Park is kept clean and with adequate lighting.

26.3.6. The Concessionaire shall provide adequate number of toilets at convenient locations in the Car Park and keep them in clean and hygienic condition.

#### **26.4. Operation of Cargo Facilities**

26.4.1. The Concessionaire shall operate and manage the Cargo Facilities such that it conforms to the Key Performance Indicators specified in this Clause 26.5.

26.4.2. The Concessionaire shall, at all time after COD for Phase I, procure that:

- (a) the time taken for processing of incoming cargo shall be in accordance with Good Industry Practice; and,
- (b) the time taken for processing of outgoing cargo shall be in accordance with Good Industry Practice.

- 26.4.3. The Concessionaire shall procure that the Cargo Facilities are kept clean and with adequate lighting.
- 26.4.4. The Concessionaire shall provide and operate an electronic data interchange (EDI) facility in accordance with Good Industry Practice and shall procure that the Users of Cargo Facilities receive efficient and economical services comparable from time to time with the best industry standards.
- 26.4.5. The Concessionaire shall provide adequate number of toilets in the Cargo Facilities and keep them in clean and hygienic condition.

#### **26.5.ISO certification**

- 26.5.1. The Concessionaire shall, within 12 (twelve) months from COD for Phase I, achieve and thereafter maintain throughout the Concession Period, QMS ISO 9001:2000 certification or a substitute thereof for all the facilities at the Airport which are controlled and managed by the Concessionaire, and shall provide a certified copy thereof to the Authority forthwith.
- 26.5.2. In the event of default in obtaining the certification specified in Clause 26.6.1, the Concessionaire shall, within 15 (fifteen) days thereof, submit to the Authority an action plan that sets out the actions proposed to be taken by the Concessionaire for rectifying its deficiencies and obtaining such certification for all facilities at the Airport.
- 26.5.3. If the period of default in obtaining the ISO certification under this Clause 26.6 shall exceed a continuous period of 3 (three) months, the Concessionaire shall pay Damages to the Authority in an amount equal to 0.1% (zero point one per cent) of the total monthly revenue from Fee for every 1 (one) month of default beyond the aforesaid period of 3 (three) months.
- 26.5.4. The Concessionaire shall provide and operate an electronic data interchange (EDI) facility in accordance with Good Industry Practice and shall procure that the Users of Cargo Facilities receive efficient and economical services comparable from time to time with the Indira Gandhi International Airport, Delhi and Chattrapati Shivaji International Airport, Mumbai.

#### **26.6.Service Quality Requirements**

The Concessionaire shall procure and ensure that it conforms and complies with the Service Quality Requirements set forth in Schedule-L.

#### **26.7.Target Rating and User Survey**

- 26.7.1. The Concessionaire shall participate in the passenger survey of Airport Service Quality (the “ASQ”) undertaken by Airports Council International (the “ACI”) or any equivalent substitute thereof, conducted every quarter and shall ensure that the Airport achieves and maintains a rating of at least 4.2 (four point two) out of 5.0 (five) in such survey (the “Target Rating”) and maintain the same throughout the rest of the Concession Period.
- 26.7.2. The Concessionaire shall, within 21 (twenty-one) days of the end of each calendar quarter, provide to the Authority a written report on the results of the passenger survey of ASQ or any equivalent survey by world renowned agencies as per Clause 26.8.1, for the immediately preceding quarter, together with its analysis of the results and the action, if any, that it proposes to take for improvement in passenger satisfaction.
- 26.7.3. In addition to the passenger survey specified in Clause 26.8.1, the Authority may, at its cost and expense, engage an independent expert agency to conduct a sample survey of User satisfaction (the “User Survey”) once every calendar quarter to determine the compliance of the provisions of this Article 26 by the Concessionaire. The nature and content of the User Survey shall be determined by the Authority in consultation with the Concessionaire to procure that the outcome is objective and represents a cross-section of Users. For the avoidance of doubt, it is agreed that in designing the User Survey, the Authority shall rely on Good Industry Practice and conform to similar surveys undertaken from time to time such as the surveys of ASQ currently conducted at other international airports.
- 26.7.4. In the event that the User Survey reveals that more than 20% (twenty per cent) of the Users surveyed are not satisfied with the performance of the Concessionaire and rank the services as poor or fair, the Authority may levy and collect from the Concessionaire, Damages

calculated at the rate of 2% (two per cent) of its revenues from Fees during the preceding month for every 1% (one per cent) Users who are not satisfied beyond the aforesaid 20% (twenty per cent). For the avoidance of doubt, in the event that 22% (twenty-two per cent) Users are not satisfied, the Damages shall be a sum equal to 4% (four per cent) of the Fee revenues of the immediately preceding month and further Damages, if any, shall be determined by the next User Survey.

#### **26.8. Quarterly status report**

During Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each quarter, furnish a quarterly report stating in reasonable detail the compliance with all the Key Performance Indicators specified in this Article 26 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 Airport. The quarterly report shall include a quantification of the Damages calculated in accordance with Clause 26.10.

#### **26.9. Damages for shortfall in performance**

The Concessionaire shall ensure and procure compliance of each of the Key Performance Indicators specified in this Article 26 and for any shortfall in performance during a quarter, it shall be liable for Damages. Any such Damages will be determined by AERA and adjusted against Aeronautical Charges for the specified period. In the event the Damages are not determined by AERA, the Damages shall be determined by the Authority. In case the damages are determined by the Authority, the damages due and payable under this clause 26.9 shall, save and except as provided in Clauses 26.5.3 and 26.7.4, be determined at the rate of 1% of the total revenue from Fees in the respective quarter for every shortfall of 10% in any single performance indicator specified in this Article 26; provided, however, that where the shortfall cannot be quantified, the Damages shall be determined at the rate of 2% of the total revenue from the Fees for the relevant quarter; provided further that the Authority may fully or partially waive its right to impose 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.

#### **26.10. Passenger Charter**

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

#### **26.11. Excuse from Key Performance Indicators**

The Concessionaire shall be excused for its default in conforming with any Key Performance Indicators if such default is on account of failure of the Authority to discharge its obligations hereunder.

## **ARTICLE 27**

### **27. INDEPENDENT ENGINEER**

#### **27.1. Appointment of Independent Engineer**

The Authority shall appoint a consulting engineering firm substantially in accordance with the selection criteria set forth in Schedule-Q, to be the independent consultant under this Agreement (the "Independent Engineer"). The appointment shall be made no later than 180 (one hundred and eighty days) days from the date of this Agreement and shall be for a period of 3 (three) years. On expiry or termination of the aforesaid appointment, the Authority shall appoint an Independent Engineer for a further term of 3 (three) years in accordance with the provisions of Schedule-Q, and such procedure shall be repeated after expiry of each appointment.

#### **27.2. Duties and functions**

- 27.2.1. The Independent Engineer shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule-R. For the avoidance of doubt, the Parties expressly agree that the functions of the Independent Engineer under this Article 27 shall not include City Side Development.
- 27.2.2. 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-R.
- 27.2.3. A 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.
- 27.2.4. A 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.

#### **27.3. Remuneration**

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

#### **27.4. Termination of appointment**

- 27.4.1. 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 27.1.
- 27.4.2. 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 27.1.

#### **27.5. Authorised signatories**

The Authority shall require the Independent Engineer to designate and notify to the Authority and the Concessionaire up to 2 (two) persons employed in its firm to sign for and on behalf of the Independent

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

**27.6. Dispute resolution**

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

**27.7. Interim arrangement**

In the event that the Authority has not appointed an Independent Engineer, or the Independent Engineer so appointed has relinquished its functions or defaulted in discharge thereof, the Authority may, in the interim, designate and authorise any person to discharge the functions of the Independent Engineer in accordance with the provisions of this Agreement, save and except that such person shall not exercise any functions relating to review, comment, approval or inspection as specified in this Agreement for and in respect of the Independent Engineer, and such functions shall be discharged as and when an Independent Engineer is appointed in accordance with the provisions of this Agreement. Provided, however, that nothing contained in this Clause 27.7 shall in any manner restrict the rights of the Authority to enforce compliance of the provisions of this Agreement.

## **ARTICLE 28**

### **28. CITY SIDE DEVELOPMENT**

#### **28.1. Development of City Side**

- 28.1.1. The Concessionaire shall undertake City Side Development on the 24 Hec land specified in Schedule-A, subject to the conditions stipulated in Schedule-B and Schedule-D, and to exploit such development for commercial purposes with the right to sub-license any or all parts thereof by means of Project Agreements.
- 28.1.2. The Concessionaire shall undertake or cause to be undertaken at its cost and in accordance with the provisions of this Agreement, Applicable Laws and Good Industry Practice, the development and maintenance of infrastructure such as roads, electric supply, water supply, sewerage and drainage systems forming part of City Side Development.
- 28.1.3. The revenue generated from City Side Development on 24 hec land as stated in clause 1.3 of Annex 1 Schedule A shall not be considered for the purpose of cross-subsidization of Aeronautical Tariff determination by AERA.
- 28.1.4. In case there is any increase in the area of city side beyond the 24 hectares that is earmarked in clause 1.3 Annex 1, Schedule A of this agreement, the revenues from that incremental land shall be part of the 30% cross subsidy under shared till regime.

#### **28.2. Operation and maintenance of City Side Development**

The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Good Industry Practice in the operation, maintenance and management of City Side Development and shall make commercial use thereof subject to the provisions of this Agreement and Applicable Laws.

#### **28.3. Cost, taxes and revenue**

- 28.3.1. All costs, expenses, taxes, cess, fees and charges relating to City Side Development, other than taxes on property, shall be borne by the Concessionaire. For avoidance of doubt, any taxes on property payable by the Authority to the extent arising out of the development undertaken by the Concessionaire, shall be paid by the Authority in accordance with Applicable Laws and reimbursed by the Concessionaire to the Authority within a period of 60(sixty) days of receiving a notice from the Authority along with necessary particulars thereof.
- 28.3.2. All revenues accruing from City Side Development shall be appropriated by the Concessionaire in accordance with the provisions of the Agreement and Applicable Laws.

#### **28.4. Restrictions on City Side Development and Land Use**

- 28.4.1. The Concessionaire shall procure that City Side Development and its land use shall at all times be in conformity with Applicable Laws and may include construction and operation of hotels, restaurants, convention centre, training centre, staff residence and hostels for employees working at the Airport, retail shops for passengers and tourists, travel related offices and amenities or analogous uses and any other activities provided as positive list in Annex IV of Schedule A.

It may be clarified that any activity, which is classified as aeronautical services as per AERA Act, if undertaken on city side land shall continue to be classified as Aeronautical Services for the purpose of tariff determination. Any decision of AERA on any activity undertaken on city side land being Aeronautical activity shall be final and binding on the Concessionaire.

- 28.4.2. The Concessionaire acknowledges and agrees that it shall not, assign or in any manner create an Encumbrance on any part of City Side Development except in accordance with the provisions of Clause 5.2 and Clause 28.6.



### **28.5. Restrictions on Floor Space Index (FSI)**

Subject to the provisions of the Master Plan, the Floor Space Index (FSI) of City Side Development shall be the lower of 2.5 (two point five) and the limit specified by local authorities under Applicable Laws. The height of any structure to be built on City Side Development shall not exceed the limit specified by the Authority or Designated GOI Agency, as the case may be, for different zones adjoining its airports. For the avoidance of doubt, the FSI as referred to hereinabove shall be computed with reference to the total area earmarked in the Master Plan as City Side Development, but excluding the areas reserved for roads, parks and other common facilities and amenities.

### **28.6. Sub-licensing of City Side Development**

- 28.6.1. Subject to the provisions of Clause 5.2 and this Article 28, the Concessionaire may sub-license the Project Assets comprising City Side Development such that the period and validity of such sub-license shall not extend beyond the period specified in Clause 28.7.
- 28.6.2. Notwithstanding anything to the contrary contained in Clause 28.6.1, the Concessionaire shall not sub-license, assign or in any manner create an Encumbrance on any Project Asset forming part of City Side Development at any time prior to the Appointed Date. Provided, however, that the restraint hereunder shall not apply to advertising or to any other Encumbrance created for a period not exceeding 6 (six) months. For the avoidance of doubt, the restriction imposed herein shall not apply to assignment under the Substitution Agreement.
- 28.6.3. Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 28.6.2, the Concessionaire shall not sub-license, assign or in any manner create an Encumbrance on any Project Asset forming part of City Side Development without prior written approval of the Authority, which approval the Authority may, in its discretion, deny only if such sub-licence, assignment or Encumbrance has or may have a material adverse effect on the rights and obligations of the Authority under this Agreement; provided that the provisions of this Clause 28.6.3 shall not apply where the Concessionaire grants a sub-licence for a cumulative period, including any renewals thereof, not exceeding 11 (eleven) months. For the avoidance of doubt, it is agreed that if the Authority does not deny the approval required under this Clause 28.6.3 within a period of 60 (sixty) days from the date of receiving a notice along with full particulars and documents from the Concessionaire, the approval shall be deemed to have been granted to the extent such sub-licence, assignment or Encumbrance, as the case may be, is in accordance with the provisions of this Agreement.
- 28.6.4. The Concessionaire agrees and undertakes that in respect of any sub-licence, assignment or other Encumbrance on any Project Asset forming part of City Side Development, it is entitled to receive a monthly fee, charge, rent or revenue share, security deposit, premium, loan and advances as the case may be, in accordance with the prevailing market practice. For the avoidance of doubt, the Concessionaire agrees to procure that the consideration payable to it for any sub-licence, assignment or other Encumbrance shall accrue evenly over the Concession Period and shall be payable no less frequently than once every quarter; provided that nothing in this Article 28 shall prohibit the Concessionaire from adjusting the whole or any part of the consideration in proportion to the fluctuations in the grantee's revenues or profits over the Concession Period or specifying annual increase not exceeding 12% (twelve percent) per annum in such consideration.
- 28.6.5. In the event of any difference or disagreement between the Parties in matters arising out of the provisions of this Clause 28.6, the Dispute Resolution Procedure shall apply.

### **28.7. Rights of sub-licensees after Termination**

The Parties expressly acknowledge and agree that the Concessionaire may, in its discretion, grant sub-licences for City Side Development upto the maximum period permissible under Clause 3.1.1, which shall include the extended period specified in the first Proviso of that Clause. The Parties further agree that in the event of Termination prior to expiry of such maximum permissible period, the tenure of the sub-licences and the rights of the sub-licensees shall continue to subsist as if the sub-

licences were granted by the Authority, and the Authority shall, for the remaining period of each sub-licence, be deemed to be the grantor of the sub-licence by stepping into such sub-licence in pursuance of the Covenant referred to in Clause 5.2.4. For the avoidance of doubt and by way of illustration, if the Concession Period including the extended period is 60 (sixty) years and the Concession Agreement is terminated prior to the 20th (twentieth) anniversary of the Appointed Date, the tenure of a sub-licence shall extend upto the earlier of the term specified in such sub-licence and the 60th (sixtieth) anniversary of the Appointed Date.

**28.8. Compliance with Applicable Laws**

The Concessionaire agrees and undertakes that it shall, in respect of City Side Development, at all times conform to Applicable Laws and the rules, regulations or by-laws made thereunder relating to buildings, structures, road works, open spaces, electric supply, water supply, sewerage and other like matters.

**28.9. Commercial advertisement or display**

The Concessionaire may undertake or cause to be undertaken commercial advertising or display on City Side Development in conformity with Applicable Laws and the provisions of this Agreement.

## **Part IV**

### **Financial Covenants**

## **ARTICLE 29**

### **29. FINANCIAL CLOSE**

#### **29.1. Financial Close**

- 29.1.1. The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 180 (one hundred and eighty) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding 120 (one hundred and twenty ) days, subject to the submission of a written request describing the reasons for seeking such extension at least 15 (fifteen) days in advance and payment of Damages to the Authority in a sum calculated at the rate of 0.05% (zero point zero five per cent) of the Performance Security for each day of delay; 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 as a result of any default or delay by the Authority in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Concessionaire shall be in addition to the Damages, if any, due and payable under the provisions of Clause 4.3.
- 29.1.2. 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 the 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.

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

- 29.2.1. Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 39.6.1, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 29.1.1 or the extended period provided thereunder or unless otherwise agreed between the Parties, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the Parties have, by mutual consent, determined the Appointed Date to precede the Financial Close, the provisions of this Clause 29.2.1 shall not apply.
- 29.2.2. Upon Termination under Clause 29.2.1, the Authority shall be entitled to encash the Bid Security or the Performance Security, as available, and appropriate the proceeds thereof as Damages; provided, however, that if Financial Close has not occurred due to Force Majeure or as a result of the Authority being in default of any of its obligations under Clause 4.1.2, it shall, upon Termination, release the Bid Security or Performance Security, as the case may be, forthwith and Damages due and payable under Clause 4.2. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by the Performance Security, the Authority shall be entitled to encash therefrom an amount equal to the Bid Security.

**ARTICLE 30**

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## ARTICLE 31

### 31. CONCESSION FEE AND LICENSE FEE

#### 31.1. Concession Fee

In consideration of the grant of Concession, the Concessionaire shall pay to the Authority by way of concession fee a sum of Re.1 (Rupee one) per annum, and the Premium specified in Clause 31.2 (the "Concession Fee").

#### 31.2. Premium

31.2.1. Without prejudice to the provisions of Clause 31.1, the Concessionaire agrees to pay to the Authority for each year commencing from the 6th (sixth) year of the occurrence of COD for Phase I, a premium (the "Premium") equal to INR X per pax of traffic handled at the airport (Premium Rate) multiplied by the total traffic handled at the airport during that year, in the form and manner provided herein. For each subsequent year, the Premium Rate for that year shall be determined by increasing the Premium Rate of the preceding year by Price Index (in percentage) of the preceding year. The corresponding Premium for the subsequent year shall be calculated by Premium Rate of subsequent year multiplied by the total traffic handled at the airport in the subsequent year.

#### Illustration:

The winning bid quoted (the premium rate in INR per pax to be paid by the Concessionaire to the Authority from 6th Year of the occurrence of COD of Phase I) is INR X6 per pax.

The Premium Rate at the commencement of the 7th (seventh) year of the occurrence of COD of Phase I would be

$$X_7 = X_6 \left\{ 1 + \left( \frac{\text{PriceIndex}_{7\text{thYearofOccurrenceofCOD}} - \text{PriceIndex}_{6\text{thYearofOccurrenceofCOD}}}{\text{PriceIndex}_{6\text{thYearofOccurrenceofCOD}}} \right) \right\};$$

The corresponding Premium for 7th year from the commencement of COD of Phase I shall be calculated by multiplying the Premium Rate for the 7th year (X7) by the annual traffic handled by the airport in the 7th (seventh) year T7.

31.2.2. The annual Premium payable under this Clause 31.2 shall be deemed to be part of the Concession Fee for the purposes of this Agreement.

#### 31.3. Payment of Concession Fee

The Concession Fee payable under the provisions of this Article 31 shall be due and payable in monthly instalments. Within 7 (seven) days of the close of each month, the Concessionaire shall pay to the Authority against the Concession Fee, a provisional amount calculated on the basis of total traffic handled at the airport in the immediately preceding month multiplied by the Premium Rate for that year, and final settlement thereof, based on audited accounts of the Concessionaire, shall be made within 120 (one hundred and twenty) days of completion of the respective Accounting Year.

#### 31.4. Verification of Total Annual Traffic

The Authority may, in order to satisfy itself that the Concessionaire is reporting its Total Annual Traffic honestly and faithfully, depute its representatives to the Airport, and undertake such other measures and actions as it may deem necessary, to ascertain the actual Total Annual Traffic of the Concessionaire in accordance with Clause 25.4. The Authority may call upon any data, information, log, sheet, document or statement, as it may deem fit and necessary for the purposes of the determination of the Total Annual Traffic handled by the Concessionaire.

### 31.5. License fee

- 31.5.1. Upon execution of the Concession Agreement and in further consideration of the Authority providing licence rights for the Site for the Project to the concessionaire and granting the rights and access set forth in this Agreement, the concessionaire shall pay to the Authority, an annual licence fee (“Licence Fee”) of 3.33% of land value. The land value as on 29th April 2019 has been estimated to be INR 4326 crores (Four Thousand three hundred and twenty six crores). For the purpose of calculating the License fee, the land value shall be assumed to increase annually at the rate of Price Index with the base year as 1st January 2019.
- 31.5.2. The Licence Fee shall be due and payable in advance every year and the first Licence Fee shall be paid by the Concessionaire from the 10th year post Appointed Date. For avoidance of doubt, the land value at the 10th year post Appointed Date would be inflated by price index w.r.t the base year. The License Fee in INR crore for 10th Year post Appointed Date shall be calculated as -

$$L_{10} = 3.33\% \times 4326 \times \left\{ 1 + \left( \frac{\text{Priceindex}_{10\text{th year post Appointed Date}} - \text{PriceIndex}_{\text{January 2019}}}{\text{PriceIndex}_{\text{January 2019}}} \right) \right\}$$

The License Fee in INR crore for 11th Year post Appointed Date onwards shall be calculated as -

$$L_{11} = L_{10} \times \left\{ 1 + \left( \frac{\text{Priceindex}_{11\text{th year post Appointed Date}} - \text{PriceIndex}_{10\text{th Year post Appointed Date}}}{\text{PriceIndex}_{10\text{th Year post Appointed Date}}} \right) \right\}$$

The authority shall not be obliged to demand payment of Licence Fee by notice or otherwise, and it shall be incumbent upon the Concessionaire to pay the Licence Fee as and when it falls due. The Licence Fee shall be payable by the Concessionaire during the term of this Concession Agreement.

For avoidance of doubt, it is clarified that treatment of License fee shall be allowed as pass-through cost in accordance with AERA Order No. 42/2018-19 dated 5<sup>th</sup> March 2019, for the purpose of aeronautical tariff estimation

- 31.5.3. The Concessionaire shall pay the Licence Fee into such account as may be designated by the authority from time to time.
- 31.5.4. If the Concessionaire fails to pay the Licence Fee as aforesaid, the Concessionaire shall be liable to pay interest for the period of delay calculated at a rate equal to 3% (three percent) above the Bank Rate for each day of delay.
- 31.5.5. In the event of failure of the Concessionaire to pay the Licence Fee within 90 days of the same becoming due, the outstanding Licence Fee shall be recovered from the Concessionaire along with penal charges duly appropriated from the performance security

## **ARTICLE 32**

### **32. USER FEE**

#### **32.1. Collection of Fees by the Concessionaire**

- 32.1.1. On and from COD of Phase I and till the Transfer Date, the Concessionaire has the sole and exclusive right to demand, collect and appropriate Fees from the Users, including the airlines and passengers, in accordance with the provisions of the AERA Act and this Agreement, provided that the Concessionaire may determine and collect Fees at such lower rates as may be agreed with the Users or any category of Users in accordance with the Applicable Laws and Applicable Permits.
- 32.1.2. The Concessionaire acknowledges and agrees that upon payment of Fee, any User shall be entitled to use the respective specified facility at the Airport, and the Concessionaire shall not place, or cause to be placed, any restriction on such use, except to the extent specified in any Applicable Laws, Applicable Permits or the provisions of this Agreement.
- 32.1.3. The Concessionaire acknowledges and agrees that any User, who is not liable for payment of Fee shall be entitled to use the Airport, without any restrictions except to the extent specified in any Applicable Laws, Applicable Permits or the provisions of this Agreement. In addition, the Concessionaire may issue passes to its own employees and the employees of contractors, sub-contractors, agents and other persons for free entry into the Airport, subject to Applicable Laws, Applicable Permits and the provisions of this Agreement.
- 32.1.4. The Concessionaire shall, for the provision of Aeronautical Services and Non-Aeronautical Services, be entitled to levy, collect and appropriate the Fee from Users, including airlines, aircrafts, passengers, advertisers and visitors. The Aeronautical Charges for use of any or all Aeronautical Services shall be as per rates determined and revised by AERA, in accordance with the provision of the Applicable Laws, Applicable Permits and this Agreement.
- 32.1.5. Subject to the provisions of the Clause 22.4.7, the Parties agree that charges for provision of Airport security services by the Authority or a Designated GOI Agency in accordance with the provisions of the Applicable Laws, shall be recovered by the Concessionaire from the passengers and paid to the Authority or the Designated GOI Agency. For the avoidance of doubt, the Parties agree that the amount collected by the Concessionaire during the course of a month shall be paid to the Authority no later than the 5th (fifth) day of the following month.

#### **32.2. Collection of Navigational Charges**

- 32.2.1. The Designated GOI Agency shall be entitled to levy, collect and appropriate the Route Navigation Facilities Charges and Terminal Navigation and Landing Charges from airlines in accordance with Applicable Laws. In the event of failure of any airline to pay such charges, the Designated GOI Agency shall be entitled to suspend provision of such service to the airline and take such steps as it deems fit to recover the charges from such airline.
- 32.2.2. The Concessionaire hereby acknowledges and agrees that it shall be bound to comply with such directions as the Designated GOI Agency may give for enforcing compliance of the provisions of Clause 32.2.1, including in respect of suspension of provision of such service to any scheduled or non-scheduled air transport operator.

#### **32.3. Principles of Determination and Revision of Aeronautical Charges**

- 32.3.1. The Parties hereto acknowledge and agree that any and all Aeronautical Charges that the Concessionaire can levy, collect and appropriate from a User shall be determined and revised by AERA, by way of an order by AERA, in accordance with the provisions of the AERA Act and this Agreement.
- 32.3.2. Aeronautical tariffs shall be determined as per Airports Economic Regulatory Authority (Terms and Conditions for Determination of Tariff for Airport Operators) Guidelines,



2011 with 30% Hybrid-Till framework as per AERA's order number 14/2016-17 (F.No. AERA/20010/Civil Aviation Policy/2014-15/Vol-I) dated 12th January 2017 (issued on 23rd January 2017) (Hybrid-Till Approval). For avoidance of doubt, revenues of the Concessionaire from City Side Development shall be excluded from the Hybrid-Till framework for the determination and regulation of the Aeronautical Charges subject to the provisions of clauses 28.1.3, 28.1.4 and 28.4.1

- 32.3.3. The Aeronautical Charges shall be regulated and set/ re-set, in accordance with the Hybrid-Till Approval, terms of this Agreement and the Applicable Laws.
- 32.3.4. The Concessionaire hereby acknowledges and agrees that the Premium paid/ payable by the Concessionaire to the Authority, under and pursuant to the terms of this Agreement, shall not be included as a part of costs for provision of Aeronautical Services and no pass-through would be available in relation to the same.
- 32.3.5. Notwithstanding anything contrary contained elsewhere, the Concessionaire shall be entitled to levy, collect and appropriate the Aeronautical Charges with effect from the COD of Phase I from the Users of the Airport, at the initial/ad-hoc rates of the tariff as may be approved by AERA. Such initial/ad-hoc rates of tariff shall be applicable and valid until the approval of Aeronautical Charges by AERA in accordance with the provisions of the AERA Act.
- 32.3.6. The Concessionaire shall have to work with AERA to explore ways to keep the tariffs comparable with the tariffs of the neighbouring airports.
- 32.3.7. The Concessionaire shall have no recourse whatsoever against the Authority, in respect of any aspect concerning the determination, levy, recovery (including under or over recovery) or appropriation of the Aeronautical Charges.

#### **32.4. Restraint on revision of Aeronautical Charges**

The Concessionaire hereby acknowledges and agrees that it is not entitled to any revision of the Aeronautical Charges or any other relief whatsoever from the Authority, AERA or any Government Instrumentality in any form or manner, save and except in accordance with the provisions of AERA Act and this Agreement. In pursuance hereof, the Concessionaire acknowledges, agrees and undertakes not to seek any revision of the Aeronautical Charges from AERA or otherwise, and in the event any such revision is sought in accordance with any provision of the Applicable Laws and/ or this Agreement, and it shall at all times be restricted to the extent specified therein.

#### **32.5. Review of Aeronautical Charges**

- 32.5.1. The Aeronautical Charges to be levied, collected and appropriated, in accordance with the provisions of Article 32, to be reviewed by AERA in accordance with the provisions of AERA Act and this Agreement, provided, however, that such review shall not rely on, examine or consider any events, occurrence, circumstances or grounds for and in respect of which revision in the Aeronautical Charges, the Concession Period or any other form of relief or remedy have been provided in this Agreement.
- 32.5.2. Any additional costs, if any, or reduction thereof arising from Change of Scope, Change in Specifications and Standards, security requirements or compliance with new international obligations having the force of Applicable Law may be reviewed by AERA, for the purposes of revision of the Aeronautical Charges. Any such review by AERA shall include consideration of the revenues for and in respect of Aeronautical Services, in accordance with the Applicable Permits issued for the Project.
- 32.5.3. Any review of the Aeronautical Charges under the provisions of Clause 32.5.1, shall take into account the revenues, adjustments, recoveries or payments, if any, that the Parties may have recovered or made in accordance with the provisions of this Agreement, and AERA may determine whether any further recoveries or payments, as the case may be, are due to, or receivable from the Concessionaire. AERA may, as far as may be, give effect to its determination hereunder by an appropriate increase or decrease, as the case may be, in the rate of the Aeronautical Charges and for such period as it may specify, in accordance with the provisions of AERA Act and this Agreement. Provided, however, that in the event AERA

- determines that any increase in the Aeronautical Charges is unjustified and prejudicial to the interests of Users, it may waive such increase fully or partly.
- 32.5.4. The Parties acknowledge that any review of the Aeronautical Charges under the provisions of this Clause 32.5.1, shall be undertaken in accordance with Applicable Laws and shall be regulated and proceeded accordingly.
- 32.5.5. The Parties acknowledge that any review of Charges under the provision of Clause 32.5.1 shall be undertaken in accordance with Applicable Laws and shall be preceded by open hearing and reasoned orders.

### **32.6. Certain limitations on increase in Aeronautical Charges**

- 32.6.1. In the event any capital cost is required to be incurred in pursuance of the provisions of Clause 32.5.2, the Concessionaire shall submit the specifications and costs in respect thereof to AERA for its scrutiny in consultation with the affected Users or their representative bodies. Upon completion of such scrutiny and consultations, AERA shall consider such submissions to determine the Aeronautical charges.
- 32.6.2. The Concessionaire shall undertake and complete the Construction Works for the subsequent Phases in accordance with the approval granted by Authority and other Government Instrumentality, and the provisions of this Agreement for and in respect of Construction Works shall apply mutatis mutandis to the Construction Works undertaken in pursuance of this Clause 32.6.
- 32.6.3. The capital cost incurred by the Concessionaire in accordance with this Clause 32.6 shall, upon completion of the relevant Construction Works, be recovered by the Concessionaire in accordance with the Applicable Laws and the terms of this Agreement, including the applicable tariff guidelines of AERA.

### **32.7. Penalty for evasion of Fees**

In the event that any User uses the Airport without payment of the Fee due, the Concessionaire shall, subject to Applicable Laws and Applicable Permits, be entitled to determine and collect from such person, the Fee due and upto twice the amount thereof towards Damages for attempt to make unauthorised use of the Airport, provided that the determination and collection of such Fee and Damages shall be at the risk and cost of the Concessionaire and the Authority shall not be liable on this account in any manner whatsoever.

### **32.8. Display of Aeronautical Charges**

- 32.8.1. The Concessionaire shall on its website and its office, maintain and provide the applicable rates of Aeronautical Charges for information of the Users.
- 32.8.2. The Concessionaire shall, from time to time, inform the Authority of the applicable Aeronautical Charges.
- 32.8.3. The Concessionaire shall not revise, display or collect any amounts in excess of the rates of Aeronautical Charges specified by AERA.

### **32.9. Monthly Fee Statement**

During the Operation Period, the Concessionaire shall furnish to the Authority, within 7 (seven) days of completion of each month, a statement of Fees substantially in the form set forth in Schedule–N (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.

### **32.10. Fee Contractor**

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

**ARTICLE 33**

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## **ARTICLE 36**

### **36. ESCROW ACCOUNT**

#### **36.1. Escrow Account**

- 36.1.1. The Concessionaire shall, prior to the Appointed Date, open and establish an Escrow Account with a Bank (the "Escrow Bank") in accordance with this Agreement read with the Escrow Agreement.
- 36.1.2. The nature and scope of the Escrow Account are fully described in the agreement ("Escrow Agreement") to be entered into amongst the Concessionaire, the Authority, the Escrow Bank and the Senior Lenders through the Lenders' Representative, which shall be substantially in the form set forth in Schedule-T.

#### **36.2. Deposits into Escrow Account**

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

- (a) all monies received in relation to the Project from Banks, other lenders, shareholders and insurance companies;
- (b) all Fee and any other revenues from or in respect of the Airport, including the proceeds of any rentals, deposits, capital receipts or insurance claims;
- (c) all Fee collected by the Authority in exercise of its rights under the Concession Agreement; and
- (d) all payments by the Authority, after deduction of any outstanding Concession Fee; and
- (e) Termination Payment

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

Provided further, that revenues earned by sub-licensees or assignees shall not be deposited into the Escrow Account.

#### **36.3. Withdrawals during Concession Period**

- 36.3.1. The Concessionaire shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, inter alia, that deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due:
- (a) all taxes due and payable by the Concessionaire for and in respect of the Airport, excluding City Side Development;
  - (b) all payments relating to construction of the Airport, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
  - (c) O&M Expenses including license fee in accordance with the Clause 31.5, subject to the ceiling, if any, set forth in the Financing Agreements, in accordance with the Applicable Laws, Applicable Permits and Good Industry Practice;
  - (d) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;
  - (e) Concession Fee due and payable to the Authority;
  - (f) monthly proportionate provision of Debt Service due in an Accounting Year;
  - (g) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
  - (h) monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;

- (i) any reserve requirements set forth in the Financing Agreements; and
  - (j) balance, if any, in accordance with the instructions of the Concessionaire.
- 36.3.2. The Concessionaire shall not in any manner modify the order of payment specified in Clause 36.3.1, except with the prior written approval of the Authority.

**36.4. Withdrawals upon Termination**

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

- (a) all taxes due and payable by the Concessionaire for and in respect of the Airport, excluding City Side Development;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) outstanding Concession Fee;
- (d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- (e) retention and payments relating to the liability for defects and deficiencies set forth in Article 44;
- (f) outstanding Debt Service including the balance of Debt Due;
- (g) outstanding Subordinated Debt;
- (h) incurred or accrued O&M Expenses;
- (i) any other payments required to be made under this Agreement; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire:

Provided that no appropriations shall be made under Sub-clause (j) of this Clause 36.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of Article 43.

The provisions of this Article 36 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 36.4.1 have been discharged.

## ARTICLE 37

### 37. INSURANCE

#### 37.1. Insurance during Concession Period

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

#### 37.2. Insurance Cover

Without prejudice to the provisions contained in Clause 37.1, the Concessionaire shall, during the Concession Period, procure and maintain Insurance Cover including but not limited to the following:

- (a) Loss, damage or destruction of the Project Assets, including assets handed over by the Authority to the Concessionaire, at replacement value;
- (b) comprehensive third party liability insurance including injury to or death of personnel of the Authority or others who may enter the Airport;
- (c) the Concessionaire's general liability arising out of the Concession;
- (d) liability to third parties for goods or property damage;
- (e) workmen's compensation insurance; and
- (f) any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (a) to (e) above.

#### 37.3. Notice to the Authority

No later than 30 (thirty) 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 37. 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.

#### 37.4. Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 37 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty-five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Authority.

#### 37.5. Remedy for failure to insure

If the Concessionaire shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Authority shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Concessionaire, or in the event of computation



of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Concessionaire.

**37.6. Waiver of subrogation**

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 37 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.

**37.7. 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.

**37.8. Application of insurance proceeds**

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire by credit to the Escrow Account and it shall, notwithstanding anything to the contrary contained in Clause 36.3, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement or improvement of the Airport, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

**37.9. Compliance with conditions of insurance policies**

The Concessionaire expressly acknowledges and undertakes to fully indemnify the Authority from and against all losses and claims arising from the Concessionaire's failure to comply with the conditions imposed under the insurance policies effected in accordance with the provisions of this Agreement.

## **ARTICLE 38**

### **38. ACCOUNTS AND AUDIT**

#### **38.1. Audited accounts**

- 38.1.1. The Concessionaire shall maintain books of accounts recording all its receipts (including all Gross Revenue and other revenues derived/collected by it from or on account of the Airport and/or its use), income, expenditure, payments (including payments from the Escrow Account), 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 either through itself or through any of its authorised representatives, 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.
- 38.1.2. 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, giving summarised information on the traffic count for each category of Users using the Airport and liable for payment of Fee therefore, and any other information, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly result by the Companies listed on a stock exchange.
- 38.1.3. On or before the 31st (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 summarised information on (a) the traffic count for each category of Users using the Airport and liable for payment of Fee therefore, (b) Fee charged and received, Gross Revenue and other revenues derived from the Airport, City Side and any other assets associated with the Project and earned directly by the Concessionaire (c) such other information as the Authority may reasonably require.

#### **38.2. Appointment of auditors**

- 38.2.1. 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 5 (five) reputable firms of chartered accountants ("Panel of Chartered Accountants"), such list to be prepared substantially in accordance with the criteria set forth in Schedule-U. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.
- 38.2.2. 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.
- 38.2.3. 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, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.
- 38.2.4. The Authority shall have the right, but not the obligation, to appoint at its cost, for the duration of the Construction Period, another firm (the "Concurrent Auditors") from the Panel of Chartered Accountants to undertake concurrent audit of the Concessionaire's accounts.

**38.3. Certification of claims by Statutory Auditors**

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 installment of Concession Fee as per Clause 31.3.

**38.4. Set-off**

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 38.4 shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

**38.5. Dispute resolution**

In the event of there being any difference between the findings of the Additional Auditors or the Concurrent Auditors, as the case may be, 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 Dispute shall be resolved by the Authority by recourse to the Dispute Resolution Procedure.

**Part V**  
**Force Majeure and Termination**

## ARTICLE 39

### 39. FORCE MAJEURE

#### 39.1. Force Majeure

As used in this Agreement, the expression “Force Majeure” or “Force Majeure Event” shall, save and except as expressly provided otherwise, mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 39.2, 39.3 and 39.4 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 (a) is beyond the reasonable control of the Affected Party, and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (c) has Material Adverse Effect on the Affected Party.

#### 39.2. Non-Political Event

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

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Airport for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 39.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (d) any delay or failure of an overseas contractor to deliver equipment in India if such delay or failure is caused outside India by any event specified in Sub-clause (a) above and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such contractor;
- (e) any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Laws or Applicable Permits, or (ii) on account of breach of any Applicable Laws or Applicable Permits 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.

#### 39.3. Indirect Political Event

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

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible;

- (c) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty-four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (d) any civil commotion, boycott or political agitation which prevents collection of Fee by the Concessionaire for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (e) failure of the Authority to permit the Concessionaire to continue with the Construction Works, with or without modifications, in the event of stoppage of such works after discovery of any geological or archaeological finds;
- (f) 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;
- (g) any Indirect Political Event that causes a Non-Political Event; or
- (h) any event or circumstances of a nature analogous to any of the foregoing.

#### **39.4. Political Event**

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

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 46 and its effect, in financial terms, exceeds the sum specified in Clause 46.1;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;
- (d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.

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

39.5.1. 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 39 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.

39.5.2. The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall

have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

- 39.5.3. 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 39.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

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

- 39.6.1. Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 29.1.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.
- 39.6.2. At any time after the Appointed Date, if any Force Majeure Event occurs:
- (a) before the COD of Phase I, the Construction Period of Phase I 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 of Phase I, whereupon the Concessionaire is unable to collect Aeronautical Charges despite making best efforts or it is directed by the Authority or any Government Instrumentality to suspend the collection thereof during the subsistence of such Force Majeure Event, AERA shall consider the impact of any such Force Majeure Event and provide appropriate remedies in accordance with provisions of Applicable Laws.

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

- 39.7.1. Upon occurrence of any Force Majeure Event prior to the Appointed Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.
- 39.7.2. 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.

- 39.7.3. Save and except as expressly provided in this Article 39, 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.

### **39.8. 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 39, 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.

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

- 39.9.1. 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.
- 39.9.2. 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;
  - (b) 110% (one hundred and ten per cent) of the Adjusted Equity; and
  - (c) an amount equivalent to the Additional Termination Payment less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in computation of the amount payable hereunder.
- 39.9.3. If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 42.3.2 as if it were an Authority Default.

### **39.10. 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.

### **39.11. 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.

### **39.12. Relief for Unforeseen Events**

- 39.12.1. Upon occurrence of an unforeseen event, situation or similar circumstances not contemplated or referred to in this Agreement, and which could not have been foreseen by a prudent and diligent person (the "Unforeseen Event"), any Party may by notice inform the other Party of the occurrence of such Unforeseen Event with the particulars thereof and its effects on the costs, expense and revenues of the Project. Within 15 (fifteen) days of such notice, the Parties shall meet and make efforts in good faith to determine if such Unforeseen Event has occurred,



and upon reaching agreement on occurrence thereof deal with it in accordance with the provisions of this Clause 39.12.

39.12.2. Upon determination of the occurrence of an Unforeseen Event, the Parties shall make a reference to a conciliation tribunal which shall comprise one member each to be nominated by both Parties from among persons who have been Judges of a High Court and the conciliators so nominated shall choose a chairperson who has been a Judge of the Supreme Court or Chief Justice of a High Court.

39.12.3. The conciliation tribunal referred to in Clause 39.12.2 shall conduct its proceedings in accordance with the provisions of Article 49 as if it is an arbitration proceeding under that Article, save and except as provided in this Clause 39.12.

39.12.4. The conciliation tribunal referred to in this Clause 39.12 shall conduct preliminary proceedings to satisfy itself that -

- (a) an Unforeseen Event has occurred;
- (b) the effects of such Unforeseen Event cannot be mitigated without a remedy or relief which is not contemplated in the Agreement; and
- (c) the Unforeseen Event or its effects have not been caused by any Party by any act or omission on its part,

and if the conciliation tribunal is satisfied that each of the conditions specified hereinabove is fulfilled, it shall issue an order to this effect and conduct further proceedings under this Clause 39.12.

39.12.5. Upon completion of the conciliation proceedings referred to in this Clause 39.12, the conciliation tribunal may by a reasoned order make recommendations and setting out the terms of reference which shall be:

- (a) based on a fair and transparent justification;
- (b) no greater in scope than is necessary for mitigating the effects of the Unforeseen Event;
- (c) of no greater duration than is necessary for mitigating the effects of the Unforeseen Event; and
- (d) quantified and restricted in terms of relief or remedy.

39.12.6. Within 15 (fifteen) days of receiving the order and terms of reference referred to in Clause 39.12.5, the Parties shall meet and make efforts in good faith to accept, in whole or in part, the relief or remedy recommended by the conciliation tribunal for mitigating the effects of the Unforeseen Event and to procure implementation of the Project in accordance with the provisions of this Agreement. In pursuance hereof, the Parties may enter into a Memorandum of Understanding (the "MoU") setting forth the agreement reached hereunder, and the terms of such MoU shall have force and effect as if they form part of this Agreement.

## **ARTICLE 40**

### **40. COMPENSATION FOR BREACH OF AGREEMENT**

#### **40.1. Compensation for default by the Concessionaire**

Subject to the provisions of Clause 40.5, in the event of the Concessionaire being in material breach or default of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material breach or default, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 40.1 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.

#### **40.2. Compensation for default by the Authority**

Subject to the provisions of Clause 40.5, 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 or 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.

#### **40.3. Extension of Concession Period**

Subject to the provisions of Clause 40.5, in the event that a material breach or default of this Agreement set forth in Clause 40.2 causes delay in achieving COD of Phase I or leads to suspension of or reduction in the realisation of Fee, as the case may be, the Authority shall, in addition to payment of compensation under Clause 40.2, extend the Concession Period, such extension in the Concession Period shall be considered and determined by the Authority at such time. The decision of the Authority in this matter shall be final.

#### **40.4. Compensation to be in addition**

Compensation payable under this Article 40 shall be in addition to, and without prejudice to, the other rights and remedies of the Parties under this Agreement including Termination thereof.

#### **40.5. Mitigation of costs and damage**

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

## **ARTICLE 41**

### **41. SUSPENSION OF CONCESSIONAIRE'S RIGHTS**

#### **41.1. Suspension upon Concessionaire's Default**

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

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

41.2.1. During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect all Fee and revenues under and in accordance with this Agreement and deposit the same in the Escrow Account. The Authority shall be entitled to make withdrawals from the Escrow Account for meeting the costs incurred by it for meeting the O&M Expenses and for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses specified in Clause 36.3.

41.2.2. During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest 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 licenses and sub-licenses respectively, the Authority or any other person authorised by it under Clause 41.1 to use during Suspension, all Intellectual Property belonging to or licensed to the Concessionaire with respect to the Airport and its design, engineering, construction, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

#### **41.3. Revocation of Suspension**

41.3.1. 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.

- 41.3.2. 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.

**41.4. Substitution of Concessionaire**

At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice thereunder from the Lenders' Representative, the Authority shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 41.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

**41.5. Termination**

- 41.5.1. At any time during the period of Suspension under this Article 41, 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 41.4, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 42 as if it is a Concessionaire Default under Clause 42.1.
- 41.5.2. 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 41.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, mutatis mutandis, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Concessionaire Default.

## ARTICLE 42

### 42. TERMINATION

#### 42.1. Termination for Concessionaire Default

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

- (a) The Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Concessionaire fails to meet any Condition Precedent or cure the Concessionaire Default, as the case may be, for which whole or part of the Performance Security was appropriated, within a Cure Period of 120 (one hundred and twenty ) days;
- (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 during the Cure Period of 120 (one hundred and twenty) days;
- (d) the Concessionaire abandons or manifests intention to abandon the construction or operation of the Airport without the prior written consent of the Authority;
- (e) COD of Phase I does not occur within the period specified in Clause 12.4.3;
- (f) the Punch List items have not been completed within the period set forth in Clause 14.4.1;
- (g) the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be, or commits repeated default in conforming to the Key Performance Indicators;
- (h) the Concessionaire has failed to make any payment to the Authority within the period specified in this Agreement;
- (i) an Escrow Default has occurred and the Concessionaire fails to cure the default within a Cure Period of 15 (fifteen) days;
- (j) upon occurrence of a Financial Default, the Lenders' Representative has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;
- (k) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- (l) the Concessionaire creates any Encumbrance in breach of this Agreement;
- (m) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (n) a Change in Ownership has occurred in breach of the provisions of 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 a Material Adverse Effect;
- (p) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;

- (q) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;
  - (r) the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
  - (s) a resolution for winding up of the Concessionaire is passed, or any petition for winding-up of 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 a 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; and provided that:
    - i. the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
    - ii. the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and
    - iii. each of the Project Agreements remains in full force and effect;
  - (t) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;
  - (u) the Concessionaire submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
  - (v) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;
  - (w) the Concessionaire issues a Termination Notice in violation of the provisions of this Agreement; or
  - (x) the Concessionaire commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the Authority.
- 42.1.2. Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Clause 42.1.3.
- 42.1.3. The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 42.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to

exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement:

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

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

#### **42.2. Termination for Authority Default**

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

- (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 fails to provide the Right of Way required for construction of the Airport on at least 90% (ninety per cent) of the total area of the Site required and necessary for the Airport; or
- (d) 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.

42.2.2. 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.

#### **42.3. Termination Payment**

42.3.1. Upon Termination on account of a Concessionaire Default during the Operation Period, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:

- (a) 90% (ninety per cent) of the Debt Due less Insurance Cover; and
- (b) 70% (seventy per cent) of the amount representing the Additional Termination Payment:

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.

For the avoidance of doubt, the Concessionaire hereby acknowledges that no Termination Payment shall be due or payable on account of a Concessionaire Default occurring prior to COD for Phase I, save and except as provided in Clause 42.3.3

- 42.3.2. Upon Termination on account of an Authority Default, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:
- (a) Debt Due less Insurance Cover;
  - (b) 150% (one hundred and fifty per cent) of the Adjusted Equity; and
  - (c) 115% (one hundred and fifteen per cent) of the amount representing the Additional Termination Payment.
- 42.3.3. Upon Termination on account of Concessionaire Default during the Construction Period for Phase I, no Termination Payment shall be due and payable for and in respect of expenditure comprising the first 40% (forty per cent) of the Total Project Cost and in the event of expenditure exceeding such 40% (forty per cent) and forming part of Debt Due, the provisions of Clause 42.3.1 shall, to the extent applicable to Debt Due, apply in respect of the expenditure exceeding such 40% (forty per cent). For the avoidance of doubt and by way of illustration, the Parties agree that if the total expenditure incurred prior to Termination is 90% (ninety per cent) of the Total Project Cost, the expenditure eligible for computation of Termination Payment hereunder shall be 50% (fifty per cent) of the Total Project Cost and the Termination Payment due and payable in such event shall not exceed 45% (forty-five per cent) of the Total Project Cost. The Parties further agree that for the purposes of this Clause 42.3.3, Total Project Cost shall mean the amount specified in Sub-clause (b) of the definition of Total Project Cost in Clause 53.1. The Parties also agree that for determining the Termination Payment under this Clause 42.3.3, the expenditure comprising the latest Project Milestone shall be reckoned.
- 42.3.4. Termination Payment shall become due and payable to the Concessionaire within 15 (fifteen) days of a demand being made by the Concessionaire to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to 3% (three per cent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.
- 42.3.5. Upon Termination on expiry of the Concession Period by efflux of time and in the event any Project Assets, essential for the efficient, economic and safe operation of the Airport or otherwise as per the requirements of this Agreement, shall have been acquired and installed after the 30th (thirty ) anniversary of the Appointed Date, with prior written consent of the Authority, which consent shall not be unreasonably denied, a Termination Payment equal to 80% (eighty per cent) of the Adjusted Depreciated Value of such Project Assets shall, notwithstanding the provisions of Clause 42.4.1, be made by the Authority to the Concessionaire. Provided that any such Termination Payment shall be adjusted and reduced by the amount that shall have been considered by AERA in the determination of the Aeronautical Charges.
- 42.3.6. Notwithstanding anything to the contrary in this Agreement, but subject to the provisions of Clause 42.3.5, in the event any Project Assets, essential for the efficient, economic and safe operation of the Airport, shall have been acquired and installed after the 30th (thirtieth) anniversary of the Appointed Date, with prior written consent of the Authority, which consent shall not be unreasonably denied, a sum equal to 70% (seventy per cent) of the Adjusted Depreciated Value thereof shall be deemed to be Debt Due for the purposes of Termination Payment.
- 42.3.7. The Concessionaire expressly agrees that Termination Payment under this Article 42 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 it shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

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

- 42.4.1. The Termination Payment, not being Additional Termination Payment, due and payable under this Agreement shall be computed with reference to the Debt Due and Adjusted Equity,



as the case may be, in accordance with the provisions of this Agreement. For the avoidance of doubt, the Parties agree that within a period of 60 (sixty) days from COD for Phase I, the Concessionaire shall notify to the Authority, the Total Project Cost as on COD for Phase I and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing Termination Payment. The Parties further agree 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. The Parties also agree that for the purposes of computing Termination Payment, the Debt Due shall at no time exceed 70% (Seventy per cent) of the Total Project Cost.

- 42.4.2. 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. Provided, however, that the provisions of this Clause 42.4.2 shall not apply if the Concessionaire does not notify the particulars of any foreign currency loans within 60 (sixty) days of the date of conversion of such foreign currency loans into Indian currency. Provided further that all borrowings in foreign currency shall be restricted to the financing of Total Project Cost and any borrowings in excess thereof shall not qualify for computation of Termination Payment.
- 42.4.3. Additional Termination Payment due and payable in respect of Specified Assets, not being assets forming part of City Side Development or expansion of the Airport, as the case may be, which are constructed, acquired or installed after the 5th (fifth) anniversary of COD of Phase I but no later than the 30th (thirtieth) anniversary of the Appointed Date, shall be limited to the lowest of:
1. Adjusted Depreciated Value thereof;
  2. 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
  3. 40% (forty per cent) of Total Project Cost.
- 42.4.4. Additional Termination Payment due and payable in respect of City Side 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 Total Project Cost.
- 42.4.5. Additional Termination Payment due and payable in respect of expansion of the Airport in accordance with the provisions of Clause 12.8 and the Master Plan, and forming part of Specified Assets shall be limited to the lowest of:
- (a) Adjusted Depreciated Value thereof;
  - (b) the capital cost of the expansion of the Airport as approved by Senior Lenders;
  - (c) the actual cost of the expansion of the Airport after Phase I upon completion thereof; and
  - (d) the estimated capital cost of the expansion of the Airport, as reasonably specified by the Authority, in consultation with the Independent Engineer, and prior to commencement of construction thereof

#### **42.5. Extension of Concession Period**

In the event of an extension as set out in Clause 3.1.1, the Termination Payment specified in Clause 42.3.5 shall not be due and payable to the Concessionaire. Upon expiry of the extended Concession Period hereunder, the Airport shall vest in the Authority under and in accordance with the provisions of this Agreement, and no Termination Payment shall be due and payable to the Concessionaire for and in respect of the transfer of the Airport to the Authority hereunder. Provided, however, that in the event an extension is not granted in accordance with Clause 3.1.1, the Authority shall pay to the

Concessionaire the Termination Payment computed in accordance with the provisions of Clauses 42.3.5 and 42.3.6. Provided further that in the event of an extension hereunder, the provisions of this Agreement, save and except the provisions for extension under Clause 3.1.1 and this Clause 42.5, shall apply mutatis mutandis to the extended Concession Period.

**42.6. Other rights and obligations of the Authority**

Upon Termination for any reason whatsoever, the Authority shall:

- (a) take possession and control of the Airport forthwith;
- (b) take possession and control of all materials, stores, implements, construction plants and equipment on or about the Site;
- (c) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Site or any part of the Project;
- (d) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 43.1; and
- (e) succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

**42.7. Survival of rights**

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 42.3.7, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

## **ARTICLE 43**

### **43. DIVESTMENT OF RIGHTS AND INTEREST**

#### **43.1. Divestment Requirements**

43.1.1. 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 Airport, 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 Airport is compliant with the provisions of this Agreement ; 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 Airport 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 Airport and shall be assigned to the Authority free of any Encumbrance;
- (e) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- (f) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project Assets, 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 Airport, free from all Encumbrances, absolutely unto the Authority or to its nominee.

43.1.2. 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 issuance of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

#### **43.2. Inspection and cure**

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Independent Engineer or any of its nominee shall verify, after giving due notice to the Concessionaire specifying the time, date and place of such verification and/or inspection, compliance by the Concessionaire with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 44 shall apply, mutatis mutandis, in relation to curing of defects or deficiencies under this Article 43.

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

- 43.3.1. 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.
- 43.3.2. The Parties shall provide to each other, 9 (nine) months prior to the Transfer Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation, management and development of the Airport following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the Authority, its concessionaire or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.
- 43.3.3. 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 43.1.1 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.

### **43.4. Vesting Certificate**

The divestment of all rights, title and interest in the Airport 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-V (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 Airport, 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 Airport on the footing that all Divestment Requirements have been complied with by the Concessionaire

### **43.5. Divestment costs etc.**

- 43.5.1. The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project Assets 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.
- 43.5.2. In the event of any Dispute relating to matters covered by and under this Article 43, the Dispute Resolution Procedure shall apply.

## **ARTICLE 44**

### **44. DEFECTS LIABILITY AFTER TERMINATION**

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

The Concessionaire shall be responsible for all defects and deficiencies in the Airport 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 Airport 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 Airport 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 funds retained in the Escrow Account under the provisions of Clause 44.2 or from the Performance Guarantee provided thereunder.

#### **44.2. Retention in Escrow Account**

- 44.2.1. Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 44.2.3, a sum equal to 5% (five per cent) of the total Gross Revenue 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 44.1
- 44.2.2. Without prejudice to the provisions of Clause 44.2.1, the Independent Engineer shall carry out an inspection of the Airport 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 Airport is such that a sum larger than the amount stipulated in Clause 44.2.1 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.
- 44.2.3. The Concessionaire may, for the performance of its obligations under this Article 44, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under Clause 44.2.1 or 44.2.2, 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 44. Upon furnishing of a Performance Guarantee under this Clause 44.2.3, the retention of funds in the Escrow Account in terms of Clause 44.2.1 or 44.2.2, as the case may be, shall be dispensed with.

**Part VI**  
**Other Provisions**

## **ARTICLE 45**

### **45. ASSIGNMENT AND CHARGES**

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

- 45.1.1. Subject to Clauses 45.2 and 45.3, 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.
- 45.1.2. Subject to the provisions of Clause 45.2, 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.

#### **45.2. Permitted assignment and charges**

The restraints set forth in Clause 45.1 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 Airport;
- (b) mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title, arising or created in the ordinary course of business of the Airport, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Airport. For the avoidance of doubt, the Senior Lenders would be entitled to create a lien on the Escrow Account, subject to and without prejudice to the rights of the Authority under this Agreement;
- (c) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and
- (d) liens or encumbrances required by any Applicable Laws

#### **45.3. Substitution Agreement**

- 45.3.1. The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire pursuant to the agreement for substitution of the Concessionaire (the "Substitution Agreement") to be entered into amongst the Concessionaire, the Authority and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Schedule-W.
- 45.3.2. 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.

#### **45.4. Assignment by the Authority**

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

## ARTICLE 46

### 46. CHANGE IN LAW

#### 46.1. Increase in costs

46.1.1. If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of Rs. 1 crore (Rupees one crore) and 0.5% (zero point five per cent) of the Aeronautical Charges 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 increased costs, 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:

46.1.2. 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 46.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

#### 46.2. Reduction in costs

46.2.1. 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 per cent) of the Aeronautical Charges 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 decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Authority may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Concessionaire shall pay the amount specified therein to the Authority; provided that if the Concessionaire shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 46.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

#### 46.3. Protection of NPV

Pursuant to the provisions of Clauses 46.1 and 46.2 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. For



the avoidance of doubt, the Parties expressly agree that for determination of NPV, the discount rate to be used shall be equal to the weighted average rate of interest at which the Concessionaire has raised the Debt Due under its Financing Agreements.

**46.4. Restriction on cash compensation**

46.4.1. The Parties acknowledge and agree that the demand for cash compensation under this Article 46 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 Accounting 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.

**46.5. No claim in the event of recovery from Users**

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

## **ARTICLE 47**

### **47. LIABILITY AND INDEMNITY**

#### **47.1. General indemnity**

- 47.1.1. The Concessionaire shall indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities, Designated GOI Agencies and Authority owned and/or controlled entities/enterprises, (the “Government Indemnified Persons”) against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the Concessionaire to the Authority or any User or from any negligence of the Concessionaire under contract or tort, or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Government Indemnified Persons.
- 47.1.2. The Authority shall indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (a) defect in title and/or the rights of the Authority in the land comprised in the Site, and/or (b) 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 assigns, affiliates, contractors, servants or agents, the same shall be the liability of the Concessionaire.

#### **47.2. Indemnity by the Concessionaire**

- 47.2.1. Without limiting the generality of Clause 47.1, the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Government Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:
- (a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;
  - (b) payment of taxes required to be made by the Concessionaire, its assigns or affiliates 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.
- 47.2.2. Without limiting the generality of the provisions of this Article 47, the Concessionaire shall fully indemnify, hold harmless and defend the Government Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Government 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 Airport, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a licence, at no cost to the Authority, authorising continued use of the infringing work. If the Concessionaire is unable to secure such licence within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

#### **47.3. 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 47 (“Indemnified Party”) it shall notify the other Party (“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.

#### **47.4. Defence of claims**

- 47.4.1. 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 47, 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.
- 47.4.2. If the Indemnifying Party has exercised its rights under Clause 47.3, 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).
- 47.4.3. If the Indemnifying Party exercises its rights under Clause 47.3, 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:
- i. the employment of counsel by such party has been authorised in writing by the Indemnifying Party;
  - ii. 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;
  - iii. 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

- iv. the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
- v. that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
- vi. 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 47.4.3 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.

**47.5. No consequential claims**

Notwithstanding anything to the contrary contained in this Article 47, 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.

**47.6. Survival on Termination**

The provisions of this Article 47 shall survive Termination.

## **ARTICLE 48**

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

#### **48.1. 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 Airport by third parties in accordance with and subject to the provisions of this Agreement.

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

48.2.1. The Concessionaire shall allow free access to the Site at all times for the authorised representatives of the Authority, Senior Lenders, and the Independent Engineer, and for the persons duly authorised by any Government Instrumentality or Designated GOI Agency to inspect the Airport and 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.

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

#### **48.3. Property taxes**

All property taxes on the Site shall be payable by the Authority as owner of the Site; provided, however, that any taxes on property payable by the Authority to the extent arising out of any development undertaken by the Concessionaire, shall be paid by the Authority in accordance with Applicable Laws and reimbursed by the Concessionaire to the Authority within a period of 60 (sixty) days of receiving a notice from the Authority along with necessary particulars thereof. For the avoidance of doubt, the Parties agree that stamp duties, if any, due and payable on the grant of license comprising this Agreement shall be paid by the Authority. Provided, however, that the Authority may require the Concessionaire to pay such stamp duties, which shall be reimbursed by the Authority to the Concessionaire within 15 (fifteen) days of receiving the demand therefor.

#### **48.4. Restriction on sub-letting**

The Concessionaire shall not sub-license 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 Airport.

## **ARTICLE 49**

### **49. DISPUTE RESOLUTION**

#### **49.1. Dispute resolution**

- 49.1.1. Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “Dispute”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 49.2.
- 49.1.2. 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.

#### **49.2. Conciliation**

- 49.2.1. 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 CEO of the Authority or any other person designated by 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 49.1.1 or such longer period as may be mutually agreed by the Parties, either Party shall refer the Dispute to arbitration in accordance with the provisions of Clause 49.3.

#### **49.3. Arbitration**

- 49.3.1. Subject to the provisions of the AERA Act concerning the power and authority of AERA to adjudicate upon the disputes as per the provisions therein, any other Dispute which is not resolved amicably by conciliation, as provided in Clause 49.2, shall be finally decided by reference to arbitration by an arbitral tribunal in accordance with Clause 49.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Center for Alternative Dispute Resolution, New Delhi (the Rules), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996 or any subsequent amendment or re-enactment thereof (“Act”). The place of such arbitration shall be Lucknow and the language of arbitration proceedings shall be English.
- 49.3.2. There shall be an arbitral tribunal comprising three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Act.
- 49.3.3. The arbitral tribunal shall make a reasoned award (“Award”). Any Award made in any arbitration held pursuant to this Article 49 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.
- 49.3.4. The Concessionaire and the Authority agree that an Award may be enforced against the Concessionaire and/or the Authority, as the case may be, and their respective assets wherever situated.

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

**49.4. Adjudication by a tribunal**

In the event of constitution of a statutory tribunal or other forum with powers to adjudicate upon disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 49.3, be adjudicated upon by such tribunal or other forum in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly.

## **ARTICLE 50**

### **50. DISCLOSURE**

#### **50.1. Disclosure of Specified Documents**

The Concessionaire shall make available for inspection by any person, copies of this Concession Agreement, the Maintenance Manual, the Maintenance Programme, the Maintenance Requirements and the Safety 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 Airport. The Concessionaire shall prominently display at the Terminal Building, 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.

#### **50.2. 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 Airport, 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.

#### **50.3. Withholding disclosure of Protected Documents**

Notwithstanding the provisions of Clauses 50.1 and 50.2, 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 50.1 and 50.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.



## **ARTICLE 51**

### **51. REDRESSAL OF PUBLIC GRIEVANCES**

#### **51.1.Complaints Register**

- 51.1.1. The Concessionaire shall maintain a public relations office at the Airport where it shall keep a register (“Complaint Register”) open to public access at all times for recording of complaints by any person (“Complainant”). Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Concessionaire at the Terminal Building so as to bring it to the attention of all Users.
- 51.1.2. 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.
- 51.1.3. Without prejudice to the provisions of Clauses 51.1.1 and 51.1.2, the Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

#### **51.2.Redressal of complaints**

- 51.2.1. 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.
- 51.2.2. Within 7 (seven) days of the close of each month, the Concessionaire shall send to the Authority and to the Independent Engineer a true photocopy each of all the pages of the Complaint Register on which any entry has been recorded during the course of such month, and upon perusal thereof, the Authority may, in its discretion, advise the Concessionaire to take such further action as the Authority may deem appropriate for a fair and just redressal of any grievance. The Concessionaire shall consider such advice and inform the Authority of its decision thereon, and if the Authority is of the opinion that the Complainant is entitled to further relief, it may refer the matter to the competent forum for its disposal under the Consumer Protection Act, 1986, and advise the Complainant to pursue the complaint at his own risk and cost.

## **ARTICLE 52**

### **52. MISCELLANEOUS**

#### **52.1. Governing law and jurisdiction**

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

#### **52.2. Waiver of immunity**

Each Party unconditionally and irrevocably:

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

#### **52.3. Depreciation**

For the purposes of depreciation under Applicable Laws, the property representing the capital investment made by the Concessionaire in the Project Assets 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 Applicable Laws.

#### **52.4. Delayed payments**

52.4.1. The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, 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 3% (three 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.

52.4.2. 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.

#### **52.5. Waiver**

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

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

- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
  - (c) shall not affect the validity or enforceability of this Agreement in any manner.
- 52.5.2. 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.

#### **52.6. 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 Airport 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, 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.

#### **52.7. 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.

#### **52.8. Survival**

52.8.1. 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.

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

#### **52.9. Entire Agreement**

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

#### **52.10. Severability**

If for any reason whatsoever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties 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.

**52.11. 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.

**52.12. 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.

**52.13. Successors and assigns**

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

**52.14. 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 the city specified in Sub-clause (b) below 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: Mr. Christoph Schnellmann

Designation: Chief Executive Officer, Yamuna International Airport Private Limited

Address: Esc House, 155, 1st & 2nd Floor, Okhla Industrial Estate, Phase 3, New Delhi 110020

Fax No:

Email: [Christoph.Schnellmann@zurich-airport.com](mailto:Christoph.Schnellmann@zurich-airport.com)

- (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 person named below 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 the same city as the Authority, it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier.

Name: Dr. Arun Vir Singh

Designation: Chief Executive Officer, Noida International Airport Limited

Address: 1<sup>st</sup> floor, Commercial Complex, Pocket 2, Sector Omega-1, Greater Noida, Pin- 201308

Fax No: +91 1202395150

Email: [ceo@nialjewar.com](mailto:ceo@nialjewar.com)

; and

- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered 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.

**52.15. 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.

**52.16. Counterparts**

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

## ARTICLE 53

### 53. DEFINITIONS

#### 53.16. 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:

“**AAI**” means the Airports Authority of India, established under the Airport Authority of India Act, 1994;

“**Act**” shall have the meaning assigned to it under clause 49.3;

“**AERA**” means the Airport Economic Regulatory Authority of India, established under the AERA Act, and shall include any other regulatory authority, replacing or superseding the functions and authorities of AERA, in accordance with the Applicable Laws;

“**AERA Act**” means the Airport Economic Regulatory Authority Act, 2008 as amended, modified and superseded from time to time;

“**ATC**” means the Air Traffic Control, and includes the tower and associated buildings and equipment located at the Airport;

“**ATC Facility**” means the air traffic services complex at the Airport, which includes the ATC tower, technical block and office accommodation with attached parking for its personnel, with provision for air-conditioning and continuous supply of electricity and water;

“**Accounting Year**” means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year;

“**Additional Auditors**” shall have the meaning as set forth in Clause 38.2.3;

“**Additional Termination Payment**” means the amount payable upon Termination in respect of Specified Assets, if any, as limited by the provisions of Clauses 42.4.3, 42.4.4 and 42.4.5, as the case may be;

“**Adjusted Depreciated Value**” means the amount arrived at after adjusting the depreciated book value of an asset (as stated in the books of account of the Concessionaire, save and except, in the case of buildings and permanent structures where the depreciated book value shall be determined by applying an annual depreciation rate of 3% (three per cent) based on the written down value method) to reflect the variation occurring in Price Index between the date of procurement thereof and the Transfer Date;

“**Adjusted Equity**” means the Equity funded in Indian Rupees and adjusted on the first day of the current month (the “**Reference Date**”), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in Price Index, and for any Reference Date occurring:

on or before COD of Phase I, 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 Price Index occurring between the first day of the month of Appointed Date and the Reference Date;

(a) from COD of Phase I and until the 4<sup>th</sup> (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD of Phase I 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 of Phase I to the extent of variation in Price Index occurring between COD of Phase I and the Reference Date; and

(b) after the 4th (fourth) anniversary of COD of Phase I, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.17% (zero point one seven per cent) thereof at the commencement of each month following the 4th (fourth) anniversary of COD of Phase I and the amount so arrived at shall be revised to the extent of variation in Price Index occurring between COD of Phase I and the Reference Date;

and the aforesaid shall apply, *mutatis mutandis*, to the Equity funded in Indian Rupees and expended for the expansion of the Airport in accordance with the provisions of Clause 12.8 and the Master Plan. For the avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the Concession Period is extended, but the revision on account of Price Index shall continue to be made;

**“Aeronautical Assets”** means those assets, which are necessary or required for the performance of Aeronautical Services at the Airport and shall include such other assets as the Concessionaire may procure from time to time, in accordance with the provisions of this Agreement, for or in relation to performance of Aeronautical Services, and does not include Non-Aeronautical Assets and City Side Development;

**“Aeronautical Charges”** means the charges for Aeronautical Services approved by AERA, which charges can be levied, collected and appropriated by the Concessionaire;

**“Aeronautical Revenues”** means the aggregate revenue requirement determined by AERA as per the Applicable Laws;

**“Aeronautical Services”** has the meaning as set forth in the AERA Act in relation to the services to be provided at the Airport;

**“Affected Party”** shall have the meaning as set forth in Clause 39.1;

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

**“Aircraft Fuelling Services”** shall have the meaning as set forth in Clause 18.3.1;

**“Airfield Lighting System”** means the lighting systems at the Airport, including those in respect of the Runway, taxiway, apron and approach, required for aircraft operations and aerodrome category airports in accordance with the provisions contained in the relevant ICAO Documents and Annexes;

**“Airport”** means the Airport, located at the place specified in the Recitals, and includes civil, mechanical and electrical works, the Terminal Building, the Runway and all Project Assets necessary for and associated with operation of the Airport, and shall also include City Side Development;

**“Appendix”** shall have the meaning as set forth in Clause 10.3.1;

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

“**Applicable Permits**” means all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Airport during the subsistence of this Agreement;

“**Appointed Date**” means the date on which Financial Close is achieved and every Condition Precedent is either satisfied or waived, as the case may be, in accordance with the provisions of this Agreement, and such date shall be the date of commencement of the Concession Period;

“**Approved Valuer**” means a firm of valuers recognised as such by the Income Tax Department and having experience of valuing at least 5 (five) properties exceeding Rs. 100 cr. (Rupees one hundred crore) each in value;

“**Architectural Design**” shall have the meaning as set forth in Clause 12.1.2;

“**Associate**” or “**Affiliate**” means, in relation to either Party, a person who controls, is controlled by, or is under the common control with such Party (as used in this definition, the expression “control” means, with respect to a person which is a company or corporation,

- a) the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person; or
- b) holding more than 50% (fifty per cent) of the voting rights of such person by virtue of an agreement; or
- c) the power to govern the policy decisions of such person under statute or an agreement; or
- d) to appoint or remove the majority of the members of the board of directors; or
- e) to cast the majority of votes at a meeting of the board of directors; 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 or by contract or otherwise.

“**Authority**” shall have the meaning attributed thereto in the array of Parties as set forth in the Recitals;

“**Authority Default**” shall have the meaning as set forth in Clause 42.2.1;

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

“**Average Daily Revenue**” means the amount arrived at by dividing the total Fee of the immediately preceding Accounting Year by 365 (three hundred and sixty-five), and increasing the quotient thereof by 5% (five per cent); provided that the Average Daily Revenue for any period prior to completion of the first Accounting Year following COD of Phase I shall be a simple average of the Fee collected every day during the period between COD of Phase I and the last day of the month preceding the date on which the event requiring calculation hereof occurred, and in the event that the Fee payable by any segment of traffic has not been realised for any reason, an assessment thereof shall be made by the Independent Engineer to form part of the Average Daily Revenue for such period;

“**Award**” shall have the meaning as set forth in Clause 49.3.3;

“**BCAS**” means the Bureau of Civil Aviation Security;



“**Bank**” means a bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore) or any other bank acceptable to Senior Lenders<sup>1</sup>;

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

“**Bid**” means the documents in their entirety comprised in the bid submitted by the selected bidder in response to the Request for Qualification cum Proposal in accordance with the provisions thereof and “**Bids**” shall mean the bids submitted by any and all bidders;

“**Bid Date**” means the last date on which the Bid may have been submitted in accordance with the provisions of the Request for Qualification cum Proposal;

“**Bid Security**” means the security provided by the Concessionaire to the Authority along with the Bid, in accordance with the Request for Qualification cum Proposals, and which is to remain in force until substituted by the Performance Security;

“**CNS/ATM Equipment**” means all equipment required by the Designated GOI Agency for performing the CNS/ATM Services;

“**CNS/ATM Services**” means communication, navigation and surveillance, and air traffic management services to be provided at the Airport as appropriate to the airspace configuration within the lateral and vertical limits of such air space, and includes:

- a) aerodrome control service including surface movement control or ground control excluding apron control;
- b) approach control / approach radar control service;
- c) area control / area radar control service (if planned); and
- d) associated services such as aeronautical information service, 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 Documents and Annexes and as required for aircraft operations at the Airport;

“**COD**” or “**Commercial Operation Date**” shall have the meaning as set forth in Clause 15.1;

“**CPI (IW)**” means the Consumer Price Index for Industrial Workers as published by the Labour Bureau, Government of India and shall include any index which substitutes the CPI (IW), and any reference to CPI (IW) shall, unless the context otherwise requires, be construed as a reference to the CPI (IW) published for the period ending with the preceding quarter;

“**Car Park**” shall have the meaning as set forth in Clause 12.6.1;

“**Cargo Facilities**” means the real estate, buildings, structures and equipment, as the case may be, required for handling of incoming and outgoing cargo, including short-term warehousing thereof in accordance with the provisions of Article 21 of this Agreement;

“**Change in Law**” means the occurrence of any of the following after the Bid Date:

- 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 Bid Date;

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<sup>1</sup> Modified as per RBI circular RBI/2020-21/20 (DOR.No.BP.BC/7/21.04.048/2020-2021) dated 6<sup>th</sup> August 2020

d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Bid Date; or

e) any change in the rates of any of the Taxes that have a direct effect on the Project;

**“Change in Ownership”** means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes (i) the aggregate holding of the selected bidder, together with its Associates in the total Equity to decline below 51% (fifty one per cent) thereof until the 7<sup>st</sup> (seventh) anniversary of COD of Phase I, and (ii) the equity holding of each Consortium Member along with its Associates whose technical and financial capacity was evaluated for the purposes of pre-qualification and short-listing in response to the RfQ-cum-RfP, to decline below 26 % (twenty six per cent) until the 7<sup>th</sup> (seventh) anniversary of COD of Phase I; provided that any material variation (as compared to the representations made by the Concessionaire during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or Bid, as the case may be,) in the proportion of the equity holding of the selected bidder to the total Equity, if it occurs prior to COD of Phase I, shall constitute a Change in Ownership;

**“Change of Scope”** shall have the meaning as set forth in Clause 16.1;

**“Change of Scope Order”** shall have the meaning as set forth in Clause 16.2.3;

**“Change of Scope Notice”** shall have the meaning as set forth in Clause 16.2.1;

**“Check-in Services”** shall have the meaning as set forth in Clause 19.6.1;

**“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;

**“City Side”** shall mean the real estate forming part of the Site and earmarked as City Side in Schedule-A;

**“City Side Development”** shall have the meaning as set forth in Clause 3.2;

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

**“Complainant”** shall have the meaning as set forth in Clause 51.1;

**“Complaint Register”** shall have the meaning as set forth in Clause 51.1;

**“Completion Certificate”** shall have the meaning as set forth in Clause 14.2;

**“Concession”** shall have the meaning as set forth in Clause 3.1.1;

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

**“Concession Fee”** shall have the meaning as set forth in Clause 31.1;

**“Concession Period”** means the period starting on and from the Appointed Date and ending on the Transfer Date;

**“Concessionaire Default”** shall have the meaning as set forth in Clause 42.1.1;

**“Concurrent Auditors”** shall have the meaning as set forth in Clause 38.2.4;

**“Conditions Precedent”** shall have the meaning as set forth in Clause 4.1.1;

“**Consortium**” shall have the meaning as set forth in Recital (E);

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

“**Construction Period**” means the period beginning from the Appointed Date and ending on COD for Phase I and in respect of the subsequent Phases, such period shall commence from the date so notified by the Authority and end on the respective COD for that Phase;

“**Construction Works**” means all works and things necessary to complete the Airport in accordance with this Agreement and includes the Aeronautical Assets, Non-Aeronautical Assets, Project Facilities and any other construction works undertaken at the Airport at any time during the Concession Period;

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

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

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

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

“**DGCA**” means the Directorate General of Civil Aviation or any substitute thereof;

“**Damages**” shall have the meaning as set forth in Sub-clause (x) of Clause 1.2.1;

“**Debt Due**” means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:

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

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

provided further that the Debt Due, on or after COD of Phase I, shall in no case exceed 70% (seventy per cent) of the Total Project Cost;

**“Debt Service”** means the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Senior Lenders under the Financing Agreements as per the terms thereof;

**“Deemed Performance Security”** shall have the meaning as set forth in Clause 9.4;

**“Defence Forces”** mean the Indian army, navy or air force and includes paramilitary forces engaged in the defence of India;

**“Designated GOI Agency”** means a department or other entity under the control of GOI and assigned statutory functions such as customs control, immigration control, quarantine, air traffic control or airport security;

**“Development Period”** means the period from the date of this Agreement until the Appointed Date;

**“Development Plan”** shall have meaning as set forth in Clause 8 of Annex II of Schedule A

**“Director”** means a director of the Concessionaire who has been appointed in accordance with the Companies Act, 2013;

**“Dispute”** shall have the meaning as set forth in Clause 49.1.1;

**“Dispute Resolution Procedure”** means the procedure for resolution of Disputes as set forth in Article 49;

**“Divestment Requirements”** means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 43.1;

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

**“Drawings”** means all of the drawings, calculations and documents pertaining to the Airport as set forth in Schedule-H, and shall include ‘as built’ drawings of the Airport;

**“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 Airport 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 Airport or which poses an immediate threat of material damage to any of the Project Assets, and includes a threat to public order or national security;

**“Encumbrances”** means, in relation to the Airport and City Side Development, 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 Airport, 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 for the purposes of this Agreement shall 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;

“**Escrow Account**” means an Account which the Concessionaire shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement, and includes the Sub-Accounts of such Escrow Account;

“**Escrow Agreement**” shall have the meaning as set forth in Clause 36.1.2;

“**Escrow Bank**” shall have the meaning as set forth in Clause 36.1.1;

“**Escrow Default**” shall have the meaning as set forth in Schedule-T;

“**Exempted Person**” means:

- a) the President of India;
- b) the Vice-President of India;
- c) the Prime Minister of India;
- d) the Chief Justice of India;
- e) Governors and Lt. Governors;
- f) Union Ministers;
- g) Chief Ministers;
- h) Judges of Supreme Court of India;
- i) Presiding Officers of Central and State Legislatures;
- j) Chief Justice of the High Courts and; Judges of High Courts;
- k) Ministers of all State Governments;
- l) foreign dignitaries on State visit;
- m) persons notified as such by GOI;
- n) persons engaged in maintenance of law and order;
- o) fire-fighting personnel and persons on emergency medical service;
- p) persons entering the Terminal Building for inspection, survey, construction, or operation and maintenance thereof; and
- q) any person to whom a pass has been issued by the Authority for entry into the Terminal Building or for use of the Reserved Car Park; provided that the name and particulars of such person shall be notified to the Concessionaire forthwith;

“**Fee**” means the charge levied on and payable by a User for availing any or all of the (a) Aeronautical Services per the rates determined or revised and approved by AERA in accordance with the provisions of AERA Act and this Agreement; and (b) Non-Aeronautical Services;

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

“**Financial Default**” shall have the meaning as set forth in Schedule-W;

“**Financial Model**” means the financial model adopted by Senior Lenders, setting forth the capital and operating costs of the Project and revenues therefrom on the basis of which financial viability

of the Project has been determined by the Senior Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein;

**“Financial Package”** means the financing package indicating the total capital cost of the Airport and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements, Subordinated Debt;

**“Financing Agreements”** means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the respective Phases of the Project, including any hedging arrangements in case of off shore borrowings 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 39.1;

**“Force Majeure Costs”** shall have the meaning as set forth in Clause 39.7.2;

**“GOI”** means the Government of India;

**“Golden Share”** shall have the meaning as set forth in Clause 5.4.1;

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

**“Government”** means the Government of the State;

**“Government Instrumentality”** means any department, division or sub-division of the Government of India 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 of India or the State Government, as the case may be, and having jurisdiction over all or any part of the Airport or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

**“Ground Handling Services”** shall have the meaning as set forth in Clause 18.2.1;

**“Gross Revenue”** means all pre-tax gross revenues earned by the Concessionaire under or pursuant to this Agreement, at any time from the date of the execution of this Agreement upto the Transfer Date, and shall include any monies received from sub-licensees and other persons, by the Concessionaire as deposits (refundable or otherwise) but shall exclude only the following:

- a) any insurance proceeds received by the Concessionaire relating to (i) third party liability insurance paid or to be paid to the person whose claim(s) constitute(s) the risk or liability insured against; and (ii) any form of physical damage of assets, and the Concessionaire has incurred or will incur an expenditure greater than or equal to such proceeds received for repair, reinstatement or otherwise replacement, promptly and diligently of such assets;

- b) any monies received by the Concessionaire, for or on behalf of any Government Instrumentality (as defined in the Concession Agreement), as an authorized agent of such Government Instrumentality.; and
- c) any deposit amounts refunded to the relevant sub-licensee or any other person authorized by the Authority in a particular Concession Year provided these pertain to past deposits on which Premium has been paid to the Authority.
- d) any revenue recognized for construction or upgrade services under the provisions of Appendix A (Service Concession Arrangements) of the Indian Accounting Standards (Ind-AS) 11, Construction Contracts and references therein, including subsequent amendments thereof in relation to the recognition of revenues/consideration for construction or upgrade services under Ind-AS, as per Applicable Laws

It is expressly clarified that:

- i. insurance proceeds referred to in exclusion (a) above, shall not include any exclusion of insurance proceeds received for loss of revenues and/or business interruption; monies referred to in exclusion (b) above, shall be excluded only if the same has been credited or will be credited by the Concessionaire to the relevant Government Instrumentality promptly and diligently and any fine, penalty or other amounts of similar nature that may accrue as a result of non-payment or delayed payment of such monies under the Applicable Laws, will not be excluded;
- ii. Gross Revenue will be computed on an annual basis for Accounting Year, in accordance with the Indian Accounting Standards, as applicable on the date of the issuance of the RFP; and
- iii. Gross Revenue will be computed on an annual basis for an Accounting Year, in accordance with the Indian Accounting Standards (Ind-AS) as specified under the Companies (Indian Accounting Standards) Rules, 2015 including amendments thereof from time to time as per Applicable Laws, except the specific provisions in respect of inclusion and exclusion of deposits (refundable or otherwise) referred to in the definition of Gross Revenue above.
- iv. in case of any dispute, discrepancy, ambiguity, doubt or otherwise, relating to the computation and/or meaning of Gross Revenue, the decision of the Authority, at its sole discretion, shall be final.

“**IATA**” means the International Air Transport Association;

“**IAF**” means Indian Airforce;

“**ICAO**” means the International Civil Aviation Organisation formed by the Chicago Convention and any successor thereof;

“**ICAO Documents and Annexes**” means International Civil Aviation Organisation documents and annexes, as amended and published from time to time;

“**Indemnified Party**” means the Party entitled to the benefit of an indemnity pursuant to Article 47;

“**Indemnifying Party**” means the Party obligated to indemnify the other Party pursuant to Article 47;

“**Independent Engineer**” shall have the meaning as set forth in Clause 27.1;

“**Indirect Political Event**” shall have the meaning as set forth in Clause 39.3;

“**In-Principle Approval**” shall have the meaning as set forth in Recital (A);

**"Inspection Report"** shall have the meaning as set forth in Clause 13.2;

**"Insurance Cover"** means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 37, and includes all insurances required to be taken out by the Concessionaire under Clause 37.2 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;

**"IMD"** shall mean the Indian Meteorological Department, Ministry of Earth Science, Government of India;

**"Key Managerial Personnel"**, in relation to the Concessionaire, means:

- a) Chief executive officer or the Managing Director;
- b) Whole Time Director;
- c) Chief financial officer, Chief commercial officer, Chief operation officer, company secretary or their one level below core management officers who subject to the superintendence, control and direction of the Board, has the management of the substantial affairs of the Concessionaire; and
- d) the persons who have the authority and responsibility for planning, directing and controlling various activities and functions of the Concessionaire;

**"Key Performance Indicators"** shall have the meaning as set forth in Clause 26.1;

**"LOA"** or **"Letter of Award"** means the letter of award referred to in Recital (E);

**"Lead Member"** shall have the meaning as set forth in Recital (E);

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

**"MRO"** means Maintenance, Repair and Overhaul;

**"Maintenance Manual"** shall have the meaning as set forth in Clause 17.3;

**"Maintenance Programme"** shall have the meaning as set forth to it in Clause 17.4.1;

**"Maintenance Requirements"** shall have the meaning as set forth in Clause 17.2;

**"Major Airport"** means an Airport which has the capacity to handle an annual passenger throughput in excess of 35 lakh (Thirty Five lakh) or any other throughput threshold, or any other Airport as the Central Government may, by notification, specify as such under the provisions of the AERA Act;

**"Master Plan"** means the master plan to be developed by the Concessionaire as set forth in Schedule- A for construction and development of the Airport in accordance with the provisions of this Agreement.;

**"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;



“**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-Aeronautical Assets**” means those assets, which are necessary or required for the performance of Non-Aeronautical Services at the Airport and shall include such other assets as the Concessionaire may procure from time to time, in accordance with the provisions of this Agreement, for or in relation to performance of Non-Aeronautical Services, and does not include Aeronautical Assets and City Side Development;

“**Non-Aeronautical Services**” means the services, other than (i) Aeronautical Services and (ii) City Side Development;

“**Non-Political Event**” shall have the meaning as set forth in Clause 39.2;

“**O&M**” means the operation and maintenance of the Airport 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 Contracts**” means the operation and maintenance contracts that may be entered into between the Concessionaire and the O&M Contractors for performance of all or any of the O&M obligations;

“**O&M Contractor**” means the persons, if any, with whom the Concessionaire has entered into O&M Contracts for discharging O&M obligations for and on behalf of the Concessionaire;

“**O&M Expenses**” means expenses incurred by or on behalf of the Concessionaire or by the Authority, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premia for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under the O&M Contracts, Fee collection 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 as set forth in Clause 24.4;

“**Operation Period**” means the period commencing from COD of Phase I and ending on the Transfer Date;

“**Panel of Chartered Accountants**” shall have the meaning as set forth in Clause 38.2.1;

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

“**Passenger Charter**” shall have the meaning as set forth in Clause 26.10;

“**Passenger Traffic**” means the total number of passengers, including embarking and disembarking passengers, who use the Airport during an Accounting Year but shall not include passengers who arrive at and depart from the Airport on a flight bearing the same number;

“**Peak Hour**” means the hour determined on the basis of that hour in the preceding Accounting Year in which the Passenger Traffic was the thirtieth busiest during such year;

“**Peak Hour Traffic**” means the Passenger Traffic during the Peak Hour on each day;

“**Peak Period**” means those 4 (four) hours during a day when the Passenger Traffic is the highest; and the remaining hours of the day shall be deemed to be “**Off Peak Period**”;

"**Performance Guarantee**" shall have the meaning as set forth in Clause 44.2.3;

“**Performance Security**” shall have the meaning as set forth in Clause 9.1;

“**Phase**” means the work forming part of the Airport for handling specified annual passenger throughput for such Phase as per the Master Plan, in accordance with the terms of this Agreement;

“**Phase Completion Schedule**” means as defined in Schedule G (point 9).

“**Phase I**” means all the works forming part of the Airport for handling annual passenger throughput of a minimum of 12 (twelve) million passengers per annum as per the Master Plan, in accordance with the terms of this Agreement;

“**Police**” means a law enforcement agency and includes the state police, Central Industrial Security Force or any other organization empowered under Applicable Laws to exercise powers and discharge functions relating to security, crime prevention or maintenance of law and order;

“**Political Event**” shall have the meaning as set forth in Clause 39.4;

"**Preservation Costs**" shall have the meaning as set forth in Clause 13.5.3;

“**Premium**” shall have the meaning as set forth in Clause 31.2.1;

“**Premium Rate**” shall have the meaning as set forth in Clause 31.2.1;

“**Price Index**” shall comprise:

- a) 70% (seventy per cent) of WPI; and
  - b) 30% (thirty per cent) of CPI (IW),
- which constituents may be substituted by such alternative index or indices as the Parties may by mutual consent determine;

“**Project**” means the design, finance, construction, operation and maintenance of the Airport in accordance with the provisions of this Agreement and the Master Plan, and includes all works, services and equipment relating to or in respect of the Scope of the Project;

“**Project Affected Families**” means:

- (a) a family whose land or other immovable property has been acquired;
- (b) a family which does not own any land but a member or members of such family may be agricultural labourers, tenants including any form of tenancy or holding of usufruct right, share-croppers or artisans or who may be working in the affected area for three years prior to the acquisition of the land, whose primary source of livelihood stand affected by the acquisition of land;
- (c) the Scheduled Tribes and other traditional forest dwellers who have lost any of their forest rights recognised under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007) due to acquisition of land;
- (d) family whose primary source of livelihood for three years prior to the acquisition of the land is dependent on forests or water bodies and includes gatherers of forest produce, hunters, fisher folk and boatmen and such livelihood is affected due to acquisition of land;
- (e) a member of the family who has been assigned land by the State Government or the Central Government under any of its schemes and such land is under acquisition;

- (f) a family residing on any land in the urban areas for preceding three years or more prior to the acquisition of the land or whose primary source of livelihood for three years prior to the acquisition of the land is affected by the acquisition of such land;

**“Project Agreements”** means this Agreement, the Financing Agreements, EPC Contract, O&M Contracts, Fee collection contract, all agreements and sub-licenses relating to City Side Development and any other material agreements or contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Escrow Agreement, Substitution Agreement, or any agreement for procurement of goods and services involving a consideration of upto Rs. 25 crores (Rupees twenty-five crore);

**“Project Assets”** means all physical and other assets relating to and forming part of the Site including:

- a) rights over the Site in the form of licence, Right of Way or otherwise;
- b) the Aeronautical Assets and the Non-Aeronautical Assets;
- c) tangible assets such as civil works and equipment including foundations, drainage works, electrical systems, communication systems and administrative offices;
- d) Project Facilities situated on the Site;
- e) buildings and immovable fixtures or structures forming part of City Side Development;
- f) all rights of the Concessionaire under the Project Agreements;
- g) financial assets, such as receivables, security deposits etc.;
- h) insurance proceeds; and
- i) Applicable Permits and authorisations relating to or in respect of the Airport, including City Side Development;

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

**“Project Facilities”** means all the amenities and facilities situated on the Site, as described in Schedule-C;

**“Project Milestones”** means the project milestones as set forth in Schedule-G;

**“Provisional Certificate”** shall have the meaning as set forth in Clause 14.3;

**“Punch List”** shall have the meaning ascribed to it in Clause 14.3;

**“Re.”**, **“Rs.”** or **“Rupees”** or **“Indian Rupees”** means the lawful currency of the Republic of India;

**“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;

**“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;

**“Request for Qualification cum Proposals”** or **“RFQ cum RFP”** shall have the meaning as set forth in Recital (D);

**“Reserved Area”** shall mean the space and area reserved for the Authority and the Designated GOI Agencies in accordance with the provisions of Clauses 19.4 and 22.8;

“**Reserved Car Park**” shall have the meaning as set forth in Clause 20.2;

“**Reserved Services**” shall have the meaning as set forth in Clause 22.1;

“**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 Airport and City Side Development in accordance with this Agreement;

“**Route Navigation Facilities Charges**” means amounts charged by Authority to airlines and/or aircraft operators for the provision of route navigation facilities in accordance with Applicable Laws;

“**Runway**” means the strip of land at the Airport, on which aircrafts will take off and land and may be a man-made surface, including by use of asphalt, concrete or a mixture of both;

“**Safety Requirements**” shall have the meaning as set forth in Clause 23.1;

“**Scheduled Completion Date**” shall have the meaning as set forth in Clause 12.4.1 for Phase I, and in Clause 12.8.3 for subsequent Phases;

“**Scope of the Project**” shall have the meaning as 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 and who hold *pari passu* charge on the assets, rights, title and interests of the Concessionaire;

“**Service Quality Requirements**” shall have the meaning as set forth in Annex-I of Schedule-L;

“**Shareholders’ Agreement**” shall have the meaning as set forth in Clause 5.4.1;

“**Site**” shall have the meaning as 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 Airport, as set forth in Schedule-D, and any modifications thereof, or additions thereto, as included in the design and engineering for the Airport submitted by the Concessionaire to, and expressly approved by, the Authority;

“**Specified Assets**” means and includes all or any of the following:

- a) such of the Project Assets which are constructed, acquired or installed after the 5<sup>th</sup> (fifth) anniversary of COD of Phase I, but no later than the 30<sup>th</sup> (thirtieth) anniversary of the Appointed Date;
- b) all buildings and immovable fixtures or structures forming part of City Side Development; and
- c) assets forming part of the expansion of the Airport in accordance with the provisions of Clause 12.8 and the Master Plan; but shall in no case include land;

“**Specified Documents**” shall have the meaning as set forth in Clause 50.1;

“**State**” means the State in which the headquarters of the Authority are situated and “**State Government**” means the government of that State;

“**Statutory Auditors**” means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 2013 including any re-enactment or amendment thereof, for the time being in force, and appointed in accordance with Clause 38.2.1;

**“Subordinated Debt”** means the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date:

- a) the principal amount of debt provided by lenders or the Concessionaire’s shareholders for meeting the project cost and subordinated to the financial assistance provided by the Senior Lenders; and
- b) all accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and 6 (six) month LIBOR (London Inter Bank Offer Rate) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due 1 (one) year prior to the Transfer Date;

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

**“Substitution Agreement”** shall have the meaning as set forth in Clause 45.3;

**“Suspension”** shall have the meaning as set forth in Clause 41.1;

**“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 Airport 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 or on City Side Development;

**“Terminal”** means and includes the Terminal Building, Car Park, approach roads, Cargo Facilities and the land appurtenant thereto, but does not include City Side;

**“Terminal Building”** means the passenger terminal building situate on the Site and the land appurtenant thereto, including the kerb side and approach roads, as described and demarcated in Schedule-A;

**“Terminal Navigational Landing Charges”** means amounts charged or to be charged by Authority to airlines or aircraft operators for the provision of terminal navigational landing services at the Airport;

**“Termination”** means the expiry or termination of this Agreement and the Concession hereunder;

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

**“Termination Payment”** means the amount payable by the Authority to the Concessionaire, under and in accordance with the provisions of this Agreement, upon Termination;

**“Tests”** means the tests as set forth in Schedule-I to determine the completion of Airport in accordance with the provisions of this Agreement, the relevant ICAO Documents and Annexes and the applicable guidelines prescribed by the DGCA and shall, *mutatis mutandis*, include similar Tests to determine completion of the expansion of the Airport in accordance with the provisions of Clause 12.8 and the Master Plan;

**“Total Project Cost”** means the capital cost incurred on construction and financing of the Project, Aeronautical Assets and the Non-Aeronautical Assets, excluding City Side Development, and shall be limited to the lowest of:

- a) the capital cost of the Project, as set forth in the Financial Package; and  
b) An Amount equal to INR 4588 crore

provided that in the event Price Index increases, on an average, by more than 3% (three per cent) per annum for the period between the date hereof and COD of Phase I, 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 Price Index, in excess of such 3% (three per cent), is reflected in the Total Project Cost;

provided further that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in Price Index 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 also that the Total Project Cost shall not exceed the actual capital cost of the Construction Works upon completion of Phase-1 of the Airport,

**“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;

**“Unforeseen Event”** shall have the meaning as set forth in Clause 39.12.1;

**“User”** means a person including any airline, passenger, visitor or other person, who uses or intends to use the Airport or any part thereof, including any or all Aeronautical Services or Non-Aeronautical Services, on payment of Fees or in accordance with the provisions of this Agreement and Applicable Laws;

**“Vesting Certificate”** shall have the meaning as set forth in Clause 43.4; and

**“WPI”** means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month, save and except that for the purposes of annual revision of Fee in accordance with the provisions of Clause 32.3, the revision due on April 1 of any year 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 for and on behalf of:	Signed for and on behalf of:
The Authority	The Common Seal of Yamuna International Airport Private Limited has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the day of 29 <sup>th</sup> September 2020 hereunto affixed in the presence of:
By:  ..... Name: Dr. Arun Vir Singh Designation: Chief Executive Officer, Noida International Airport Limited Fax: +91 1202395150 Email address: ceo@nialjewar.com	..... Name: Mr. Christoph Schnellmann Designation: Chief Executive Officer, Yamuna International Airport Private Limited  Address: Esc House, 155, 1st & 2nd Floor, Okhla Industrial Estate, Phase 3, New Delhi 110020
Signature of the Witness:  ..... Name: Mr. Surendra Singh Designation: Director, Civil Aviation, GoUP	..... Name: Ms. Kiranjeet Kaur Jain Designation: Chief Operating Officer, Yamuna International Airport Private Limited Address: Esc House, 155, 1st & 2nd Floor, Okhla Industrial Estate, Phase 3, New Delhi 110020
Signature of the Witness:  Name: Ms. Ritu Maheshwari Designation: Chief Executive Officer, NOIDA	Signature of the Witness:  Name: Mr. Shobhit Gupta Designation: Head, Legal, Yamuna International Airport Private Limited

## **Schedules**



## **SCHEDULE – A**

*(See Clause 10.1)*

### **Site of the Airport**

#### **1. The Site**

- 1.1. Site of the Airport is described in Annex-I of 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.
- 1.3. Additional land required for service areas, ancillary buildings or for construction of works specified in Change of Scope Order shall be acquired in accordance with the provisions of this Agreement. Upon acquisition, such land shall form part of the Site and vest in the Authority.

#### **2. Master Plan for the Site**

- 2.1. The Master Plan to be developed for the Site is described in Annex-II of this Schedule-A.
- 2.2. The Master Plan shall be consistent with the land use plan provided in Map 1 and shall include all the land earmarked for the Airport, and shall specify the location and land use in respect of the Aeronautical Assets, Terminal Building, Non-Aeronautical Assets and City Side Development as per the provisions of this Agreement.

#### **3. City Side Development**

- 3.1. The land earmarked for City Side Development has been described in Annex-III and Map 1 of this Schedule-A, and such land shall form part of the Site.

Annex-I

(Schedule A)

**SITE FOR THE AIRPORT**

1. Location of the Site

1.1. The Site for the Airport is located north of Jewar Village, in Gautam Buddh Nagar district of Uttar Pradesh (latitude 28° 09' N and longitude of 77° 35' E) in western region of the state. The Site is comprised of land from seven villages viz., Banwarivas, Dayanatpur, Kishorpur, Kureb, Parohi, Ranhera and Rohi.

1.2. The coordinates for the Site are given in the table below, subject to marginal variation as per Site demarcation

**List of Boundary Co-Ordinates**

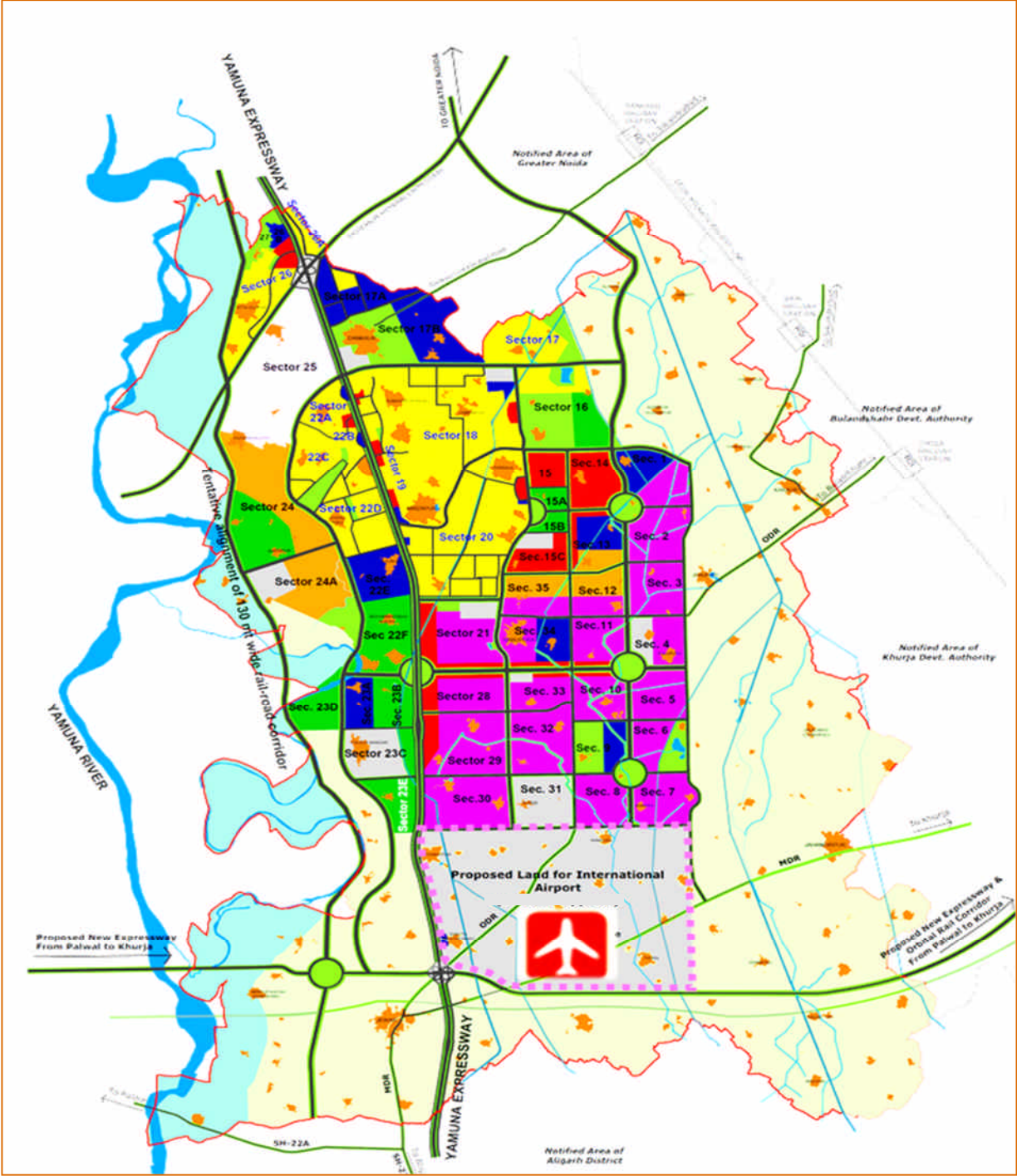
<b>Sr.No.</b>	<b>Latitude</b>	<b>Longitude</b>	<b>Easting</b>	<b>Northing</b>
1	28°11'06.79"	77°34'49.69"	753331.98	3120416.03
2	28°11'06.71"	77°34'30.01"	752794.06	3120402.12
3	28°10'31.52"	77°34'37.37"	753018.95	3119323.87
4	28°10'23.89"	77°34'39.02"	753068.14	3119089.89
5	28°10'05.60"	77°34'42.84"	753184.08	3118528.04
6	28°09'53.23"	77°35'35.97"	754642.96	3118178.11
7	28°09'59.59"	77°35'37.89"	754690.88	3118375.05
8	28°09'23.51"	77°38'12.58"	758935.98	3117355.57
9	28°09'53.13"	77°38'24.24"	759233.39	3118274.99
10	28°09'58.20"	77°38'05.29"	758713.96	3118419.86
11	28°10'13.34"	77°38'10.17"	758836.98	3118888.91
12	28°10'09.83"	77°38'20.39"	759117.09	3118786.88
13	28°10'30.73"	77°38'29.81"	759360.1	3119435.99
14	28°10'35.16"	77°38'17.31"	759016.11	3119564.04
15	28°10'41.02"	77°37'54.73"	758396.95	3119731.1
16	28°10'56.87"	77°36'53.50"	756715.89	3120183.89
17	28°11'07.61"	77°35'54.49"	755098.12	3120479.01

1.3. Total area of the Site is 1334 hectares, out of which 24 hectare of area is earmarked for City Side Development.

1.4. Given the Site is located is far from sea shore (beyond 500 meters from high tide line), Coastal Regulation Rules does not apply. The approximate ground level of the Site is 200 meters above mean sea level which is about 30 meters above the bed level of Yamuna River.

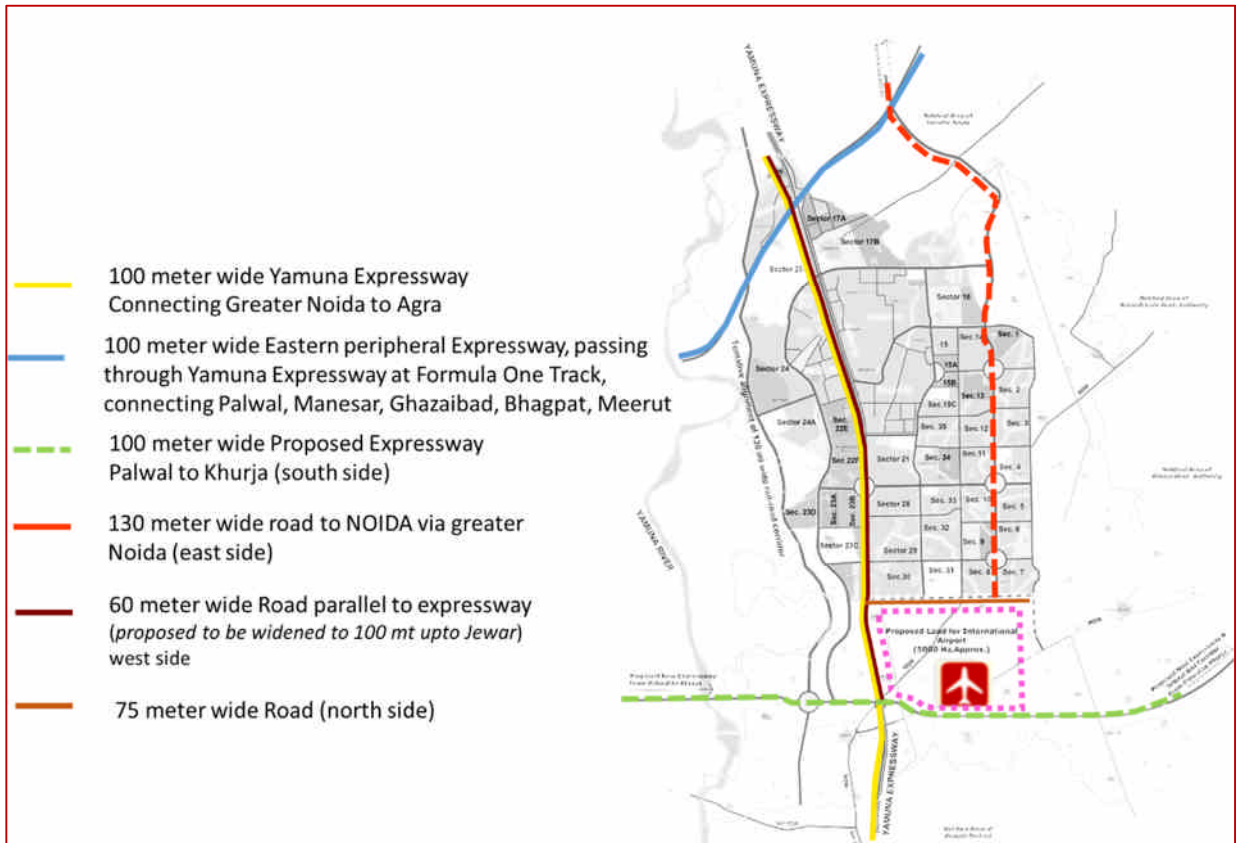
- 1.5. The site can be accessed from Sikandarabad- Jewar road which merges with the Yamuna Expressway towards the west of the proposed site of the Airport. The Site is also well connected with NCR (National Capital Region) as well as various other districts in western UP. Site is about 30 km from State Highway SH-22A i.e. the highway that connects Palwal and Aligarh. There is 100 meter wide Eastern Peripheral Expressway, passing through Yamuna Expressway at Formula One Track, which connects the site to Palwal, Manesar, Ghazaibad, Bhagpat and Meerut. On the southern side, the airport is planned to be connected to the proposed Palwal Khurja expressway. It is also connected to Noida via Greater Noida by a 130 meter wide road.
  
- 1.6. A reference drawing is provided herein below showing the location of the Site and approach roads to the Site:

Map 1A: Site Location





Map 2: Noida International Airport Existing Access and Proposed Expressway



**Annex-II**  
**(Schedule A)**  
**(See Clause 12.2.1)**  
**MASTER PLAN FOR THE SITE**

1. The Airport is envisaged as a world-class International Airport with modular and scalable facilities, for both domestic and international passengers, and cargo.
2. It is proposed to develop the airport in a phase-wise manner over the Concession Period. In the Phase I, Concessionaire needs to build an Airport with traffic design capacity of 12 million passenger per annum.
3. The subsequent phases would be based on the achievement of traffic trigger mentioned in the table below.

**Table 1: Design Capacity and Traffic Triggers for Phasing**

<b>Phasing</b>	<b>Traffic Design Capacity (Million Passengers Per Annum)</b>	<b>Trigger For Phasing</b>
PHASE I	12 MPPA	
PHASE II	30 MPPA	80 % of Phase I capacity
PHASE III	50 MPPA	80 % of Phase II capacity
PHASE IV	70 MPPA or more	80 % of Phase III capacity

The traffic computation for the purpose of construction of subsequent phases will be on the basis of the passenger traffic in the immediately preceding 12 (twelve) month period. Within 30 (thirty) days from the completion of a calendar month, the Concessionaire will submit to the Authority the passenger traffic in that month and the passenger traffic in the immediately preceding 12 (twelve) month period.

4. The Concessionaire will prepare the Master Plan using the land use plan provided herewith (refer Map I) as a guideline with the following provisions:
  - a. The Concessionaire shall plan and construct the facilities as identified under the different land use provided in Map 1B of this Agreement. The Concessionaire has the flexibility to plan and design the facilities within the defined land use subject to provisions of this Agreement.
  - b. The Master Plan should be in accordance with Civil Aviation Requirements (CAR) as prescribed by the DGCA, ICAO guidelines and conforming to Good Industry Practice.
  - c. Level of service for Terminal Building – IATA Level of Service optimum compliant. The total area of the Terminal Building shall be minimum 30 square meter per peak hour passenger for the design year.

- d. Terminal design must be capable of incremental expansion with minimum impact on current operations.
    - e. The City Side development shall be as per provisions of this agreement, applicable development control regulations and Applicable Law.
5. The Concessionaire will, based on the above mentioned guidelines and the provisions mentioned in this Schedule A, Schedule B, C and D, prepare the Master Plan. The Master Plan shall include following:
  - i. a statement of the overall development strategy and philosophy;
  - ii. details of traffic forecasts and the traffic trigger for development of each of the Project Facilities, which are linked to traffic growth;
  - iii. vision of how the Airport and each of its precincts will look at each Phase and the ultimate vision of the Airport, at the end of the period when it reaches capacity;
  - iv. obstacle limitation surfaces for the Airport and approach and take-off areas;
  - v. provide graphic presentation of the development of the Airport in a Phased manner;
  - vi. proposed development through the technical, economic, and environmental investigation of concepts and alternatives;
  - vii. such other matters that may be specified by the Authority.
6. The Master Plan is to be submitted to the Authority in 60 days from the date of this Agreement. Within 30 (thirty) days of the receipt of the Master Plan, the Authority shall provide to the Concessionaire, any comments or changes that the Authority may have on the Master Plan. If the Authority provides any comments and/or suggestions to the Master Plan, then the Concessionaire shall within 30 (thirty) days of receipt thereof, suitably incorporating such comments and/or changes suggested by the Authority in the Master Plan. This Master Plan will become a part of the Concession Agreement.
7. The Concessionaire will, within 90 [ninety] days from the date of acceptance of the Master Plan, submit Development Plan for Phase I. The Development Plan for subsequent phases shall be prepared and submitted within 90 (ninety) days from the date of achieving the trigger for the respective phases as mentioned in the Table 1 of this Annex II of Schedule A. The Authority shall within 30 (thirty) days of the receipt of Development Plan provide its comments. The Concessionaire shall incorporate the comments of Authority and submit the Development Plan within 30 (thirty) days from the receipt of comments from the Authority.
8. The Development Plan (“Development Plan”) for each Phase shall be prepared considering the following:
  - a. Development Plan shall be in compliance with the:
    - (i) Master Plan;
    - (ii) requirements set forth in Schedule A, Schedule B, Schedule C and Schedule D hereof;
    - (iii) in accordance with International Civil Aviation Organization (ICAO) guidelines as prescribed by the Directorate General of Civil Aviation, Government of India (DGCA), this Agreement and conforming to Good Industry Practice.
  - b. Development Plan shall include:
    - (i) engineering design and drawings for each of the identified Project Facilities;
    - (ii) quantity and cost estimates;
    - (iii) specifications and standards
    - (iv) Completion Schedule;
    - (v) Indicative financing plan; and



(vi) any other criteria, as may be specified by the Authority or any concerned Governmental Instrumentality, from time to time.

9. The Concessionaire shall update and resubmit the Master Plan every 5 (five) years starting from the COD of Phase I to the Authority for its review and comments.
10. The Concessionaire may, at any time during the Concession Period, seek approval of the Authority for modifications in the Master Plan to improve or augment the Aeronautical Services or to expand any part of the Airport to minimize or eliminate the congestion, and upon receipt of any request hereunder, the Authority may grant approval to the extent reasonably required herein within a period of 30 (thirty) days
11. The Development Plans for subsequent Phases shall inter-alia provide for undertaking specific capital expenditure projects linked to traffic triggers. The Concessionaire shall submit the Development Plan for subsequent Phases after Phase I, at least 3 (three) months prior to the planned date of start of Construction Works for such Phase, as defined in the Master Plan.

The construction of Phases, subsequent to Phase I will be in line with the requirements mentioned in Clause 12.8 of the Agreement.

**Annexure III**  
*(Schedule A)*  
*(See Clause 28)*

The total land available for city side/commercial development is 24 hectare. The Concessionaire is allowed to use the area earmarked for commercial purposes as allowed under the Annexure IV.

**Annexure IV**

*(Schedule A)*

*(Clause 28)*

A. Hospitality

1. Resorts
2. 3-4 star hotels
3. 5 star hotels
4. Restaurant
5. Budget hotel.

B. Public Entities

1. Post office
2. Telephone Exchange
3. Police Station
4. Health Center
5. Hospital

C. Commercial Office Space

1. Shopping Plaza
2. Office Space
3. Airline offices
4. Government offices

D. Education and Training

1. Aviation Institution
2. Aviation related training such as flight attendants training etc.
3. College/University
4. Skill Development Centers

E. Logistics offices

1. Logistics operator offices
2. Custom clearing offices
3. Warehouses
4. Cold Storages

F. Packaging Centers

1. Loading/Unloading facilities, weighbridge, etc.
2. Truck parking
3. Drivers facilities
4. Petrol/Diesel/CNG pumps and other support services

G. Tourist/Visitors' Centre and Exhibition Ground

5. Leisure, entertainment, and cultural venues
6. Information desks and kiosks
7. Tourist facilities, rest rooms
8. Conference area
9. Café and recreation

10. Indoor and outdoor exhibition space.
  11. Cultural centre
  12. Museum and art galleries
  13. Amphitheatre
  14. Open Exhibition ground
  15. Art and Craft workshop
  16. Recreation club
  17. Promotional activities of tourism
- For clarification, residential developments are not permitted.

## Schedule B

(See Clause 2.1)

### Development of the Airport

#### 1. Development of the Airport

Development of the Airport shall include construction of the Airport as described in this Schedule-B and in Schedule C.

#### 2. Airport

##### 2.1. Development of Airport shall include:

i. Construction and procurement of the Aeronautical Assets including runways, taxiways, apron, aircraft parking bays, and associated facilities with the following requirements –

a. ICAO Aerodrome Reference Code: Geometrical layout of the facilities should conform to the Code F operation in all the phases. Airport to be constructed for Code 4E operations and upgraded to Code F, as and when any user demands.

b. Location of Runway:

Details of Noida International Airport		
<b>Aerodrome Elevation</b>	<b>199 m AMSL</b>	
	<b>Co-ordinates</b>	
ARP	28°10'32.20"N 77°36'22.47"E	
RWY 10L	28°11'00.46"N 77°35'32.74"E	
RWY 28R	28°10'34.69"N 77°37'52.67"E	
RWY 10R	28°10'10.41"N 77°35'16.26"E	
RWY 28L	28°09'43.00"N 77°37'45.15"E	
Runway Dimension		
10L - 28R	3900 X 60 m.	
10R - 28L	4150 X 60 m.	

ii. Construction and procurement of the Terminal Building as follows:

a. Level of service for Terminal Building - IATA Level of Service Optimum compliant.

- b. 75 % (Seventy five percent) of each of the international and domestic aircrafts gates shall be served by the boarding bridges.
- c. Unit area of the Terminal Building (including all miscellaneous and support spaces), per Peak Hour passenger (including arrival and departure), shall be minimum 30 sq. m.
- d. Provide international standard range of retail and other passenger services; and
- e. Terminal design must be capable of incremental expansion with minimum impact on current operations
- f. All facilities and services should be of state-of –the-art technology and international standards.

2.2. The Airport shall be constructed by the Concessionaire in conformity with the Master Plan as set forth in Schedule A and the Specification and Standards as set forth in Schedule D.

### 3. Reserved Area

The Concessionaire shall earmark and allocate the Reserve Area for performance of Reserved Services by the Authority and the Designated GOI Agencies and take approval from Designated GOI Agency.

### 4. City Side Development

4.1. The FSI of 2.5 will be applicable for the overall 24 hectare designated for City Side development. The area should only be used for conducting economic activities as per Annex IV of Schedule A.

4.2. City Side Development shall be undertaken in conformity with the Specification and Standards set forth in Schedule D.

### 5. Cargo Facilities

5.1. The Concessionaire shall earmark land within the Site for the development of a Cargo Facility in the Airport

5.2. The Cargo Facilities including apron, cargo terminal for international and domestic cargo and other allied facilities shall be developed in a Phase wise manner as per the applicable Standards and Good Industry Practice.

### 6. MRO Facilities

6.1. The Concessionaire shall earmark minimum 40 acres of land within the Site for the development of a MRO Facility in the Airport as per the applicable Standards and Specifications.

6.2. This earmarked area may not be used for any other activity

6.3. The Concessionaire has to mandatory enter into any arrangement with any third party or the Concessionaire itself decides for developing and operating the MRO Facilities and for associated activities latest by 10th anniversary of the COD of Phase I.

6.4. The MRO Facility shall be developed, subject to the requirements specified in Clause 12.10 of the Concession Agreement, for serving aircrafts of type and size as per the demand established, which shall include the buildings, structures and equipment required by the aircraft as per the provisions in CAR 145 of DGCA. This will be built in accordance with the provisions of this Agreement, Applicable Laws, relevant ICAO Documents and Annexes, CAR Guidelines and Good Industry Practice.

### 7. Car Park

7.1. The Concessionaire shall earmark land within the Site for Car Park facility including Reserved Car facility as per the applicable law and Good Industry Practice.

## **Schedule C**

*(See Clause 2.1)*

### **PROJECT FACILITIES**

#### 1. Project Facilities

The Concessionaire shall construct or install the Project Facilities in accordance with the provisions of this agreement.

#### 2. Project Facilities for Airport

Project Facilities forming part of the Airport and to be completed on or before COD of each Phase have been described in Annex-I of this Schedule-C.

**Annex - I**

*(Schedule-C)*

**PROJECT FACILITIES FOR AIRPORT**

**Project Facilities for Airport**

The Concessionaire shall construct the Project Facilities described in this Annex I to form part of the Airport. The Project Facilities shall include:

- (a) Geometrical layout of the facilities should conform to the Code F operation in all the phases. Airport to be constructed for Code 4E operations and upgraded to Code F, as and when any user demands.
- (b) Passenger terminal building with all services and amenities necessary for IATA Level of Service Optimum requirements;
- (c) Air-traffic control and meteorological facilities;
- (d) Airside and landside access roads and forecourts, including, curb-side, traffic signals, way finding through appropriate signages;
- (e) Cargo terminal and ancillary facilities for processing and storage;
- (f) Aircraft Rescue & Fire Fighting facilities;
- (g) Infrastructure for Aircraft Fuelling Services;
- (h) Reserved Services;
- (i) Emergency services;
- (j) Foul and surface water drainage;
- (k) Aircraft Ground Service Equipment Maintenance facilities;
- (l) Hangars;
- (m) Flight catering services;
- (n) Vehicle parking;
- (o) Police Station and Customs Building;
- (p) Other activities related to passenger services at the Airport;
- (q) In addition, any facility required as per ICAO documents and annexes, Applicable Laws and the direction of the Authority would need to be provided as part of this Agreement.



## **Schedule D**

*(See Clause 2.1)*

### **SPECIFICATIONS AND STANDARDS**

#### **1. Airport**

The Concessionaire shall comply with the Specifications and Standards set forth in Annex-I of this Schedule-D for construction of the Airport.

#### **2. City Side Development**

City Side Development shall be undertaken in accordance with Applicable Laws, Good Industry Practice and the provisions of building construction codes widely followed in India. In case, Indian codes are not available then applicable UK or USA codes shall be used.

## **Annex - I**

*(Schedule-D)*

### **SPECIFICATIONS AND STANDARDS FOR THE AIRPORT**

#### **1. Mandatory standards and requirements**

The Concessionaire shall conform to the construction standards and other requirements specified in the following:

- (a) Section 4, Series B (Part I), Civil Aviation Requirements (CAR), Aerodrome Standards and Air Traffic Services (26 August 2015); as amended from time to time.
- (b) DGCA CAR Section 4 – Aerodrome Standards and Air Traffic Services; Series ‘F’ Part I dated 16 October 2006 regarding grant of an Aerodrome Licence;
- (c) International Civil Aviation Organisation (ICAO) – International Standards and Recommended Practices, Aerodromes, Annex 14 to the Convention on International Civil Aviation: Volume 1 Aerodrome Design and Operations – Eighth, Edition July 2018;
- (d) ICAO Aerodrome Design Manual (Doc 9157);
- (e) ICAO Airport Services Manual (Doc 9137);
- (f) Any other ICAO Manual and Standards as applicable;
- (g) US National Fire Protection Association (NFPA) standards on Airport Terminal Buildings, Fuelling Ramp drainage and loading Walkways;
- (h) International Air Transport Association (IATA) Airport Development Reference Manual, 11th Edition, March 2019;
- (i) The National Building Code (NBC, 2016); and
- (j) Relevant Indian Standard Codes published by the Bureau of Indian Standards;
- (k) Energy Conservation Building Code, 2017 issued by the Bureau of Energy Efficiency as revised from time to time;
- (l) Statutory Agency Requirements, including DGCA, Bureau of Civil Aviation Security, Ministry of Defence, Customs and Immigration authorities, Ministry of Environment, Forests and Climate Change, Pollution Control Board;
- (m) Applicable local bylaws and development control regulations
- (n) Any other applicable manuals, standards, specifications, guidelines not listed above.

## **Schedule E**

*See Clause 4.1.3)*

### **APPLICABLE PERMITS**

#### **PART I**

##### **1. Applicable Permits prior to Appointed Date**

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

- (a) 'In principle' approval of DGCA for construction of the Airport; and

#### **PART II**

##### **2. Applicable Permits prior to COD**

The Concessionaire shall obtain, as required under Applicable Laws, the following Applicable Permits prior to commencement of the relevant activity:

- (i) DGCA licence for operating the Airport;
- (ii) Permission of the State Government for extraction of boulders from quarry;
- (iii) Permission of the Pollution Control Board for installation of crushers;
- (iv) Licence for use of explosives;
- (v) Permission of the State Government for drawing water from river/reservoir;
- (vi) Licence from Inspector of factories or other competent authority for setting up Batching Plant;
- (vii) Clearance of the Pollution Control Board for setting up Batching Plant;
- (viii) Clearance of the Pollution Control Board for Asphalt Plant;
- (ix) Clearance of the Pollution Control board for installation of diesel generator sets;
- (x) Permission of the State Government for cutting of trees; and
- (xi) Any other permits or clearances required under Applicable Laws.

Unless otherwise specified in this Agreement, Applicable Permits, if any, relating to environmental protection and conservation of the Airport, excluding City Side Development, shall have been procured by the Authority as a Condition Precedent.

## Schedule F

*(See Clause 9.1)<sup>2</sup>*

### PERFORMANCE SECURITY

To,

Noida International Airport Limited  
1st floor, commercial complex, sector- Omega 1, Greater Noida

#### WHEREAS:

- (A) \_\_\_\_\_ (the “**Concessionaire**”) and the \_\_\_\_\_ (the “**Authority**”) have entered into a Concession Agreement dated \_\_\_\_\_ (“**Agreement**”) whereby the Authority has agreed to the Concessionaire undertaking the construction, operation, maintenance and management of Noida International Airport at Jewar in the State of Uttar Pradesh on design, build, finance, operate and transfer (the “**DBFOT**”) basis, subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Concessionaire to furnish a Performance Security to the Authority in a sum of Rs \_\_\_\_\_ cr. (Rupees \_\_\_\_\_ crore) (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 Performance Security.

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

1. The Bank hereby unconditionally and irrevocably guarantees and undertakes to pay to the Authority upon occurrence of any failure or default in the due and faithful performance of all or any of the Concessionaire’s obligations during the Construction Period, under and in accordance with the provisions of the Agreement, on 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 upto 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 ....., 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.

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<sup>2</sup>Heading of the Schedule (i.e. Schedule F) and text in italics may be removed based on the requirement of the Bank issuing the Guarantee.

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, fulfilment 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 fulfilment, 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 earlier of the 1<sup>st</sup> (first) anniversary of the Appointed Date i.e. upto date .... or compliance of the conditions specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no 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 Performance Security shall cease to be in force and effect after the expiry of a period of 2 years from the COD for the Phase [] of the Project for the purposes of this Guarantee, and provided the Concessionaire is not in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars required hereunder, duly certified by a statutory auditor of the Concessionaire, the Authority shall release the Performance Security forthwith two years after the completion of Phase I.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. 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 authorised 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.

11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of two years from the date hereof or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

Signed and sealed this..... day of , 20..... at

**SIGNED, SEALED AND DELIVERED**

For and on behalf of the BANK by:

(Signature)

(Name)

(Designation) (Code Number) (Address)

NOTES:

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

## Schedule G

(See Clause 12.1)

### PROJECT COMPLETION SCHEDULE

#### 1. Project Completion Schedule

During Construction Period, the 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. For the avoidance of doubt, it is agreed that the provisions of this Schedule shall not apply to City Side Development.

#### 2. Project Milestone-I

- 2.1. Project Milestone-I shall occur on the date falling on the 180<sup>th</sup> (one hundred and eightieth) day from the Appointed Date (the “**Project Milestone-I**”).
- 2.2. Prior to the occurrence of Project Milestone-I, the Concessionaire shall have commenced construction of the Airport and expended not less than 5% (five per cent) of the Total Project Cost set forth in the Financial Package.

#### 3. Project Milestone-II

- 3.1. Project Milestone-II shall occur on the date falling on the 365<sup>th</sup> (three hundred and sixty fifth) day from the Appointed Date (the “**Project Milestone-II**”).
- 3.2. Prior to the occurrence of Project Milestone-II, the Concessionaire shall have commenced construction of the Runway and the Terminal Building and expended not less than 15% (fifteen per cent) of the Total Project Cost set forth in the Financial Package and conveyed to the Independent Engineer the nature and extent of physical progress comprising such expenditure so as to enable the Independent Engineer to determine that the physical progress is reasonably commensurate with the expenditure incurred. Provided, however, that at least one-half of the expenditure referred to hereinabove shall have been incurred on physical works which shall not include advances of any kind to any person or expenditure of any kind on plant and machinery.

#### 4. Project Milestone-III

- 4.1. Project Milestone-III shall occur on the date falling on the 550<sup>th</sup> (five hundred and fiftieth) day from the Appointed Date (the “**Project Milestone-III**”).
- 4.2. Prior to the occurrence of Project Milestone-III, the Concessionaire shall have commenced construction of the taxiways, the apron, the ATC Facility and expended not less than 30% (thirty per cent) of the Total Project Cost set forth in the Financial Package and conveyed to the Independent Engineer the nature and extent of physical progress comprising such expenditure so as to enable the Independent Engineer to determine that the physical progress is reasonably commensurate with the expenditure incurred. Provided, however, that at least one-half of the expenditure referred to hereinabove shall have been incurred on physical works which shall not include advances of any kind to any person or expenditure of any kind on plant and machinery.

#### 5. Project Milestone-IV

- 5.1. Project Milestone-IV shall occur on the date falling on the 730<sup>th</sup> (Seven Hundred Thirtieth) day from the Appointed Date (the “**Project Milestone-IV**”).
- 5.2. Prior to the occurrence of Project Milestone-IV, the Concessionaire shall have commenced or procured the commencement of the construction of the Cargo Facilities, the Car Park and

administrative offices block and expended not less than 50% (fifty per cent) of the Total Project Cost set forth in the Financial Package.

**6. Project Milestone-V**

6.1. Project Milestone-V shall occur on the date falling on the 920<sup>th</sup> (Nine Hundred Twentieth) day from the Appointed Date (the “**Project Milestone-V**”).

6.2. Prior to the occurrence of Project Milestone-V, the Concessionaire shall have commenced trial runs of the Runway and expended not less than 75% (seventy-five per cent) of the Total Project Cost set forth in the Financial Package.

**7. Scheduled Completion Date**

7.1. The Scheduled Completion Date shall occur on the 1095<sup>th</sup> (one thousand and ninety fifth) day from the Appointed Date.

7.2. On or before the Scheduled Completion Date, the Concessionaire shall have completed the Airport in accordance with this Agreement.’

**8. 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.

**9. Project Completion Schedule for subsequent phases**

For every subsequent Phase of Airport development, Concessionaire shall prepare and submit Development Plan in accordance with the provisions of Schedule A including project completion schedule to Independent Engineer and Authority, which defines the milestones in measurable time units (days/weeks/month/year), and specify the amount expended of the project cost set forth in the Financial Package of the respective Phase of development (“Phase Completion Schedule”).



## **Schedule H**

*(See Clause 12.3)*

### **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**

If the Independent Engineer determines that for discharging its duties and functions under this Agreement, it requires any drawings other than those listed in Annex-I, it may by notice require the 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**

The Concessionaire shall furnish following list of drawings:

- Master Plan by Phasing's
- Architectural design for all buildings
- Structural drawings for all buildings
- MEP drawings for all the buildings
- Civil Design for all facilities including airside, terminal and landside.

**Schedule I**  
(See Clause 14.1.2)

**TESTS**

**1. Schedule for Tests**

- 1.1. The Concessionaire shall, no later than 90 (ninety) days prior to the likely completion of the Airport, notify the Independent Engineer and the Authority of its intent to subject the Airport to Tests, and not later than 15 (fifteen) 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 Airport.
- 1.2. The Concessionaire shall notify the Independent Engineer of its readiness to subject the Airport 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-I.

**2. Tests**

- 2.1. In pursuance of the provisions of Clause 14.1.2 of this Agreement, the Independent Engineer shall conduct, or cause to be conducted, the Tests specified in this Paragraph 2.
- 2.2. Visual and physical Test: The Independent Engineer shall conduct a visual and physical check of the Airport to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.
- 2.3. The Runway, taxiways, apron, ATC Facility and Terminal Building shall be subjected to non-destructive testing of completed structures or part thereof, to be conducted in accordance with the procedure described in (IS-13311), the relevant ICAO Documents and Annexes and the applicable guidelines of DGCA. The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out the aforesaid testing if it has a reasonable doubt about the adequacy of the strength of such structure for any of the following reasons:
  - (a) Results of compressive strength on concrete test cubes falling below the specified strength;
  - (b) premature removal of formwork;
  - (c) inadequate curing of concrete;
  - (d) over loading during the construction of the structure or part thereof;
  - (e) presence of honey - combed or damaged concrete that may affect the stability of the structure to carry the design load; or
  - (f) any other reason which may result in the structure or any part thereof being of less than the expected strength.
- 2.4. Tests for Equipment: The Independent Engineer shall conduct or cause to be conducted Tests, in accordance with the relevant ICAO Documents and Annexes, the applicable guidelines of DGCA and Good Industry Practice, for determining the compliance of all equipment with the Specifications and Standards and Safety Requirements.
- 2.5. Trial run for test flights: Subject to the Concessionaire handing over the ATC Facility to the Authority or the Designated GOI Agency, as the case may be, at least 120 (one hundred and

twenty) days prior to COD and the Authority having equipped the ATC Facility with the CNS/ATM Equipment for the provision of CNS/ATM Services at least 90 (ninety) days prior to COD, the Independent Engineer] shall conduct or cause to be conducted adequate trial runs for flights at the Airport to determine the compliance of the Airport with the relevant ICAO Documents and Annexes and the applicable guidelines of DGCA.

- 2.6. Trial run of Airport: The Independent Engineer shall conduct or cause to be conducted adequate trial runs of the Airport to determine the compliance of the Airport, including the Aeronautical Assets, Terminal Building and Non-Aeronautical Assets, with the Specification and Standards, Maintenance Requirements, the relevant ICAO Documents and Annexes, applicable guidelines of DGCA and Safety Requirements.
- 2.7. Environmental audit: The Independent Engineer shall carry out a check to determine conformity of the Airport with the environmental requirements set forth in Applicable Laws and Applicable Permits.
- 2.8. Other mandatory tests: The Concessionaire shall procure and ensure that all statutory tests required to be undertaken in accordance with Applicable Laws for grant of an airport licence by DGCA are undertaken and completed no later than 15 (fifteen) days prior to COD.

### **3. Agency for conducting Tests**

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

### **4. Tests for Safety Certification**

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

### **5. Completion/Provisional Certificate**

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

### **6. Tests during Construction**

Without prejudice to the provisions of this Schedule-I, tests during construction shall be conducted in accordance with the provisions of Clause 13.3.1.

## Schedule J

(See Clause 14.2 & 14.3)

### COMPLETION CERTIFICATE

1. I/We, \_\_\_\_\_ (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement dated . (the “**Agreement**”), for development and operation of the Noida International Airport near Jewar on design, build, finance, operate and transfer (the “**DBFOT**”) basis, through (Name of Concessionaire), hereby certify that the Tests specified in Article 14 and Schedule-I of the Agreement have been successfully undertaken to determine compliance of the Airport with the provisions of the Agreement, and I/We am/are satisfied that the Airport 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 Airport have been completed, and the Airport is ready for entry into commercial operation on this the.....day of 20...

SIGNED, SEALED AND DELIVERED

For and on behalf of INDEPENDENT ENGINEER by:

(Signature)

(Name)

(Designation)

(Address)

**PROVISIONAL CERTIFICATE**

1. I/We, \_\_\_\_\_ (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement dated \_\_\_\_\_ (the “**Agreement**”), for development and operation of the of the Noida International Airport near Jewar on design, build, finance, operate and transfer (the “**DBFOT**”) basis, through \_\_\_\_\_ (Name of Concessionaire), hereby certify that the Tests specified in Article 14 and Schedule-I of the Agreement have been undertaken for the Airport to determine compliance thereof with the provisions of the Agreement.
2. Construction Works forming part of the Airport that were found to be incomplete and/or deficient have been specified in the Punch List appended hereto, and the Concessionaire has agreed and accepted that it shall complete and/or rectify all such works in the time and manner set forth in the Agreement. Some of the incomplete works have been delayed as a result of reasons attributable to the Authority or due to Force Majeure and the Provisional Certificate cannot be withheld on this account. Though the remaining incomplete works have been delayed as a result of reasons attributable to the Concessionaire,]§ I/We am/are satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the Airport, pending completion thereof.
3. In view of the foregoing, I/We am/are satisfied that the Airport can be safely and reliably placed in commercial service of the Users thereof, and in terms of the Agreement, the Airport is hereby provisionally ready for entry into commercial operation on this the . day of . 20....

<p><b>ACCEPTED, SIGNED, SEALED AND DELIVERED</b>  <b>For and on behalf of CONCESSIONAIRE by:</b></p> <p><b>(Signature)</b>  <b>(Name and Designation)</b>  <b>(Address)</b></p>	<p><b>SIGNED, SEALED AND DELIVERED</b>  <b>For and on behalf of INDEPENDENT ENGINEER by:</b></p> <p><b>(Signature)</b>  <b>(Name and Designation)</b>  <b>(Address)</b></p>
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**Schedule K**  
(See Clause 17.2)

**MAINTENANCE REQUIREMENTS**

**1. Maintenance Requirements**

- 1.1. The Concessionaire shall, at all times, operate and maintain the Airport in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits.
- 1.2. The concessionaire shall repair or rectify any defect or deficiency set forth in Paragraph 2 of this Schedule-K 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 Clause 17.8 of the Agreement, without prejudice to the rights of the Authority under the Agreement, including Termination thereof.

**2. Repair/rectification of defects and deficiencies**

- 2.1. The obligations of the Concessionaire in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies specified in Applicable Laws, Applicable Permits, the standards prescribed in the relevant DGCA, and ICAO Documents and Annexes and Good Industry Practice or renew, replace and upgrade to the extent reasonably necessary, the Airport. All maintenance, repair and other works shall be carried out in such a way as to minimise inconvenience to users of the Airport.
- 2.2. The Concessionaire shall at all times maintain an adequate inventory of spares and consumables to meet the Maintenance Requirements.

**3. Other defects and deficiencies**

- 3.1. In respect of any defect or deficiency not specified in any of the above documents or standards, the Concessionaire shall undertake repair or rectification in accordance with Good Industry Practice and within the time limit specified by the Independent Engineer.
- 3.2. In respect of any defect or deficiency not specified in Annex-I of this Schedule-K, 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 Concessioner in accordance with Good Industry Practice and within the time limit specified by the Independent Engineer.

**4. Extension of time limit**

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

**5. Emergency repairs/restoration**

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

**6. Daily inspection by the Concessionaire**

- 6.1. The Concessionaire shall, through its engineer, undertake a daily visual inspection of the Airport 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.

**7. Divestment Requirements**

All defects and deficiencies shall be repaired and rectified by the Concessionaire so that the Airport conforms to the Maintenance Requirements on the Transfer Date.

**8. Display of Schedule - K**

The Concessionaire shall display a copy of this Schedule – K at the Terminal Building along with the Complaint Register stipulated in Article 51.



## **Schedule L**

*See Clause 26.7)*

### **SERVICE QUALITY REQUIREMENTS**

#### **1. Service Quality Requirements**

The Concessionaire shall, at all times, procure and ensure that it achieves the Service Quality Requirements as set forth in Annex-I of this Schedule-L.

#### **2. Monthly Compliance Report**

The Concessionaire shall, within 7 (seven) days of the closing of each calendar month, furnish a monthly report on compliance of the Service Quality Requirements

#### **3. Display of Schedule-L**

The Concessionaire shall display a copy of this Schedule-L at the Terminal Building along with the Complaint Register stipulated in Article 51.

## Annex - I

(Schedule-L)

### SERVICE QUALITY REQUIREMENTS

The Concessionaire shall at all times procure and ensure that the services provided at the Airport conform to the minimum performance standards (the “**Service Quality Requirements**”) specified in this Annex-I of Schedule-L.

Performance Indicator	Performance Measure	Minimum Performance Standard
<b>Transfer Process</b>	Minimum connect times for 80% of the transfer passengers	Domestic/International:60 minutes International/International: 45 minutes Domestic/Domestic: 45 minutes
<b>Terminal Services</b>	Handling of complaints	100% of complaints responded to within 2 working days
	Response to phone calls	90 % of calls answered within 60 seconds
	Availability of Flight Information	98% availability
	Automated services	98% availability
	Lifts, escalators etc.	98% availability
	Repair completion time	95% of high priority complaints within 4 hours, 95% of others within 24 hours
	Baggage Trolleys	100% availability
	Assistance for the differently abled	100% of time within 5 minutes
<b>Check-in</b>	Maximum queuing time	5 minutes for business class 20 minutes for economy
<b>Security check</b>	Waiting time in queue	Such that 95% of passengers wait less than 5 minutes with an average dwell time at the security check point of 45 seconds per passenger.
<b>Immigration</b>	Checking time in queue for Immigration	Such that 95% of passengers wait less than 10 minutes with an average dwell time at the immigration counter of 120 seconds per passenger.
<b>Baggage delivery</b>	Time for bag delivery from aircraft arrival	Domestic- First bag 10 minutes, last bag 30 minutes from on blocks time International-First bag 15 minutes, last bag 40 minutes from on blocks time.
<b>Passenger arrival process</b>	Time taken from aircraft arrival to kerbside	International - 95% of passengers take less than 45 minutes Domestic - 95% of passengers take less than 35 minutes
<b>Parking Bays</b>	% time available	99%
<b>Passenger boarding bridges</b>	% airline requests for boarding bridges met	International – 90% Domestic – 90% of requests for B737 / A320 or larger aircrafts
<b>Car parking</b>	Average time taken to find parking space including the time taken for payment of parking fee or collection of ticket	95% of drivers take less than 5 minutes

	Average time from parking slot to the exit gate including the time for payment of parking fee	95% of drivers take less than 5 minutes
<b>Taxis</b>	Maximum waiting time	95% of passengers wait less than 5 minutes
<b>Gate Lounges</b>	Seating availability	Seats for 80% of aircraft capacity
<b>Land side access</b>	Delay on terminal frontage road	95% of the vehicles to have delay less than 5 minutes

## II. Subjective Quality of Service Parameters and Benchmarks

The subjective quality of service shall be measured on the parameter of “Overall satisfaction with the airport” on the ACI ASQ survey to be conducted every quarter. The benchmark score for the parameter “Overall satisfaction with the airport” shall be at least equivalent to such score that the Airport is identified within top 20 (twenty) percentile of all airports in its category in the world. The Concessionaire shall also provide performance on all measured parameters of the ACI ASQ survey as part of the Statements being submitted as per the provisions of the Agreement.

The following items shall be assessed as being under the reasonable control or influence of the Concessionaire and will be used to compute the rating. The list provided below is subject to change as per ACI ASQ survey guidelines:

- a) Navigational Items
  - a. Ease of finding way through the Airport/ sign posting
  - b. Flight Information Screens
  - c. Walking distances
- b) Connectivity Items
  - a. Ease of making connections with other flights
  - b. Ground transportation to / from airports
- c) Service Facilities
  - a. Availability of baggage carts
  - b. Restaurant / eating facilities
  - c. Shopping facilities
  - d. Business facilities
  - e. Washroom
  - f. Parking facilities
- d) Value for money
  - a. Restaurant/ eating facilities
  - b. Shopping facilities
  - c. Parking facilities

## **Schedule M**

*(See Clause 23.1)*

### **SAFETY REQUIREMENTS**

#### **1. Guiding principles**

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

(b) Users of the Airport include staff of the Concessionaire and its contractors working on the Airport.

(c) 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.

(d) Safety Requirements include measures associated with safe movement, safety management, safety equipment, fire safety, enforcement and emergency response, with particular reference to the Safety Guidelines specified in Annex - I of this Schedule-M.

#### **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, approved by the Authority;
- (c) provisions of this Agreement;
- (d) relevant ICAO Documents and Annexes, applicable guidelines of DGCA and other relevant Standards/Guidelines contained in internationally accepted codes; and
- (e) Good Industry Practice.

#### **3. Appointment of Safety Consultant**

3.1 For carrying out safety audit of the Airport 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 airport safety expert and one traffic planner to undertake safety audit of the Airport.

3.2 Once in every Accounting Year, a safety audit shall be carried out by the Safety Consultant. It shall review, compile and analyse the annual report and accident data of the preceding year, and undertake an inspection of the Airport. The Safety Consultant shall complete the safety audit within a period of 1 (one) month and submit a Safety Report (the "Safety Report") recommending specific improvements, if any, required to be made to the Airport. 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. Safety measures during Operation Period**

4.1 The Concessionaire shall develop, implement and administer a surveillance and safety programme for Users, including response to hijacking of aircraft, correction of safety violations and deficiencies and all other actions necessary to provide a safe environment in accordance with this Agreement.

- 4.2 The Concessionaire shall establish an Airport Safety Management Unit (the “**ASMU**”) to be functional on and after COD, and designate one of its officers to be in-charge of the ASMU. Such officer shall have specialist knowledge and training in airport system safety by having attended a course conducted by a reputed organisation on the subject.
- 4.3 The Concessionaire shall keep a copy of every first information report (the “**FIR**”) recorded by the Police with respect to any accident occurring on the Airport. In addition, the Concessionaire shall also collect data for all cases of accidents not recorded by the Police. The information so collected shall be summarised in the form prescribed by the Authority for this purpose. The Concessionaire shall also record the exact location of each accident on a route map. The aforesaid data shall be submitted to the Authority at the conclusion of every quarter.
- 4.4 The Concessionaire shall submit to the Authority before the 31<sup>st</sup> (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 minimising such accidents in future.
- 4.5 Once in every Accounting Year, a safety audit shall be carried out by a Safety Consultant to be appointed by the Authority. It shall review and analyse the annual report and accident data of the preceding year, and undertake an inspection of the Airport. The Safety Consultant shall complete the safety audit within a period of 1 (one) month and submit a Safety Report recommending specific improvements, if any, required to be made in the Airport. 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. Costs and expenses**

Costs and expenses incurred in connection with the Safety Requirements set forth herein, including the provisions of Paragraph 2 of this Schedule-M, shall be met in accordance with Article 23.

## **Annex - I**

*(Schedule-M)*

### **SAFETY GUIDELINES**

#### **1. Safe movement**

In the design, construction and operation of the Airport, particular care shall be taken to ensure safety of Users. This shall include facilities for safe and efficient evacuation in case of emergency. In particular, the Terminal shall be designed and tested for safe movement.

#### **2. System integrity**

In the design of power supply, lighting, signalling, communication and security equipments, particular care shall be taken to minimise the likely incidence of failure.

#### **3. Restoration of service**

The Airport 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. Contingency and Safety management**

4.1 The Concessionaire shall procure and ensure that appropriate contingency arrangements are in place at the Airport to deal with the following events in accordance with the provisions of the relevant ICAO Documents and Annexes and applicable guidelines of DGCA:

- a) Removal of disabled aircraft from the Runway and taxiways;
- b) Bomb threat to an aircraft or the Airport, or any acts of terrorism;
- c) Aircraft accidents in and around the vicinity of the Airport;
- d) Non-scheduled aircraft forced to land at the Airport;
- e) Fires at the Airport;
- f) Natural calamities and disasters;
- g) Strikes at the Airport;
- h) Unlawful interference with civil aviation; and
- i) Any other emergency at the Airport.

4.2 The Concessionaire shall procure and ensure that emergency alarm bells are installed and operated to link the ATC Facility to the Airport Manager and to all emergency services located at the Airport, including fire services, medical services, the Central Industrial Security Force and the Police:

4.3 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, and the 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**

The following safety equipment shall be provided at the Airport:

- a) Fire extinguishers and fire alarms at appropriate locations on the Airport;
- b) adequate number of stretchers and standard first aid boxes; and
- c) such other equipment as may be required in conformity with the relevant ICAO Documents and Annexes, applicable guidelines of DGCA and Good Industry Practice.

## **6. Emergency**

A set of emergency procedures shall be formulated to deal with different emergency situations and the operations staff shall be trained to respond appropriately during 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 Engineer no later than 30 (thirty) days prior to COD.

## **7. Fire safety**

7.1 The Concessionaire shall conform to the standards specified in the US National Fire Protection Association (NFPA) on Airport Terminal Buildings, Fueling Ramp drainage and loading Walkways.

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 Terminal Building 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 7.4, the possibility of poor visibility due to smoke shall be duly taken into account. All notices and signages shall be uniform and standardised.

7.5 Appropriate categories of rescue and firefighting services shall be made available and maintained in accordance with the provisions of the relevant ICAO Documents and Annexes.

## **8. User safety and information system:**

8.1 The Concessionaire shall provide the ASMU with the facilities required for supervising passenger areas and the Terminal Building, and shall provide visual information to Users. The Concessionaire shall also provide one way communication to Users at the Terminal Building through a Public Announcement (PA) system. The User call points should be located at convenient locations to allow Users to contact the ASMU in emergencies.

8.2 The User information system shall comprise dynamic visual displays and loudspeakers.

**Schedule N**  
**MONTHLY STATEMENTS**

**Monthly Traffic Census**  
**(See Clause 25.3)**

**Airport:**

**Month:**

Type of User	No. of Users using the Project Airport during		
	Corresponding month/last year	Preceding month	Month of report
(1)	(2)	(3)	(4)
A Aircrafts	A1 INT Arrivals		
	A2 INT Departures		
	A3 DOM Arrivals		
	A4 DOM Departures		
B Passengers	B1 INT Arrivals		
	B2 INT Departures		
	B3 DOM Arrivals		
	B4 DOM Departures		
C Vehicles Entering the Airport	C1 2/3 Wheelers		
	C2 Cars		
	C3 LCV/ Mini Truck		
	C4 Bus/ Truck		
D Vehicles Exiting the Airport	D1 2/3 Wheelers		
	D2 Cars		
	D3 LCV/ Mini Truck		
	D4 Bus/ Truck		

(INT: International, DOM: Domestic, C and D have to be provided separately for each access to the airport) Remarks, if any:



## Monthly Cargo Census

(See Clause 25.3)

**Airport:**

**Month:**

Type of Cargo	No. of consignments	Gross Weight	Value (INR)
A. Incoming			
<b>A1 Bulk Cargo (exceeding 100 kg)</b>			
<b>A2 Small Cargo</b>			
<b>A3 Perishables</b>			
Total (A)			
B Outgoing			
<b>B1 Bulk Cargo (exceeding 100 kg)</b>			
<b>B2 Small Cargo</b>			
<b>B3 Perishables</b>			
Total (B)			
C. Grand Total (A+B)			

**Note:** Submit separate statements for International and Domestic Cargo. Remarks, if any:

**Monthly Fee Statement***(See Clause 32.9)***Airport:****Month:**

Type and purpose of Fee  <b>(1)</b>	Corresponding Month of Previous Year		Preceding Month		Current Month	
	No. of Users  <b>(2)</b>	Fee Collected (INR)  <b>(3)</b>	No. of Users  <b>(4)</b>	Fee Collected (INR)  <b>(5)</b>	No. of Users  <b>(6)</b>	Fee Collected (INR)  <b>(7)</b>
<b>A. Landing</b>						
<b>B. Parking</b>						
<b>C. Housing</b>						
<b>D. Passenger Service</b>						
<b>E. Check-in Services</b>						
<b>F. Entry of Visitors</b>						
<b>G. Car Park</b>						
<b>H. Cargo Facilities</b>						
<b>I. Ground Handling</b>						
<b>Total</b>						

(Additional rows to be added for fee items not covered in the table above) Remarks, if any:

## **Schedule O**

### **TRAFFIC SAMPLING**

**1. Traffic sampling**

The Authority may, in its discretion and at its own cost, undertake traffic sampling, pursuant to Clause 25.4, in order to determine the actual passenger, vehicular, cargo and visitor traffic on the Airport. Such traffic sampling shall be undertaken through the Independent Engineer in the manner set forth below or in such manner as the Parties hereto may agree upon.

**2. Manual traffic count**

The Independent Engineer shall employ the required number of enumerators who shall count, classify and record all the Users as they pass by and divide the survey into fixed time periods. The count stations shall be located near the entry gates or at the fee collection points. The survey shall be conducted continuously for a minimum of 24 (twenty four) hours and maximum of 7 (seven) days at a time. Special surveys may also be undertaken for determining the Peak Hour Traffic and such surveys may be carried out for upto 4 (four) Peak Hours in a day for a continuous period of 7 (seven) days. The count period shall be 15 (fifteen) minutes with results summarised hourly. All surveys shall be conducted substantially in the manner specified in this Schedule—P or in such manner as the Parties may agree upon.

**3. Automatic traffic count**

For automatic traffic count to be conducted on intermittent (non-continuous) basis, the Independent Engineer shall use suitable and standardised equipment to classify and record the Users passing through the entry or Fee collection points. For this purpose, the counter shall be checked with at least 1,000 (one thousand) Users to ensure that Users are being counted and classified correctly.

**4. Variation between manual and automatic count**

Average Daily Traffic (ADT) shall be determined separately by the aforesaid two methods and in the event that the number of Users, as counted by the manual method, varies by more than 1% (one per cent) of the number of such Users as counted by the automatic method, the manual and automatic count shall be repeated, and in the event of any discrepancy between the two counts in the second enumeration, the average thereof shall be deemed to be the actual traffic. For the avoidance of doubt, it is expressly agreed that the Authority may, in consultation with the Concessionaire, adopt modified or alternative processes of traffic sampling for improving the reliability of such sampling, and may, instead of carrying out Manual and Automatic traffic counts, rely only on Automatic traffic counts or any substitute thereof.

**Schedule P**  
(See Clause 26.10)

**PASSENGER CHARTER**

**1. Service with Safety**

It is our aim to provide safety and quality in Airport Management through state of the art infrastructure for total customer satisfaction. This Charter explains our commitments to the users of our Airport and what they can expect from us.

**2. Contents**

1. Introduction
2. Our standards for Passenger Service
3. Availability of Information
4. Passengers who require Assistance
5. Buying a Ticket
6. Lost Property
7. Listening to your views
8. Our promised response times

**2.1. Introduction**

Customers' Satisfaction is our motto! It is the intention of the Airport Management to provide quality service to the users of this Airport through its trained manpower and contractors. We aim to provide:

- a) Safety and security for the users of the Airport
- b) Clean and hygienic environment
- c) Reliable and easy to understand information
- d) Polite, customer friendly and helpful staff
- e) Enjoyable and reasonable shopping and eating experience
- f) Availability of essential facilities

**2.2. Our standards for Passenger Service**

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

**2.2.1. Approach to the Airport**

We will make all out efforts to make approach within the Airport area smooth and comfortable. Our traffic plans will be so oriented as to enable easy entry into and exit from the Airport area. To make your approach comfortable, we will tow away the cars parked unauthorisedly on the approach road within the Airport area.

### 2.2.2. Entry to the Terminal Building

We will ensure that the entry into the Terminal Building is hassle free and when multiple entries are available, information will be suitably indicated at the entrances dedicated to specific airlines.

Entry to the Terminal Building will be non-discriminatory. However, visitors accompanying passengers will have to pay the entry fee as prescribed. The entry of the visitors may be curtailed or suspended at times as per the needs of security.

### 2.2.3. Luggage

We will ensure the availability of luggage trolleys to all the passengers who are in need of the same. Paid portage service will also be made available for your convenience.

### 2.2.4. Parking of vehicles

It will be our endeavour to provide adequate parking space for parking of various vehicles like car, scooter, bus etc. The usage of parking facilities will be available on payment of prescribed fees which may vary according to the vehicles and the type of parking used. It is our aim to ensure that you do not spend more than 5 minutes for parking/taking out your vehicle.

### 2.2.5. Length of queue

Adequate number of check-in counters, x-ray baggage machines, conveyor belts etc. will be provided so that the time spent on queues is kept at minimum.

### 2.2.6. Facilities

You are entitled to free facilities like toilets, clean drinking water, liquid soap, paper glass and child care room. Of course, all other facilities will be available on payment basis. All the essential facilities for eating, drinking and shopping for travellers' need, will be available in a pleasing atmosphere. In order to ensure availability of reasonably priced basic beverages and food items, vending machines would be installed at convenient locations. We will ensure that the vendors price their items, as per laws relating to MRP. Vending machines of competing vendors will be provided to ensure competition and choice to the passengers. We will also ensure the cleanliness and hygiene of the Terminal Building so that you spend your time in a related and pleasant manner.

Our target will be to ensure that you do not have to stand in a queue for more than 5 minutes for most of the services and not more than 20 minutes for your luggage / baggage.

### 2.2.7. Seating

The waiting area for the users will be so planned as to ensure that at least 30% of the peak hour capacity are provided comfortable seats.

Adequate lighting will be provided for your comfort and the temperature inside the Terminal Building will be maintained at 25° C when the outside temperature is below 40° C. In other cases the difference between the temperature outside the Terminal Building and the temperature inside the Terminal Building will not be less than 15° C. During winter season, the temperature shall not be less than 15° C.

### 2.2.8. Taxis

We will ensure that prepaid taxis are available when you arrive. Maximum waiting time for at least 95% (ninety-five per cent) of the passengers shall not exceed 5 minutes.

#### 2.2.9. Planned / Unplanned Engineering Works

We will ensure whenever any modification/repair works are carried out, the area is adequately cordoned off, clear signage is available and normal functioning of the Airport is not affected in anyway.

### 2.3. Availability of information

Information is power.

We will provide timely information on the arrival and departure times of flights. The information will also be available before you enter the Terminal Building so that you can spend more time with your relatives/friends in case of any delay. We will also provide clear and easy to understand universally accepted signages inside the Terminal Building so that you can avail all the facilities without asking for anybody's help.

However, if you need any help, our trained staff will be there to lend you a helping hand. The accuracy of the flight timings and abnormal delays largely depends on the cooperation by the airlines. We will make all efforts to coordinate with the airlines and update the information immediately on receipt.

### 2.4. Passengers who require assistance

We are concerned with the needs of differently abled passengers. We are committed to provide:

#### 2.4.1. Assistance to Passengers

Our trained staff will be ready to help you once you bring the requirement to the notice of Terminal in-charge.

#### 2.4.2. Wash rooms

We will provide disabled friendly wash rooms which are easy to use.

#### 2.4.3 Ramps

Wherever feasible, ramps will be provided for the wheel chair passengers.

#### 2.4.3. First Aid Facilities

Facilities will be available for meeting any unforeseen medical emergencies and first aid will be provided by qualified professional

### 2.5. Buying a ticket

Buying a ticket is very easy and convenient at our airport

Adequate number of ticketing counters of all major airlines will be provided at the airport. They will be open to the public and will have an opening to the city side. Passengers coming by air and proceeding to another destination can also purchase their tickets without going out of the terminal building.

**2.6. Lost Property**

Lost something at airport? You may get it back from the Lost Property Office located in the Terminal Building.

All the lost and found items will be sent to the Lost Property Officer in-charge. You may get in touch with him for recovery of your lost items. He can be reached at his email address viz.

**2.7. Listening to your views**

Customer is always right. Customer satisfaction is our motto. Continuous improvement is our aim.

Periodically analyse the User Satisfaction Survey on the different aspects of our service shall be carried out. To record your suggestions/complaints, suggestion books have been made available at various locations. You can also contact us through correspondence or our phone lines or through our website.

**2.8. Our promised response times**

When you write to us, you should hear from us within seven working days.

- a) In case it needs a longer time to provide a full reply, we will send you an acknowledgement within 7 (seven) working days and reply within 25 (twenty five) working days.
- b) If a full reply cannot be made within 25 working days, we will contact and update you.
- c) There are several agencies involved in providing the various services at the Airport. Some of the services we have promised above may involve interaction and coordination with these agencies who are primarily responsible for the provision of the service. In this case, we shall make best efforts to address your concerns.

If you are unhappy with our reply, we will make all our efforts to make you satisfied with our response. Kindly let us know. This will help us identify weak spots and continually improve our performance.

## Schedule Q

(See Clause 27.1)

### SELECTION OF INDEPENDENT ENGINEER

#### 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, GOI vide OM 24(23)/PF-II/2008 dated May 21, 2009, or any substitute thereof shall apply for selection of an experienced firm to discharge the functions and duties of an Independent Engineer. Provided, however, that no entity which is owned or controlled by the Authority shall be eligible for appointment as the Independent Engineer hereunder.
- 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 Q.
- 1.3 The Concessionaire may, in its discretion, nominate a representative to participate in the process of selection to be undertaken by the Authority under this Schedule-Q.

#### 2. Terms of Reference

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

#### 3. Fee and expenses

- 3.1. In determining the nature and quantum of duties and services to be performed by the Independent Engineer during the Development Period and Construction Period, the Authority shall endeavour that payments to the Independent Engineer on account of fee and expenses do not exceed 1% (one per cent) of the Total Project Cost. Payments not exceeding such 1% (one per cent) shall be borne equally by the Authority and the Concessionaire in accordance with the provisions of this Agreement and any payments in excess thereof shall be borne by the Authority.
- 3.2. The nature and quantum of duties and services to be performed by the Independent Engineer during the Operation Period shall be determined by the Authority in conformity with the provisions of this Agreement and with due regard for economy in expenditure. All payments made to the Independent Engineer on account of fee and expenses during the Operation Period, shall be borne equally by the Authority and the Concessionaire.

#### 4. Selection every three years

No later than 3 (three) years from the date of appointment of Independent Engineer pursuant to the provisions of Paragraph 1 of this Schedule-Q, and every 3 (three) years thereafter, the Authority shall engage another firm in accordance with the criteria set forth in this Schedule-Q.

#### 5. Appointment of government entity as Independent Engineer

Notwithstanding anything to the contrary contained in this Schedule, the Authority may in its discretion appoint a government-owned entity as the Independent Engineer; provided that such entity shall be a body corporate having as one of its primary functions the provision of consulting, advisory and supervisory services for engineering projects; provided further that a government-owned entity



which is owned or controlled by the State Government shall not be eligible for appointment as Independent Engineer.

**Schedule R**

(See Clause 27.2.1)

**TERMS OF REFERENCE FOR INDEPENDENT ENGINEER****1. Scope**

1.1. These Terms of Reference for the Independent Engineer (the “**TOR**”) are being specified pursuant to the Concession Agreement dated \_\_\_\_\_ (the “**Agreement**”), which has been entered into between the Authority and \_\_\_\_\_ (the “**Concessionaire**”) for the Airport at \_\_\_\_\_ in city of \_\_\_\_\_ on design, build, finance, operate and transfer (the “**DBFOT**”) basis, 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 construction, operation and maintenance of the Airport.

**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 Clauses 1.2, 1.3 and 1.4 of the Agreement shall apply, *mutatis mutandis*, to this TOR.

**3. Role and functions of the Independent Engineer**

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

- a. review of the Drawings and Documents as set forth in Paragraph 4;
- b. review, inspection and monitoring of Construction Works as set forth in Paragraph 5;
- c. conducting Tests on completion of construction and issuing Completion/ Provisional Certificate as set forth in Paragraph 5;
- d. review, inspection and monitoring of O&M as set forth in Paragraph 6;
- e. review, inspection and monitoring of Divestment Requirements as set forth in Paragraph 7;
- f. determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
- g. determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
- h. assisting the Parties in resolution of Disputes as set forth in Paragraph 9; and
- i. Undertaking all other duties and functions in accordance with the Agreement.

3.2 The role and functions of the Independent Engineer shall not include construction works comprising City Side Development.

3.3 The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

#### **4. Development Period**

4.1 During the Development Period, the Independent Engineer shall undertake a detailed review of the Drawings to be furnished by the Concessionaire along with supporting data, including the geo-technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, 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.

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

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

4.5 Upon reference by the Authority, the Independent Engineer shall review and comment on the EPC Contract or any other contract for construction, operation and maintenance of the Airport, 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 once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20<sup>th</sup> (twentieth) day of each month in any case, and make out a report of such inspection (the "Inspection Report") setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works with the Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Airport. 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 Airport more than once in a month if any lapses, defects or deficiencies require such inspections.

5.5 For determining that the Construction Works conform to Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance. For purposes of this Paragraph 5.5, the tests specified in the relevant Manuals specified by the Authority in relation to structures, buildings and equipment (the “Quality Control Manuals”) or any modification/substitution thereof shall be deemed to be tests conforming to 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 under paragraph 5.5, 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 to in Paragraph 5.5, 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 Airport 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 for Phase 1 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 Article 14 and Schedule-I.

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

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

## **6. Operation Period**

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

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

6.3 The Independent Engineer shall review the quarterly status 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.

6.4 The Independent Engineer shall inspect the Airport, once every month, preferably after receipt of the monthly status report from the Concessionaire, but before the 20<sup>th</sup> (twentieth) day of each month in any case, and make out an O&M Inspection Report setting forth an overview of the status, quality and safety of O&M including its conformity with the Key Performance Indicators, Maintenance Requirements and Safety Requirements. In a separate section of the O&M Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the Airport. The Independent Engineer shall send a copy of its O&M Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection

6.5 The Independent Engineer may inspect the Airport more than once in a month, if any lapses, defects or deficiencies require such inspections.

6.6 The Independent Engineer shall in its O&M Inspection Report specify the tests, if any, that the Concessionaire shall carry out, or cause to be carried out, for the purpose of determining that the Airport is in conformity with the Maintenance Requirements. It shall monitor and review the results of such tests and the remedial measures, if any, taken by the Concessionaire in this behalf.

6.7 In respect of any defect or deficiency referred to in Paragraph 3 of Schedule-L, the Independent Engineer shall, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards and shall also specify the time limit for repair or rectification of any deviation or deterioration beyond the permissible limit.

6.8 The Independent Engineer shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Agreement, and shall also determine the Damages, if any, payable by the Concessionaire to the Authority for such delay.

6.9 The Independent Engineer shall examine the request of the Concessionaire for closure of the Airport for undertaking maintenance/repair thereof, keeping in view the need to minimise disruption in traffic and the time required for completing such maintenance/repair in accordance with Good Industry Practice. It shall grant permission with such modifications, as it may deem necessary, within 3 (three) days of receiving a request from the Concessionaire. Upon expiry of the permitted period of closure, the Independent Engineer shall monitor the re-opening of such section of the Airport, and in case of delay, determine the Damages payable by the Concessionaire to the Authority under Clause 17.7.

6.10 The Independent Engineer shall monitor and review the curing of defects and deficiencies by the Concessionaire as set forth in Clause 24.5.

6.11 In the event that the Concessionaire notifies the Independent Engineer of any modifications that it proposes to make to the Airport, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire within 15 (fifteen) days of receiving the proposal.

6.12 Audit of Fee collection system The Independent Engineer shall, at least once every month, conduct an audit of the working of the automatic Fee collection system installed by the Concessionaire, to check its accuracy in recording the entry and exit of Users and in recording the Fee.

6.13 The Independent Engineer shall undertake traffic sampling, as and when required by the Authority, under and in accordance with Article 20 and Schedule-P.

## **7. Termination**

7.1 At any time, not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the Independent Engineer shall, in the presence of a representative of the Concessionaire, inspect the Airport for determining compliance by the Concessionaire with the Divestment Requirements set forth in Clause 43.1 and, if required, cause tests to be carried out at the Concessionaire's cost for determining such compliance. If the Independent Engineer determines that the status of the Airport is such that its repair and rectification would require a larger amount than the sum set forth in Clause 44.2, it shall recommend retention of the required amount in the Escrow Account and the period of retention thereof.

7.2 The Independent Engineer shall inspect the Airport once in every 15 (fifteen) days during a period of 90 (ninety) days after Termination for determining the liability of the Concessionaire under Article 44, in respect of the defects or deficiencies specified therein. If any such defect or deficiency is found by the Independent Engineer, it shall make a report in reasonable detail and send it forthwith to the Authority and the Concessionaire.

**8. Determination of costs and time**

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

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

**9. Assistance in Dispute resolution**

9.1. 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.

9.2 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.

**10. Other duties and functions**

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

**11. Miscellaneous**

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.

11.2 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.

11.3 The Independent Engineer shall obtain, and the Concessionaire shall furnish in 2 (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 1 (one) of the copies to the Authority along with its comments thereon.

11.4 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.

11.5 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 their editable digital format or in such other medium or manner as may be acceptable to the Authority.

11.6 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 S**

Deleted



**Schedule T***See Clause 36.1.2)***ESCROW AGREEMENT**

THIS ESCROW AGREEMENT is entered into on this the \_\_\_\_ day of \_\_\_\_ 20\_\_\_\_

**AMONGST**

1 \_\_\_\_\_ 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, permitted assigns and substitutes);

2 ..... (insert name and particulars of Lenders’ Representative) and having its registered office at acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);

3 ..... (insert name and particulars of the Escrow Bank) and having its registered office at \_\_\_\_\_ (hereinafter referred to as the “**Escrow Bank**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and

4 \_\_\_\_\_ (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

**WHEREAS:**

- A. The Authority has entered into a Concession Agreement dated \_\_\_\_ with the Concessionaire (“**Concession Agreement**”) for the Airport at in the state of on design, build, finance, operate and transfer basis (the “**DBFOT**”), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- B. Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- C. The Concession Agreement requires the Concessionaire to establish an Escrow Account, *inter alia*, on the terms and conditions stated therein.

**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 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 Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

“**Concession Agreement**” means the Concession Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

“**Cure Period**” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Concessionaire, and shall commence from the date on which a notice is delivered by the Authority or the Lenders’ Representative, as the case may be, to the Concessionaire asking the latter to cure the breach or default specified in such notice;

“**Escrow Account**” means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

“**Escrow Default**” shall have the meaning ascribed thereto in Clause 6.1;

“**Lenders’ Representative**” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

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

“**Payment Date**” means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

“**Sub-Accounts**” means the respective sub-accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective sub-accounts and paid out therefrom on the Payment Date(s).

## **1.2 Interpretation**

1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.

1.2.2 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

1.2.3 References to Clauses are, unless stated otherwise, references to Clauses of this 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. Escrow Account**

### **2.1 Escrow Bank to act as trustee**

2.1.1 The Concessionaire hereby appoints the Escrow Bank to act as trustee for the Authority, the Lenders’ Representative and the Concessionaire in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.

2.1.2 The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority, the Lenders' Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Authority, the Lenders' Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Agreement.

## **2.2 Acceptance of Escrow Bank**

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Senior Lenders or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, the Lenders' Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

## **2.3 Establishment and operation of Escrow Account**

2.3.1. Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Concessionaire shall open and establish the Escrow Account with the (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.

2.3.2. The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.

2.3.3. The Escrow Bank and the Concessionaire shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

## **2.4 Escrow Bank's fee**

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Concessionaire. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with Clause 4.1.

## **2.5 Rights of the parties**

Save and except as otherwise provided in the Concession Agreement, the rights of the Authority, the Lenders' Representative and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority, the Lenders' Representative and the Concessionaire shall have no other rights against or to the monies in the Escrow Account.

## **2.6 Substitution of the Concessionaire**

The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Concessionaire under

this Agreement on and with effect from the date of substitution of the Concessionaire with the Nominated Company.

### **3. Deposits into escrow account**

#### **3.1 Deposits by the Concessionaire**

3.1.1 The Concessionaire agrees and undertakes that it shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:

- (a) all monies received in relation to the Project from Banks, insurance companies, other lenders and shareholders;
- (b) all Fee and any other revenues from or in respect of the Airport, including the proceeds of any rentals, deposits, capital receipts or insurance claims; and
- (c) all payments by the Authority, after deduction of any outstanding Concession Fee; and

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

3.1.2 The Concessionaire may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

#### **3.2 Deposits by the Authority**

The Authority agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

- (a) Any monies disbursed by the Authority to the Concessionaire;
- (b) all Fee collected by the Authority in exercise of its rights under the Concession Agreement; and
- (c) Termination Payments:

Provided that, notwithstanding the provisions of Clause 4.1.1, the Authority shall be entitled to appropriate from the aforesaid amounts, any Concession Fee due and payable to it by the Concessionaire, and the balance remaining shall be deposited into the Escrow Account.

#### **3.3 Deposits by Senior Lenders**

The Lenders' Representative agrees, confirms and undertakes that the Senior Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project; provided that notwithstanding anything to the contrary contained in this Agreement, the Senior Lenders shall be entitled to make direct payments to the EPC Contractor under and in accordance with the express provisions contained in this behalf in the Financing Agreements.

#### **3.4 Interest on deposits**

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Concessionaire in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

### **4. Withdrawals from escrow account**

#### **4.1. Withdrawals during Concession Period**

4.1.1 At the beginning of every month, or at such shorter intervals as the Lenders' Representative and the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):

- a) All taxes due and payable by the Concessionaire for and in respect of the Airport excluding City Side Development ;
- b) All payments relating to construction of the airport, subject to and in accordance with the conditions if any set forth in the financing agreements;
- c) O&M expenses, subject to the ceiling, if any, set forth in the financing agreements;
- d) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of the Agreement, and certified by the Authority as due and payable to it;
- e) Concession Fee due and payable to the Authority;
- f) monthly proportionate provision of Debt Service due in an Accounting Year;
- g) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire.
- h) monthly proportional provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- i) any reserve requirements set forth in the Financing Agreements; and
- j) balance, if any, in accordance with the instructions of the Concessionaire.

4.1.2 No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

#### **4.2 Withdrawals upon Termination**

Upon Termination of the Concession Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

- a) all taxes due and payable by the Concessionaire for and in respect of the Airport;
- b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- c) outstanding Concession Fee;
- d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- e) retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in Article 44 of the Concession Agreement;

- f) outstanding Debt Service including the balance of Debt Due;
- g) outstanding Subordinated Debt;
- h) incurred or accrued O&M Expenses;
- i) any other payments required to be made under the Concession Agreement; and
- j) balance, if any, in accordance with the instructions of the Concessionaire:

Provided that the disbursements specified in Sub-clause (j) of this Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by the Authority.

#### **4.3 Application of insufficient funds**

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

#### **4.4 Application of insurance proceeds**

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement or improvement of the Airport, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

#### **4.5 Withdrawals during Suspension**

Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 41 of the Concession Agreement. Any instructions given by the Authority to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

### **5. Obligations of the escrow bank**

#### **5.1 Segregation of funds**

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank.

#### **5.2 Notification of balances**

7 (seven) business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire and/or the Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lenders' Representative of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

#### **5.3 Communications and notices**

In discharge of its duties and obligations hereunder, the Escrow Bank:

- a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;

- b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- c) shall, within 5 (five) business days after receipt, deliver a copy to the Lenders' Representative of any notice or document received by it in its capacity as the Escrow Bank from the Concessionaire or any other person hereunder or in connection herewith; and
- d) shall, within 5 (five) business days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Lenders' Representative in connection herewith.

#### **5.4 No set off**

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

#### **5.5 Regulatory approvals**

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

### **6. Escrow default**

**6.1** Following events shall constitute an event of default by the Concessionaire (an "**Escrow Default**") unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority or the Lenders' Representative:

- a) the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;
- b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or
- c) the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business day

**6.2** Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Concession Agreement.

### **7. Termination of escrow agreement**

#### **7.1 Duration of the Escrow Agreement**

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the debt, guarantee or financial assistance received by it from the Senior Lenders, or any of its obligations to the Authority remain to be

discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

## **7.2 Substitution of Escrow Bank**

The Concessionaire may, by not less than 45 (forty-five) days prior notice to the Escrow Bank, the Authority and the Lenders' Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Lenders' Representative and arrangements are made satisfactory to the Lenders' Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank.

The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

## **7.3 Closure of Escrow Account**

The Escrow Bank shall, at the request of the Concessionaire and the Lenders' Representative made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement and the Financing Agreements including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

## **8. Supplementary escrow agreement**

### **8.1 Supplementary Escrow Agreement**

The Lenders' Representative and the Concessionaire shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, *inter alia*, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to Clause 4.1.1 and for matters not covered under this Agreement such as the rights and obligations of Senior Lenders and lenders of Subordinated Debt, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

## **9. Indemnity**

### **9.1 General indemnity**

9.1.1 The Concessionaire will indemnify, defend and hold the Authority, Escrow Bank and the Senior Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense 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.

9.1.2 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 fulfil 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.

9.1.3 The Escrow Bank 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 Escrow Bank to fulfil 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 Escrow Bank, its officers, servants and agents.

## **9.2 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 9.1 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, which approval shall not 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.

## **10. Dispute resolution**

### **10.1 Dispute resolution**

10.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with be the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "**Rules**") or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996 and Arbitration and Conciliation (Amendment) Act, 2015.

10.1.2. The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

## **11. Miscellaneous provisions**

### **11.1 Governing law and jurisdiction**

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

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

### **11.3 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.

### **11.4 Alteration of terms**

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

### **11.5 Waiver**

11.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

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

11.5.2 Neither the failure by any 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 any 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.

### **11.6 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.

### **11.7 Survival**

11.7.1 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.

11.7.2 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.

### **11.8 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 10.1 of this Agreement or otherwise.

### **11.9 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.

### **11.10 Notices**

All notices or other communications to be given or made under this Agreement shall be in writing and 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, its facsimile number and e-mail address 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 a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business 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.

### **11.11 Language**

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

### **11.12 Authorised representatives**

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

### **11.13 Original Document**

This Agreement may be executed in four 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/Authorised Officer who has countersigned the same in token thereof.

Signature  
Name  
Designation  
Address  
Fax No  
Email address

SIGNED, SEALED AND DELIVERED

For and on behalf of SENIOR LENDERS by the Lenders' Representative:

Signature  
Name  
Designation  
Address  
Fax No  
Email address

**Schedule U**  
(See Clause 38.2.1)

**PANEL OF CHARTERED ACCOUNTANTS**

**1. Panel of Chartered Accountants**

Pursuant to the provisions of Clause 38.2.1 of the Agreement, the Authority and the Concessionaire shall prepare a mutually agreed panel of 5 (five) reputable firms of Chartered Accountants having their registered offices in India (the “**Panel of Chartered Accountants**”). The criteria for preparing such Panel and the procedure to be adopted in this behalf shall be as set forth in this Schedule-U.

**2. Invitation for empanelment**

2.1. The Authority shall invite offers from all reputed firms of Chartered Accountants who fulfil the following eligibility criteria, namely:

- (a) the firm should have conducted statutory audit of the annual accounts of at least one hundred companies registered under the Companies Act, 2013, including any re-enactment or amendment thereof, of which at least ten should have been public sector undertakings;
- (b) the firm should have at least 5 (five) practising Chartered Accountants on its rolls, each with a minimum experience of 10 (ten) years in the profession;
- (c) the firm or any of its partners should not have been disqualified or black-listed by the Comptroller and Auditor General of India or the Authority; and
- (d) the firm should have an office in the State or in an adjacent State with at least 2 (two) practising Chartered Accountants on its rolls in such State.

2.2 Interested firms meeting the eligibility criteria shall be required to submit a statement of their capability including the bio-data of all the practising Chartered Accountants on its rolls. In particular, each firm shall be required to furnish year-wise information relating to the names of all the companies with an annual turnover exceeding Rs. 25,00,00,000 (Rupees Twenty-five crores) whose annual accounts were audited by such firm in any of the preceding 5 (five) Accounting Years.

**3. Evaluation and selection**

- 3.1 The information furnished by each firm shall be scrutinised and evaluated by the Authority and 1 (one) point shall be awarded for each annual audit of the companies specified in Paragraph 2.2 above. (For the avoidance of doubt and by way of illustration, a firm which has conducted audit of the annual accounts of any such company for 5 (five) years shall be awarded 5 (five) points).
- 3.2 The Authority shall prepare a list of all the eligible firms along with the points scored by each such firm and 5 (five) firms scoring the highest points shall be identified and included in the draft Panel of Chartered Accountants.

#### **4. Consultation with the Concessionaire**

The Authority shall convey the aforesaid panel of firms to the Concessionaire for scrutiny and comments, if any. The Concessionaire shall be entitled to scrutinise the relevant records of the Authority to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Authority within 15 (fifteen) days of receiving the aforesaid panel.

#### **5. Mutually agreed panel**

- 5.1 The Authority shall, after considering all relevant factors including the comments, if any, of the Concessionaire, finalise and constitute a panel of 5 (five) firms which shall be deemed to be the mutually agreed Panel of Chartered Accountants.
- 5.2 After completion of every 5 (five) years from the date of preparing the mutually agreed Panel of Chartered Accountants, or such earlier period as may be agreed between the Authority and the Concessionaire, a new panel shall be prepared in accordance with the provisions of this Schedule-U.

**Schedule V**

(See Clause 43.4)

**VESTING CERTIFICATE**

1. The Governor of \_\_\_\_\_ represented by \_\_\_\_\_ (the “**Authority**”) refers to the Concession Agreement dated \_\_\_\_\_ (the “**Agreement**”) entered into between the Authority and \_\_\_\_\_ (the “**Concessionaire**”) for the Airport at \_\_\_\_\_ in the state of \_\_\_\_\_. on design, build, finance, operate and transfer (the “**DBFOT**”) basis.
2. The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Clause 43.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Airport shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.
3. Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

AGREED, ACCEPTED AND For and on behalf of Concessionaire by:

Signature  
Name  
Designation  
Address

AGREED, ACCEPTED AND For and on behalf of Authority by:

Signature  
Name  
Designation  
Address

In presence of

- A)
- B)

## Schedule W

(See Clause 45.3.1)

### SUBSTITUTION AGREEMENT

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

#### AMONGST

1. \_\_\_\_\_ and having its principal offices at (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, permitted assigns and substitutes);
3. \_\_\_\_\_ (insert name and particulars of Lenders’ Representative) and having its registered office at \_\_\_\_\_, acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**”, which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

#### WHEREAS:

- A. The Authority has entered into a Concession Agreement dated \_\_\_\_\_ with the Concessionaire (the “**Concession Agreement**”) for the Airport at \_\_\_\_\_ in the state of \_\_\_\_\_ on design, build, finance, operate and transfer basis (the “**DBFOT**”), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- B. Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- C. Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.
- D. In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

**NOW, 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. Definition

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, 2013 including any re-enactment or amendment thereof, selected by the Lenders’ Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/transfer of the Concession as provided in this Agreement;

“**Notice of Financial Default**” shall have the meaning ascribed thereto in Clause 3.2.1; and

“**Parties**” means the parties to this Agreement collectively and “**Party**” shall mean any of the Parties to this Agreement individually.

### 1.2. Interpretation

1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.

1.2.2. References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.3 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

## **ASSIGNMENT**

### **2.1. Assignment**

The Concessionaire hereby agrees to assign the rights, title and interest in the Concession to, and in favour of, the Lenders' Representative pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

## **3. SUBSTITUTION OF THE CONCESSIONAIRE**

### **3.1. Rights of substitution**

3.1.1 Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

The Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. For the avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Airport 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 Airport in accordance with the provisions of Article 41 of the Concession Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days. For the avoidance of doubt, the Authority expressly agrees and undertakes to terminate the Concession Agreement

forthwith, upon receipt of a written request from the Lenders' Representative at any time after 240 (two hundred and forty) days from the date of Suspension hereunder.

### **3.3. Substitution upon occurrence of Concessionaire Default**

- 3.3.1 Upon occurrence of a Concessionaire Default, the Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days' time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.
- 3.3.2 In the event that the Lenders' Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days; provided further that the Lenders' Representative may at any time withdraw its representation hereunder and upon such withdrawal, the Concessionaire may terminate this Agreement in accordance with the provisions hereof.

### **3.4. Procedure for substitution**

- 3.4.1 The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Airport including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.
- 3.4.2 To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfil 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 Airport in accordance with the provisions of the Concession Agreement;
  - (b) endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
  - (c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.

- 3.4.4 If the Authority has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) 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 shall thereupon transfer and endorse the Concession within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.
- 3.4.5 The transfer of Concession hereunder to a Nominated Company may, notwithstanding anything to the contrary in this Agreement and the Concession Agreement, be undertaken by transfer of no less than 75% (seventy-five per cent) of the equity of the Concessionaire to the Nominated Company, and upon such transfer hereunder, the Concessionaire shall be deemed to be the Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

### **3.5. Selection to be binding**

The decision of the Lenders' Representative and the Authority in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Authority taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Authority and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Authority or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

## **4. PROJECT AGREEMENTS**

### **4.1. Substitution of Nominated Company in Project Agreements**

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Company's assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

## **5. TERMINATION OF CONCESSION AGREEMENT**

### **5.1 Termination upon occurrence of Financial Default**

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 42 of the Concession Agreement.

## **5.2. Termination when no Nominated Company is selected**

In the event that no Nominated Company acceptable to the Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2, the Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

## **5.3 Realisation of Debt Due**

The Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement. For realisation of the Debt Due, the Lenders' Representative shall be entitled to make its claim from the Escrow Account in accordance with the provisions of the Concession Agreement and the Escrow Agreement.

## **6. DURATION OF THE AGREEMENT**

### **6.1 Duration of the Agreement**

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- (a) Termination of the Agreement; or
- (b) no sum remains to be advanced and no sum is outstanding to the Senior Lenders, under the Financing Agreements.

## **7. INDEMNITY**

### **7.1 General indemnity**

- 7.1.1 The Concessionaire will indemnify, defend and hold the Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.
- 7.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil 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 fulfil 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 provisions of the Arbitration and Conciliation Act, 1996 and Arbitration and Conciliation (Amendment) Act, 2015.
- 8.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State 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 in the State 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 judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective

of their use or intended use of any order or judgement that may be made or given in connection therewith).

### **9.3 Priority of agreements**

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

### **9.4 Alteration of terms**

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

### **9.5 Waiver**

9.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

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

9.5.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation 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, its facsimile number and e-mail address 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 Authorised representatives**

Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

#### **9.13 Original Document**

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

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

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

Signature  
Name  
Designation  
Address  
Fax No  
Email address



SIGNED, SEALED AND DELIVERED For and on behalf of AUTHORITY

Signature  
Name  
Designation  
Address  
Fax No  
Email address

SIGNED, SEALED AND DELIVERED For and on behalf of SENIOR LENDERS by the Lenders' Representative

Signature  
Name  
Designation  
Address  
Fax No  
Email address

## Schedule X

See Clause 5.6.1)

### SHAREHOLDERS' AGREEMENT

THIS SHAREHOLDERS AGREEMENT (the “**Agreement**”) is made on this the day of \_\_\_\_\_, 20....,

#### AMONGST

1. Noida International Airport Limited and having its principal office at office no. 1-15 block P-2-sector Omega -1, Greater Noida, Gautam Buddha Nagar, Uttar Pradesh (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of the **One Part**;

and

2. The Parties listed in Annex I hereto (hereinafter individually referred to as “**Private Participant**” and collectively referred to as “**Private Participants**” (which expression shall, unless it be repugnant or contrary to the subject or context thereof, be deemed to mean and include their respective legal representatives and successors) of the **Second Part**;

and

3. ....LIMITED a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at ..... (hereinafter referred to as “**Concessionaire**”, which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the **Third Part**.

The Private Participants, the Authority and the Concessionaire are hereinafter collectively referred to as the “**Parties**” and individually as “**Party**”. The Private Participants and the Authority are collectively referred to as the “**Shareholders**”.

#### WHEREAS:

- a) The Government of Uttar Pradesh had procured the in-principle approval from Government of India (hereinafter referred to as “**In-Principle Approval**”) for establishment of an airport for public use near Jewar, District Gautam Buddha Nagar in the State of Uttar Pradesh (hereinafter referred to as “**Airport**” or “**Project**”), subject to the terms and conditions stipulated in the In-Principle Approval, and had resolved to establish the Airport on design, build, finance, operate and transfer (the “**DBFOT**”) basis. The Government of Uttar Pradesh (“**GoUP**”) vide its Government Resolution No..... dated \_\_\_\_\_ (“**GoUP Approval**”), approved the implementation of the Project and assigned Noida International Airport Limited as Authority.
- b) The Authority invited proposals by its Request for Proposal cum Qualification No. ....\*dated..... (the “**Request for Proposal cum Qualification**” or “**RFP cum RFQ**”) for selection of the successful bidder who would have the right to incorporate a company to act as a special purpose vehicle to undertake the Project.
- c) The Private Participants include the Members of the Selected Bidder, which had Bid, and was/were thereafter short listed and eventually selected by Authority, pursuant to which the Authority issued the Letter of Award No..... dated to.....incorporate

the special purpose vehicle which would execute the Concession Agreement for undertaking the Project (the “**Concessionaire**”).

- d) The Selected Bidder has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 2013, and has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the concessionaire under the Concession Agreement and the Authority has agreed to this request.
- e) As part of the Request for Proposals it was contemplated that the Authority would hold one non-transferable Golden Share (as defined hereinafter), on terms and conditions as set out in this Shareholders’ Agreement.
- f) The Authority and the Private Participants are therefore desirous of setting forth in this Agreement, the terms and conditions to govern the relationships in their mutual capacity as the Shareholders of the Concessionaire and to record their respective rights and obligations in relation to the management and functioning of the Concessionaire and other matters incidental thereto.

**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 INTERPRETATIONS**

### **1.1 Definitions**

In this Agreement, (including any recitals, annexure, schedules or exhibit attached thereto), except where the context otherwise requires, the following words and expressions shall have the following meaning:

“**Affected Party**” shall have the meaning ascribed to the term in Clause 11.3 hereunder;

“**Alternate Director**” shall have the meaning ascribed to the term in Clause 5.7.1 hereunder;

“**Board of Director(s)**” or “**Board**” means the board of director(s) of the Concessionaire;

“**Chairman**” means chairman of the Board of the Company;

“**Charter Documents**” means the memorandum of association and articles of association of the Concessionaire, incorporating as appropriate, and consistent with, to the extent permitted by law, the terms and conditions of this Agreement.

“**Companies Act**” means the Companies Act, 2013 for the repealed provisions of Companies Act, 1956 and otherwise Companies Act, 1956 including any re-enactment or amendment thereof;

“**Concession Agreement**” shall mean the Concession Agreement entered into between the Authority and the Concessionaire with respect to the Project;

“**Consequential Loss**” shall have the meaning ascribed to the term in Clause 11.14 hereunder;

“**Defaulting Party**” shall have the meaning ascribed to the term in Clause 8.2.1 hereunder;

“**Director**” means a director on the Board of Directors of the Concessionaire;

“**Equity Shares**” means the fully paid up equity share of a par value of Rs. .... each of the Concessionaire;

“**Golden Share**” means the fully paid up equity share of a par value of Rs. . . . of the Concessionaire issued/ to be issued to the Authority;

“**Managing Director**” means the whole time managing director of the Concessionaire;

“**Private Participants**” shall have the meaning ascribed to it in the preamble of this Agreement;

“**Private Participants Agreement**” shall have the meaning ascribed to the term in Clause 4.2.4 hereunder;

“**Project**” shall have the meaning ascribed to it in Recital (A).

“**Proprietary Information**” shall have the meaning ascribed to the term under Clause 9.1 hereunder;

“**Reserved Matters**” means the matters listed under Annex II hereto;

“**Shareholder**” or “**Shareholders**” shall have the meaning ascribed to the term in the preamble of this Agreement;

“**Shareholders’ Agreement**” or “**Agreement**” means this shareholders’ agreement;

“**Third Party**” means any entity not a Party to this Agreement;

“**Transfer**” shall include (i) any transfer or other disposition of such securities or voting interests or any interest therein, including, without limitation, by operation of Applicable Laws, by court order, by judicial process, or by foreclosure, levy or attachment; (ii) any sale, assignment gift, donation, redemption, conversion or other disposition of such securities or any interest therein, pursuant to an agreement, arrangement, instrument or understanding by which legal title to or beneficial ownership of such securities or any interest therein passes from one entity to another entity or to the same entity in a different legal capacity, whether or not for value; (iii) the granting of any encumbrance (whether by way of mortgage, pledge, lien hypothecation or otherwise) or charge in or extending or attaching to such securities or any interest therein or any privilege or priority of any kind having the effect of security

## **1.2 Interpretations**

1.2.1 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 or the Companies Act, as the case may be, shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement or the Companies Act.

1.2.2. References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.3 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. EFFECTIVE DATE**

Except for the provisions of Clauses 2, 3, 7, 9 and 10 which shall become effective immediately upon the execution hereof, the provisions of this Agreement shall become effective upon the completion, to the satisfaction of the Authority, of the following actions (such date being the effective date “**Effective Date**”):

- (i) The Concessionaire shall have resolved by way of special resolution, in an extra ordinary General Meeting of the Shareholders of the Concessionaire, alteration of the Charter Documents of the Concessionaire, as necessary, to reflect the terms of this Agreement;
- (ii) The Concessionaire shall have filed with the concerned Registrar of Companies, amended Charter Documents as above, as necessary, and provided the Authority with the receipt issued by the said Registrar of Companies evidencing filing of the Chartered Documents amended as above; and
- (iii) The Concessionaire shall have delivered and the Private Participants shall have caused the Concessionaire to deliver to the Authority a certified true copy of all such resolutions and/or any other document(s) evidencing performance of the actions contemplated in this Clause.

### **3. CAPITAL STRUCTURE AND ISSUANCE OF THE GOLDEN SHARE**

#### **3.1 Issuance of the Golden Share to the Authority**

- 3.1.1 The Concessionaire hereby undertakes to issue and allot, and the Private Participants hereby agree to cause the Concessionaire to issue and allot to the Authority, simultaneously with the execution of this Agreement, the Golden Share, for a consideration equal to the par value of such Golden Share, and deliver the share certificate representing the Golden Share to the Authority.
- 3.1.2 The Concessionaire shall make all filings as may be required under the provisions of the Companies Act and comply with all other requirements of Applicable Laws, in connection with the issuance of the Golden Share.
- 3.1.3 The Parties agree that the nominee Directors of the Authority shall have rights of affirmative vote in the meetings of the Board of Directors of the Company, and the Authority shall have a right of affirmative vote in the General Meeting of Shareholders, in respect of the Reserved Matters. For the avoidance of doubt, the rights of the Authority under this Agreement shall be in addition to any other rights that the Authority may have under the Concession Agreement or any other Project Agreement.
- 3.1.4 The Parties expressly agree that the Golden Share shall, unless otherwise provided for under this Agreement, have identical rights and privileges of Equity Shares, with respect to dividend and all other matters.

#### **3.2 Transfer restrictions**

- 3.2.1 Any Shareholder (other than the Authority) may, subject to the provisions of this Agreement, and in compliance with Applicable Laws, Transfer, whether directly or indirectly, all or any of its/their Equity Shares or their rights under this Agreement, to a Third Party provided that (i) such Transfer shall not cause the Concessionaire to be in breach of the Concession Agreement; and (ii) such Third Party purchaser shall agree and undertake to be bound by the terms and conditions of this Agreement and executes a deed of adherence in the form and manner attached in Annex III (“**Deed of Adherence**”).
- 3.2.2 It is hereby expressly clarified that where Private Participant is a special purpose vehicle established primarily for the purposes of holding Equity Shares in the Concessionaire (such Private Participant being an “SPV PP”), a Transfer of any shareholding in such SPV PP shall constitute an indirect Transfer of Equity Shares by the SPV PP for the purposes of this

Agreement and be subject to the restrictions on Transfer of shares as set forth in this Agreement, including (i) the requirement of the execution of a Deed of Adherence by a third party transferee.

- 3.2.3 The Parties expressly agree that the Authority shall not be entitled to Transfer the Golden Share at any time, save and except when a successor entity of the Authority assumes the rights and obligations of the Authority under the Concession Agreement.

#### **4. SCOPE AND OBJECTIVE OF THE CONCESSIONAIRE**

##### **4.1 Purpose of the Concessionaire and scope of this Agreement**

The purpose of the Concessionaire is to undertake and perform the obligations and exercise the rights of the Concessionaire in accordance with and subject to the provisions contained in the Concession Agreement.

##### **4.2 Shareholder Commitments**

4.2.1 Each Shareholder hereby agrees to cooperate with each other Shareholder and with the Concessionaire and to use its reasonable efforts to the extent that it has the authority and ability to do so to promote the success of the Concessionaire. Provided, however, the Parties hereby expressly acknowledge and agree that the responsibilities and obligations of the Authority shall be restricted and limited to the matters expressly set forth in the Concession Agreement: Provided further that, nothing contained in this Article 4.2.1 shall be construed as creating any obligation on the Authority other than as expressly set forth in the Concession Agreement, nor will it imply any joint and several liability of the Authority.

4.2.2 Each Shareholder hereby undertakes towards the other Shareholders and for the benefit of the Concessionaire:

- (a) To perform and observe all of the provisions of this Agreement and the Charter Documents; and
- (b) Subject to Authority's right of affirmative vote (which may be exercised through a nominee of the Authority) in relation to the Reserved Matters, and without prejudice to the foregoing, to procure that (i) every person for the time being representing it in its capacity as Shareholder, and (ii) every person appointed as a Director in terms of this Agreement will exercise any power of vote or cause the power to vote to be exercised, at any meeting of the Shareholders or the Board of the Concessionaire, as the case may be, so as to ensure the approval of any and every resolution necessary or desirable to procure that the affairs of the Concessionaire are conducted in accordance with the Concession Agreement and otherwise to give full effect to this Agreement, and likewise so as to ensure that no resolution is passed which is not in accordance with the Concession Agreement and/or the provisions of this Agreement; provided, however, that except as expressly directed or as otherwise contemplated by any provisions in this Agreement, each Shareholder shall have full discretion on how to vote the Equity Shares which such Shareholder owns or on how to cause any person appointed by such Shareholder to act in operating the Concessionaire, subject only to Applicable Laws.

- 4.2.3 If any Director nominated by a Shareholder pursuant to Clause 5, for any reason refuses to exercise his discretion in accordance with the provisions of this Agreement, such Shareholder shall forthwith take all action within its power or control to substitute such Director.

4.2.4 The Parties agree that the Charter Documents shall, to the extent permissible under Applicable Laws, incorporate the provisions of this Agreement including without limitation Authority's right of affirmative vote and to the extent that the Charter Documents are inconsistent with the Agreement, the Shareholders shall exercise their power as shareholders of the Concessionaire to ensure that the Charter Documents are amended to the extent permissible under Applicable Law to remove any such inconsistencies. Further, the Parties also agree that the Private Participants may enter into any agreement amongst themselves to regulate their inter-se relationship as Shareholders of the Concessionaire ("**Private Participants Agreement**"), provided that the provisions of such Private Participants Agreement shall not be contrary to or inconsistent with the provisions of this Agreement, or detrimental, in any way, to the interest of the Authority under this Agreement and/or the Concession Agreement and shall be permissible under Applicable Laws. For the avoidance of doubt, it is hereby expressly agreed between the Parties that in the event of a conflict or inconsistency between the Private Participants Agreement and this Agreement, the provisions of this Agreement shall take precedence.

4.2.5 The Private Participants hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project, till such time as the Financial Close for the Project is achieved in accordance with the Concession Agreement.

## **5. MANAGEMENT AND THE BOARD OF DIRECTORS**

### **5.1 Management**

The Concessionaire shall be managed and governed under the overall superintendence, direction and control of the Board. The Board shall have overall authority with respect to development and management of the Concessionaire and the Project. The officers of the Concessionaire shall have the authority and responsibilities specified by the Board of Directors, consistent with the Charter Documents and this Agreement.

### **5.2 Composition of the Board**

5.2.1 The Board composition shall be determined as under:

- (a) The Authority shall at all times be entitled to nominate 2 persons of its choice for appointment as Directors on the Board of the Concessionaire, and upon such nomination, the Concessionaire shall appoint such persons as a non-retiring Directors in accordance with Applicable Laws.
- (b) Private Participants and Shareholders other than the Authority shall have the right to nominate the remaining Directors.

5.2.2 The Shareholders hereby acknowledge and agree to vote their respective shareholding in the Concessionaire in such manner so as to ensure appointment of the nominees of Authority and the Private Participants, as Directors from time to time

### **5.3 Chairman**

The Parties hereby undertake and agree that the Private Participants shall have the right to nominate the Chairman of the Concessionaire, who shall be appointed by the Board.

### **5.4 Managing Director**

5.4.1 The Private Participants shall also nominate the Managing Director of the Concessionaire, who shall, following a Board resolution, be appointed by the Board.

5.4.2 The Managing Director shall be responsible for day-to-day management of the Concessionaire and for implementing the Project. The Managing Director will exercise his powers subject to the overall superintendence, direction and control of the Board.

## **5.5 Qualification**

The Directors need not hold any qualification shares in the Concessionaire.

## **5.6 Resignation and removal**

Except where a Director is required under Applicable Laws or the Charter Documents to vacate office, no Director shall be removed during the term for which he was elected without the consent of the Shareholder that recommended his appointment on the Board. Notwithstanding the foregoing, a Shareholder may ask for removal, substitution or recall for any reason, of any of the Directors nominated by such Shareholder and such Director shall be bound by the direction of removal, substitution or recall. Each Shareholder agrees to co-operate with the other Shareholders in convening a meeting of the Shareholders of the Concessionaire to effect such removal and to vote in favour thereof, if so required.

## **5.7 Alternate Director**

5.7.1 A Director, other than the Managing Director, (the “**Original Director**”) shall be entitled at any time and from time to time, to appoint any person to act as the Original Director’s alternate (“**Alternate Director**”) (and the Shareholders shall procure that the Board appoints such person as his alternate) and to direct the termination of the appointment of such Alternate Director (and the Shareholders shall procure that the Board terminates the appointment of such Alternate Director).

5.7.2 The Alternate Director shall be entitled, while holding office as such, to receive notices of meetings of the Board or any committee thereof to which the Original Director has been appointed, and to attend and vote as a Director at any such meetings at which the Original Director is not present and generally to exercise all the powers, rights (other than the right to appoint an Alternate Director as provided in Clause 5.7.1), duties and authorities and to perform all the functions of the Original Director. Further, such Alternate Director shall be entitled to be counted for the purpose of constituting quorum, exercise the vote and sign a written resolution on behalf of the Original Director at any meeting of the Board or any committee thereof and to the extent permitted by Applicable Laws his signature, vote, presence and consent shall be deemed to be that of himself (as if he is a Director in his own right) and the Original Director for whom he is an Alternate Director.

## **5.8 Vacancy**

If a vacancy in any such office should occur for whatever reason, or a Director is absent for a continuous period of 1 (one) month from the place where meetings of the Board are regularly held and no Alternate Director has been appointed in his place, then the Shareholder that nominated such Director shall be entitled to nominate a replacement Director, and the Shareholders agree to vote their Shares unanimously for the removal of such Director and election of such replacement Director.



## **5.9 Mode of conduct of Board meeting**

Board meetings shall be held at least once every quarter at such places in India as the Board may determine and failing any such determination at the Concessionaire's registered office located at \_\_\_\_\_. If and when permitted under Applicable Laws, a Director may participate in a Board meeting or a committee/sub-committee meeting of the Board by means of telephone, audio and/or video conferencing or other communication facilities, and a Director participating in such a meeting by such means shall be deemed for the purposes of this Agreement, to be present at that meeting.

## **5.10 Notice and Agenda for meeting**

- 5.10.1 Unless the requirement of notice is waived by all Directors, a minimum of 14 (fourteen) days written notice (or such shorter period as all the Directors may agree) of the Board meetings shall be given to all Directors and their Alternate Directors. Each notice of a meeting of the Board shall contain, *inter alia*, an agenda specifying in reasonable detail, the matters to be discussed at the relevant meeting and shall be accompanied by all necessary written information.
- 5.10.2 The Board shall only transact the business set out in the agenda accompanying the notice to the Directors. Provided however that with the unanimous consent of all the Directors with Director nominated by Authority in attendance and voting in favour, the Board may transact business that is not set out in the agenda.

## **5.11 Quorum for Board meetings**

- 5.11.1 The quorum for the meetings of the Board or any adjournment thereof shall necessarily include the Director nominated by Authority if any Reserved Matter is to be considered in such meeting; and no Reserved Matter shall be taken into consideration at such meeting, if the Director nominated by the Authority is not present at such meeting.
- 5.11.2 All items of business transacted or decisions taken at meetings where the quorum is not so constituted shall be null and void.

## **5.12 Committees of the Board**

If the Board finds it necessary to constitute a committee or sub-committee, the Board shall determine the powers (including scope, termination, amendment of and withdrawal thereof) of such committee or sub-committee. The committee or subcommittee shall be subject to and be under the supervision of the Board. Notwithstanding anything to the contrary contained herein, the Authority shall have the right to nominate its nominee to each and every committee and sub-committee constituted by the Board: Provided, however, that no Reserved Matters shall be delegated to such committee and/or sub-committee.

## **5.13 Decisions**

- 5.13.1 Subject to the provisions of the Companies Act, a resolution of the Board of Directors shall be adopted by the affirmative vote of the simple majority of the Directors present at a meeting at which a quorum of the Board of Directors is present. Provided, however, that all resolutions on the Reserved Matters to be passed in the meeting of Board of Directors of Concessionaire shall be subject to the affirmative vote of the Director nominated by the Authority and no such resolution shall be passed if no such Director nominated by the Authority is present and voting in favour of such resolution.

5.13.2 The Concessionaire or any of its Directors, officers, agents or representatives shall not undertake any Reserved Matter without the prior approval by the Board in the manner provided in Clause 5.13.1 above and any act done by the Concessionaire or any of its Directors, officers, agents or representatives without such prior approval shall be null and void.

#### **5.14 Resolution by circulation**

Subject to Applicable Laws and for matters other than Reserved Matters, resolutions of the Board may be passed by circulation, if the resolution has been circulated in draft, together with necessary papers, if any, to all the Directors, then in India or outside India, and has been signed by a majority of the Directors. Such resolutions may be signed by the Directors as single document or in counterparts.

#### **5.15 Authority**

Unless otherwise authorised by the Board, none of the Directors shall be empowered to bind the Concessionaire individually.

#### **5.16 Disqualification of Directors**

Subject to Applicable Laws, a Director shall not be deemed disqualified to serve by reason of his being officer, director or shareholder of any other body corporate.

#### **5.17 Inspection and information**

5.17.1 It is hereby agreed between the Parties that the Authority shall have the right to examine the books, records and accounts to be kept by the Concessionaire and shall be entitled to receive all information, including monthly management accounts and operating statistics and other trading and financial information.

5.17.2 Without prejudice to the generality of Clause 5.17.1, the Concessionaire shall supply the Authority with copies of:

- (a) audited accounts of the Concessionaire (complying with all relevant legal requirements); and
- (b) monthly/quarterly management accounts of each principal division of the Concessionaire; these shall include a consolidated profit and loss account, balance sheet and cash flow statement broken down according to the principal divisions of the Concessionaire including a statement of progress against the relevant business plan, a statement of any variation from the quarterly revenue budget and up-to-date forecasts for the balance of the relevant Accounting Year and itemising all expenditure in relation to the Concessionaire's capital programme entered into by each principal division of the Concessionaire during that period.

### **6. SHAREHOLDERS' RIGHTS AND OBLIGATIONS**

#### **6.1 General meeting and matters requiring the approval of Shareholders**

6.1.1 The Board may whenever it thinks fit convene a General Meeting of the Concessionaire. The Board shall also proceed to convene a General Meeting if so requisitioned by the Shareholders of the Concessionaire in accordance with the provisions of the Companies Act and the Charter Documents.

- 6.1.2 Notwithstanding anything to the contrary contained in this Agreement and the Charter Documents, no decision shall be made and no action shall be taken by or with respect to a Reserved Matter, which is subject to the affirmative vote rights of the Authority as provided in Clause 3.1.3 above, unless approved by an affirmative vote of authorized representative of the Authority. The Parties specifically agree that a resolution relating to the Reserved Matters shall be passed in a meeting of Shareholders only and not by way of circulation.
- 6.1.3 The quorum for any Shareholders' meetings or any adjournment thereof shall necessarily include a representative of the Authority if any Reserved Matter is to be considered in such meeting; and no Reserved Matter shall be taken into consideration at such meeting, if a representative of the Authority is not present at such meeting.
- 6.1.4 All items of business transacted or decisions taken at meetings where the quorum is not so constituted shall be null and void.

## **7. UNDERTAKINGS, REPRESENTATIONS AND WARRANTIES**

7.1 Each of the Private Participants hereby warrant and represent to and for the benefit of Authority, the Concessionaire and the other Private Participants that:

- (a) It is duly organised and validly existing under law and has all requisite legal power and authority to execute this Agreement and carry out the terms, conditions and provisions hereof;
- (b) the execution and delivery by the Private Participant of this Agreement has been duly authorised by all requisite corporate and other action and will not contravene any provisions of or constitute a default under, any other agreement or instrument to which it is a party or by which it may be bound;
- (c) this Agreement and all such other agreements and written obligations entered into and undertaken in connection with the transactions contemplated hereby to which it is a Party, constitute or will constitute following the execution and delivery thereof valid and legally binding obligations of such Private Participant, enforceable against it in accordance with its respective terms, subject as to enforcement of remedies to applicable bankruptcy, insolvency, reorganisation and other laws affecting generally the enforcement of the rights of creditors and subject to a court's discretionary authority with respect to the granting of a decree ordering specific performance or other equitable remedies;
- (d) it is not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against it;
- (e) 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 has or may have a material adverse effect on its ability to perform its obligations under this Agreement; and
- (f) there are no actions, suits, claims, proceedings or investigations pending or, to the best of the Private Participant's knowledge, threatened in writing against it at law, in equity, or otherwise, whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental authority, and there are no outstanding judgments, decrees or orders of any such courts, commissions, arbitrators or governmental authorities, which materially and adversely affects its ability to perform its obligations under this Agreement.

7.2 Each of the Private Participants and the Concessionaire hereby irrevocably undertake, warrant and represent to and for the benefit of Authority that:

- (a) the rights vested in the Authority under this Agreement and the Concession Agreement shall not be abridged, abrogated or in any manner affected by any act done or purported to be done by any of the Private Participants or the Concessionaire; and
- (b) any divestment of equity in the Concessionaire shall not in any manner affect the rights of the Authority herein and that the successors, assigns and substitutes of the Concessionaire shall be bound by such undertaking.

7.3 The Authority hereby warrants and represents to and for the benefit of the Concessionaire and the Private Participants that it has all requisite legal power and authority to execute this Agreement and carry out the terms, conditions and provisions hereof.

## **8. TERMINATION**

### **8.1 Termination**

The Parties agree that in the event any of the Shareholders cease to hold, directly or indirectly, any Equity Shares of the Concessionaire, this Agreement shall stand terminated automatically vis-à-vis such Shareholder. Provided however, the obligations of such Shareholder under this Agreement relating to confidentiality (Clause 9) and dispute resolution (Clause 10) and such other provisions of this Agreement that by their nature are intended to survive, shall survive any termination of this Agreement.

### **8.2 Right to terminate for cause**

8.2.1 In the event of occurrence of a material breach of any of the terms and conditions of this Agreement or any covenant, representation, warranty or agreement set forth herein (“**Material Breach**”) on the part of a Shareholder (the “**Defaulting Party**”), any other Shareholders (“**Non-Defaulting Party**”) may give written notice of the alleged breach (“**Breach Notice**”) to the Defaulting Party.

8.2.2 A termination event (“**Termination Event**”) shall be deemed to have occurred if such Material Breach, if reasonably capable of being cured, is not cured by the Defaulting Party within 30 (thirty) days of receipt of the Breach Notice (“**Cure Period**”), or if such Material Breach is not reasonably capable of being cured, forthwith upon issue of the Breach Notice.

8.2.3 On the occurrence of a Termination Event on the part of any of the Private Participants, the Authority may, in its discretion, require such Private Participant to transfer all, but not less than all, of the Equity Shares held by it to the Authority at the lower of the market value of Equity Shares or 25% (twenty-five per cent) of the par value thereof; and the transfer of such shares shall take place at the registered office of the Concessionaire within 30 (thirty) days from the date of notice by the Authority in this behalf.

## **9. CONFIDENTIALITY**

9.1 The Parties hereby acknowledge and agree that each of them possess and will continue to possess information that has been created, discovered, developed, or otherwise known and owned by them, which information has commercial value in the business in which they, are or may become engaged (the aforementioned information is hereinafter called “**Proprietary Information**”). The Parties agree that during the terms of this Agreement and after the termination or expiration hereof, each of them will keep in confidence and trust all

Proprietary Information received from the other Party, and they will not use or disclose any such Proprietary Information or anything directly relating to it without the written consent of the other Party(ies).

9.2 In the event of the expiration or termination of this Agreement for any reason, the Parties shall promptly, at the direction of the owner of such Proprietary Information, cease to use, destroy or return to the owner all documents and data of any nature pertaining to the Proprietary Information owned by such Party, and will not keep or deliver to anyone else any documents or data of any description or any reproduction of any description containing or pertaining to any Proprietary Information.

9.3 This Clause shall not, however, apply to information which:

- (a) is or becomes publicly available without the fault of any Party;
- (b) was known to any Party on a non-confidential basis prior to disclosure;
- (c) is independently developed by any Party without use of the Proprietary Information;
- (d) is disclosed by the owner of such information to a Third Party without restrictions similar to those contained herein;
- (e) is disclosed in order to enable the sell-down/ draw-down of debt or to proposed Third Party transferees, provided that the recipient executes a confidentiality undertaking to use the information solely for that purpose;
- (f) is disclosed in order to comply with the requirements of Applicable Laws including any requirements for the stock exchange listing of the Concessionaire or any entity, which directly or indirectly, holds Equity Shares;
- (g) is disclosed to any of the consultants (legal, financial, technical or otherwise) of the Parties, provided that the recipient executes a confidentiality undertaking to use the information solely for the purpose disclosed.

9.4 The Shareholders agree with each other and the Concessionaire to use their, and to cause the Concessionaire to use its, best efforts to assure that all information disclosed in connection with the business of the Concessionaire and not otherwise generally available shall be kept confidential and shall not be revealed.

## **10.GOVERNING LAW AND CONSENT TO JURISDICTION; ARBITRATION**

10.1 This Agreement and all questions of its interpretation shall be construed in accordance with the laws of India. Subject to Clause 10.3, the courts in the State shall have exclusive jurisdiction over this Agreement.

10.2 The Parties agree that they shall attempt to resolve through good faith consultation, all and any issue, 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 (“**Disputes**”), and such consultation shall begin promptly after a Party has delivered to the other Party a written request for such consultation: Provided that if such good faith consultations have not resulted in a resolution of the dispute within 60 (sixty) days of such consultations having commenced, the provisions of Clause 10.3 shall apply.

### 10.3 Arbitration

- 10.3.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to a sole arbitrator to be appointed by the Chief Justice of the High Court having jurisdiction. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”) or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996 and Arbitration and Conciliation (Amendment) Act, 2015.
- 10.3.2 The arbitrator shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.
- 10.3.3 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.

## **11. MISCELLANEOUS**

### 11.1 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, its facsimile number and e-mail address 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.

### 11.2 Force Majeure

Notwithstanding anything to the contrary contained in this Agreement, it is hereby expressly agreed between the Parties that no relief shall be granted to any Party under this Agreement for, or on account of, Force Majeure.

### 11.3 Specific performance of obligations

The Parties to this Agreement agree that, to the extent permitted under Applicable Laws, the rights and obligations of the Parties under this Agreement shall be subject to the right of specific performance and may be specifically enforced against a defaulting Party. The Parties acknowledge that any breach of the provisions of this Agreement will cause immediate irreparable harm to the adversely affected Party (“**Affected Party**”) for which any compensation payable in damages shall not be an adequate remedy. Accordingly, the Parties agree that the Affected Party shall be entitled to immediate and permanent injunctive relief, specific performance or any other equitable relief from a court of competent jurisdiction in the event of any such breach or threatened breach by any other Party. The Parties agree and stipulate that the Affected Party shall be entitled to such injunctive relief, specific performance or other equitable relief without (i) the necessity of proving actual damages; or (ii) posting a bond or other security. Nothing contained

herein shall limit the Affected Party's right to any remedies at law or in equity, including without limitation the recovery of damages from the defaulting Party.

#### 11.4 Entire Agreement

11.4.1 Subject to the provisions of the Clause 11.4.2, this Agreement, together with all Annexures, Schedules, Exhibits and attachments hereto, represents the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement and supersedes any prior agreement or understanding, written or oral, that the Parties may have had.

11.4.2 Nothing contained herein shall:

- (a) affect the provisions of the Concession Agreement;
- (b) prevent the Private Participants from having any other inter-se arrangements regarding their shareholding in the Concessionaire, provided that no such arrangements shall in any way affect the rights of the Authority under this Agreement or under the Concession Agreement.

For the avoidance of doubt, it is clarified that in the event of a conflict between the provisions of the Concession Agreement and this Agreement, the provisions of the Concession Agreement shall prevail.

#### 11.5 Amendments

Any modification, amendment, or waiver of any provision of this Agreement shall be effective if, but only if, in writing and signed in person or by an authorised representative of each Party.

#### 11.6 Severability

If any article, clause, section or paragraph, or part thereof, of this Agreement or any agreement or document appended hereto or made a part hereof is invalid, ruled illegal by any court of competent jurisdiction, or unenforceable under present or future Applicable Laws, then it is the intention of the Parties that the remainder of the Agreement, or any agreement or document appended hereto or made a part hereof, shall not be affected thereby unless the deletion of such provision shall cause this Agreement to become materially adverse to any Party in which case the Parties shall negotiate in good faith such changes to the Agreement as will best preserve for the Parties the benefits and obligations under such provision.

#### 11.7 Counterparts

This Agreement may be executed in two or more counterparts, and by each Party on the same or different counterparts, but all of such counterparts shall together constitute one and the same instrument.

#### 11.8 Waivers

No failure by a Party to take any action with respect to a breach of this Agreement or a default by any other Party shall constitute a waiver of the former Party's right to enforce any provision of this Agreement or to take action with respect to such breach or default or any subsequent breach or default. Waiver by any Party of any breach or failure to comply with any provision of this Agreement by a Party shall not be construed as, or constitute, a continuing waiver of such provision, or a waiver of any other breach or failure to comply with any other provision of this Agreement.

#### 11.9 No agency

This Agreement shall not constitute any Party as the legal representative or agent of another Party, nor shall any Party have the right or authority, to assume, create or incur any liability or obligation, express or implied, against, in the name of, or on behalf of another Party.

#### 11.10 No third party beneficiaries

Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any entity other than the Parties hereto (and their respective successors and permitted assigns) any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision herein contained.

#### 11.11 Independence of the Parties with respect of each other and of the Concessionaire

The Parties are and shall remain independent. None of the Parties shall be considered an agent of the other, nor shall they have authority to enter into any contract or any obligation for, or make any warranty or representation on behalf of the other, or the Concessionaire.

#### 11.12 Arms' length

All relationships between each Party of the one part, and the Concessionaire of the other part, shall be conducted at arms length and on competitive terms.

#### 11.13 Encumbrance

The Parties agree that the Private Participants shall not be entitled to Encumber their shareholding in the Concessionaire other than in favour of or for the benefit of the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Airport.

#### 11.14 Consequential Loss

Notwithstanding anything to the contrary contained in this Agreement, in no event shall any Party, its officers, employees or agents be liable to any other Party (on the basis of contract, indemnity, warranty or tort including negligence and strict or absolute liability or breach of statutory duty or otherwise) for any matter arising out of, or in connection with, this Agreement in respect of any Consequential Loss suffered by such other Party. For the purposes of this provision, "**Consequential Loss**" means any indirect or consequential loss (including loss of profit, loss of revenue, loss of contract, loss of goodwill, liability under other agreements, or liability to third parties) resulting from such breach and whether or not the Party committing the breach ought to have known, that such indirect or consequential loss would be likely to be suffered as a result of such breach and includes the payment or repayment of any amounts (or any acceleration thereof) to lenders or creditors of the aggrieved Party from time to time, but excludes death or personal injury resulting from the negligence of the Party liable, its officers, employees or agents.

#### **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/Authorised Officer who has countersigned the same in token thereof



SIGNED, SEALED AND DELIVERED For and on behalf of AUTHORITY:

SIGNED, SEALED AND DELIVERED For and on behalf of Private Participant

**Annex- I**

*(Schedule-X)*

**PRIVATE PARTICIPANTS**

{Insert the Names of Private Participants}

## **Annex-II**

*(Schedule-X)*

### **RESERVED MATTERS**

- (a) to alter or add to the provisions of the memorandum;
- (b) to alter or add to the articles of association;
- (c) to change the name of the Concessionaire;
- (d) to purchase the Concessionaire's own shares or specified securities;
- (e) to issue sweat equity shares;
- (f) to issue further shares without pre-emptive rights to non-members or to convert loans or debentures into shares;
- (g) to reduce the share capital;
- (h) to remove the registered office of the Concessionaire outside the limits of the State where it is located;
- (i) to commence any new lines of business;
- (j) to keep registers and returns at any other place than within city, town or village in which the registered office is situated;
- (k) to consent to a Director or his relative or partner or firm or private company holding an office or place of profit, except that of Managing Director, manager, banker, or trustee for debenture-holders of the Concessionaire;
- (l) to make inter-corporate-loans and investments or guarantee/security to be given, etc., if the aggregate amount thereof, exceeds the limit of 10 per cent of the Concessionaire's paid-up share capital;
- (m) to apply to a court to wind-up the Concessionaire;
- (n) to wind-up the Concessionaire voluntarily;
- (o) for various other matters pertaining to the winding up of the Concessionaire; and
- (p) any other matter which is required by the Companies Act, 2013, or any re-enactment or amendment thereof, to be passed by a special resolution of the shareholders of the company.

**Annex- III**

(Schedule-X)

**DEED OF ADHERENCE**

This **DEED OF ADHERENCE** (“**Deed**”) is executed this    day of    , by a company/ body corporate incorporated under the laws of India, with its registered office at (the “**Transferee**”)

**WHEREAS:**

- A. By a Shareholders’ Agreement dated    ., 20... (the “**Shareholders’ Agreement**”) amongst the Authority, ..... and the Concessionaire, the Shareholders agreed to a mutual distribution / regulation of their rights and liabilities as Shareholders of the Concessionaire.
- B. Clause 3.2.1 (ii) of the Shareholders’ Agreement requires, *inter alia*, that, concurrently with the transfer of shares in the equity capital by any Shareholder (“**Parent**”) to any third party, such third party shall, as a pre-condition of such transfer of shares to it, execute this Deed and be bound by the Shareholders’ Agreement.

**NOW THIS DEED WITNESSETH AS FOLLOWS:**

1. Definitions and Interpretation:

Capitalised terms used but not defined in this Deed shall, unless the context otherwise requires, have the respective meanings ascribed thereto in the Shareholders Agreement.

2. Undertakings

The Transferee hereby acknowledges that it has heretofore received a copy of, and has read and understands the Shareholders’ Agreement, the Concession Agreement and other Project Agreements, and covenants, agrees and confirms that it shall be bound by all provisions of the Shareholders’ Agreement as if it was an original party thereto, including with respect to the rights and obligations of the transferor Party contained therein, and the Shareholders’ Agreement shall have full force and effect on it, and shall be read and construed to be binding on it.

3. Governing Law

This Deed shall be governed by and construed in accordance with the laws of the India. The terms and conditions of the Shareholders’ Agreement in relation to the provisions regarding arbitration and other terms and conditions shall be deemed to have been incorporated in this Deed.

By

Name and Title: In the presence of:

Witness    1.        2.

## Schedule Y

(See Clause 22.2.1)

### CNS/ATM AGREEMENT

*[To be executed on stamp paper of appropriate value]*

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

This Agreement is made on ----- 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) \_\_\_\_\_(Name of Airport Company) a company incorporated with limited liability under the Indian Companies Act, 1956, having its registered office at \_\_\_\_\_ hereinafter called ("Airport Company").

The expressions "AAI" and "Airport company" 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. \_\_\_\_\_ (Name of Airport Company) proposes to develop design, finance, construct, complete and operate a Greenfield airport at \_\_\_\_\_ in the State/UT (Union Territory) of \_\_\_\_\_, 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 \_\_\_\_\_ (Name of Airport Company) 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;

"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 domestic airport comprising of the Initial Phase at \_\_\_\_\_ in the State/UT of \_\_\_\_\_ 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 \_\_\_\_\_ (Name of Airport Company) 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 authorisation 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 Air Traffic Management Services as more particularly described in Schedule 3;

"Concession Agreement" means the Concession Agreement dated ----- entered into between the Government of India and \_\_\_\_\_ (Name of Airport Company) under which the Government of India has granted to \_\_\_\_\_ (Name of Airport Company) 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 \_\_\_\_\_ (Name of Airport Company) 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 \_\_\_\_\_ (Name of Airport Company) and the EPC Contractors under which the EPC Contractors will design, procure, construct and Complete the Airport ;

"Existing Airport" means the existing airport in \_\_\_\_\_ (Name of the place of Airport Company) known as " \_\_\_\_\_ (Name of the 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 \_\_\_\_\_ (Name of Airport Company) 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 (insofar as they relate to the development and construction of the Initial Phase) have been executed and delivered by all the parties thereto and conditions precedent there under shall have been fulfilled to such extent as may be necessary to permit \_\_\_\_\_ (Name of Airport Company) to have immediate access, subject only to giving the notices of drawdown required thereby, to funding required by \_\_\_\_\_ (Name of Airport Company);

"Financing Agreements" means any of (i) \_\_\_\_\_ (Name of Airport Company) agreements with Lenders for the making available to \_\_\_\_\_ (Name of Airport Company) 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 \_\_\_\_\_ (Name of Airport Company) pursuant to Clause 4.1;

"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;

"\_\_\_\_\_ (Name of Airport Company) Commissioning Obligations" means those obligations to be met by \_\_\_\_\_(Name of Airport Company) in accordance with Clause 4.2;

"\_\_\_\_\_ (Name of Airport Company) Equipment" means the items set out in Part 1 of Schedule 1;

"\_\_\_\_\_ (Name of Airport Company) Obligations" means the \_\_\_\_\_ (Name of Airport Company) Pre-Commissioning Obligations, \_\_\_\_\_ (Name of Airport Company) Commissioning Obligations and \_\_\_\_\_ (Name of Airport Company) Operative Obligations;

"\_\_\_\_\_ (Name of Airport Company) Operative Obligations" means those obligations to be met by \_\_\_\_\_ (Name of Airport Company) in accordance with Clause 5.3;

"\_\_\_\_\_ (Name of Airport Company) Pre-Commissioning Obligations" means those obligations to be met by \_\_\_\_\_ (Name of Airport Company) 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 \_\_\_\_\_ (Name of Airport Company) 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 Organisation 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 \_\_\_\_\_ (Name of Airport Company) 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 ;

"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 ;

"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 \_\_\_\_\_ (Name of Airport Company) 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 \_\_\_\_\_ (Name of Airport Company) for the communication of information regarding the day to day discharge of provision relating to the AAI Services and the \_\_\_\_\_ (Name of Airport Company) 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 \_\_\_\_\_ (Name of Airport Company) has or shall have a leasehold interest pursuant to the Land Lease Agreement, measuring approximately -----acres, on over and under which the Airport is to be constructed ;

"State Support Agreement" means the agreement dated ----- entered into between the Govt of \_\_\_\_\_ and \_\_\_\_\_ (Name of Airport Company);

"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.

## 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;
- 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 \_\_\_\_\_).

## 2. Conditions Precedent

### 2.1. Conditions Precedent to Services

The provisions of this Agreement (other than those contained in Clauses 1,2, 10 to 12 and 14 to 19 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 \_\_\_\_\_ (Name of Airport Company) that the Concession Agreement shall have been executed and delivered by all the parties thereto and all the conditions precedent set out therein 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 \_\_\_\_\_ (Name of Airport Company) 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 \_\_\_\_\_ (Name of Airport Company) 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 \_\_\_\_\_ (Name of Airport Company).

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, \_\_\_\_\_ (Name of Airport Company) 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.

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. \_\_\_\_\_ (Name of Airport Company) Pre-Commissioning Obligations

Following the Financial Close, \_\_\_\_\_ (Name of Airport Company) 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, \_\_\_\_\_ (Name of Airport Company) Equipment, which shall be owned by \_\_\_\_\_ (Name of Airport Company), 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 \_\_\_\_\_ (Name of Airport Company) Equipment, which shall be the responsibility of \_\_\_\_\_ (Name of Airport Company) If required by \_\_\_\_\_ (Name of Airport Company), \_\_\_\_\_ (Name of Airport Company) shall co-ordinate with AAI the calibration flights to enable \_\_\_\_\_ (Name of Airport Company) to calibrate \_\_\_\_\_ (Name of Airport Company) 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 \_\_\_\_\_ (Name of Airport Company) Equipment is installed, tested

and commissioned, at its own cost, by the Initial Commissioning Date or in the case of any additional \_\_\_\_\_ (Name of Airport Company) 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 \_\_\_\_\_(Name of Airport Company) 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 \_\_\_\_\_(Name of Airport Company) 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 finalising 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.
- ii. Ensure that the AAI Equipment is installed, tested and commissioned by the Initial Commissioning Date or Future Commissioning Date. In case \_\_\_\_\_ (Name of Airport Company) requires AAI, to upgrade the AAI equipment over and above the requirements set forth in the ICAO annexes and Documents then the cost of such up-gradation of equipment shall be borne by \_\_\_\_\_ (Name of Airport Company).
- iii. Coordinate and ensure compatibility between AAI and \_\_\_\_\_(Name of Airport Company) equipment and interfaces. In respect of requirement of interfaces by either party, the costs for the said interface(s), shall be borne by \_\_\_\_\_(Name of Airport Company).
- iv. At \_\_\_\_\_(Name of Airport Company) cost, participate in any benchmark testing conducted by the EPC Contractors in respect of any \_\_\_\_\_(Name of Airport Company) Equipment, if required by \_\_\_\_\_(Name of Airport Company).
- v. Prepare maps, charts, survey, IAL procedure, make site visits and associated works at \_\_\_\_\_ (Name of Airport Company's) cost.

### 3.3. Co-ordination

AAI and \_\_\_\_\_(Name of Airport Company) 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

\_\_\_\_\_ (Name of place where Airport is situated) 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 \_\_\_\_\_(Name of Airport Company);
- 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 \_\_\_\_\_(Name of Airport Company) 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 12.

#### 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 \_\_\_\_\_ (Name of Airport Company) 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. \_\_\_\_\_ (Name of Airport Company) 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 \_\_\_\_\_ (Name of Airport Company) anticipates the Initial Commissioning Period will commence (the "Target Commissioning Date").

4.1.2. \_\_\_\_\_ (Name of Airport Company) shall further notify AAI at least one hundred and eighty (180) days prior to the Target Commissioning Date notified by \_\_\_\_\_ (Name of Airport Company) to AAI pursuant to Clause 4.1.1 above of the date on which \_\_\_\_\_

(Name of Airport Company) then anticipates the Initial Commissioning Date will occur and the Target Commissioning Date shall be revised accordingly.

4.1.3. \_\_\_\_\_ (Name of Airport Company) shall notify AAI at least three hundred and sixty five days prior to the date on which \_\_\_\_\_ (Name of Airport Company) anticipates any Future Commissioning Date will occur.

4.2. \_\_\_\_\_(Name of Airport Company) 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, \_\_\_\_\_ (Name of Airport Company) shall confirm in writing to the AAI that:

- 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 SO84E 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 fire fighting 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 \_\_\_\_\_(Name of Airport Company) 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;
  - a. 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, \_\_\_\_\_(Name of Airport Company) 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 \_\_\_\_\_(Name of Airport Company) Equipment has been supplied and installed. \_\_\_\_\_(Name of Airport Company) 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 notify \_\_\_\_\_(Name of Airport Company) 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 \_\_\_\_\_ (Name of Airport Company) AAI shall;
  - i. within fourteen (14) days of receipt of the notice received from \_\_\_\_\_ (Name of Airport Company) in accordance with Clause 4.2.1 confirm in writing to \_\_\_\_\_ (Name of Airport Company) 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 \_\_\_\_\_ (Name of Airport Company) Equipment to the extent required. Any costs of such integration with \_\_\_\_\_ (Name of Airport Company) Equipment shall be borne by \_\_\_\_\_ (Name of Airport Company);
  - iv. Carry out such calibration flights as are necessary to commission the AAI Equipment and, to the extent practicable, shall coordinate those flights with \_\_\_\_\_ (Name of Airport Company) to enable \_\_\_\_\_ (Name of Airport Company) to calibrate the \_\_\_\_\_ (Name of Airport Company) Equipment at the same time. For the avoidance of doubt, AAI shall not be liable for the cost incurred by \_\_\_\_\_ (Name of Airport Company) to calibrate the \_\_\_\_\_ (Name of Airport Company) Equipment. The cost incurred by AAI to calibrate \_\_\_\_\_ (Name of Airport Company) equipment shall be recovered from \_\_\_\_\_ (Name of Airport Company).
  - v. where appropriate, assist \_\_\_\_\_ (Name of Airport Company) 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 \_\_\_\_\_ (Name of Airport Company) 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 \_\_\_\_\_ (Name of Airport Company) and other agencies with such assistance as may be reasonably 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 \_\_\_\_\_(Name of Airport Company) 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 \_\_\_\_\_(Name of Airport Company) in writing that the AAI Equipment is fully operational and integrated with the \_\_\_\_\_(Name of Airport Company) 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

AAI shall start with one shift operation, 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).

- 5.1.1. provide on quarterly cost recovery basis, the CNS/ATM Services as defined in Scheduled 3; and shall extend its CNS/ATM services to cater to multi shift operation based on mutual agreement between AAI and \_\_\_\_\_ (Name of Airport Company);
- 5.1.2. Maintain the AAI Equipment including carrying out periodic flight calibration of the AAI Equipment and other tests;
- 5.1.3. 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).
- 5.1.4. Procure such equipment as may be required from time to time to enable AAI to provide the relevant CNS/ATM Services at the Airport.
- 5.1.5. Relocate at \_\_\_\_\_ (Name of Airport Company) cost, AAI Equipment for its \_\_\_\_\_ (Name of Airport Company) operative convenience for reasons of modification/, expansion/ upgradation required by \_\_\_\_\_(Name of Airport Company)at the airport provided such relocation does not affect the \_\_\_\_\_ (Name of Airport Company) obligations and or smooth operation of the airport.
- 5.1.6. Review from time to time such procedures as are necessary for safe, expeditious and orderly flow of air traffic;
- 5.1.7. Provide to \_\_\_\_\_(Name of Airport Company) 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

5.1.8. Provide and keep record of such information and issue notices to \_\_\_\_\_ (Name of Airport Company) and Airmen as is required under the Operating Reporting Procedure and the Incident Reporting Procedure including breakdown of CNS/ATM Service.

5.1.9. Provide at \_\_\_\_\_(Name of Airport Company) 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 \_\_\_\_\_(Name of Airport Company), 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 \_\_\_\_\_ (Name of Airport Company). 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. \_\_\_\_\_(Name of Airport Company) Operative Obligations

Following the Airport Opening Date, \_\_\_\_\_ (Name of Airport Company) 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 SO84E 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 fire fighting services shall be made available and maintained in accordance with the provisions contained in the relevant ICAO 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 \_\_\_\_\_(Name of Airport Company)'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 \_\_\_\_\_(Name of Airport Company) & 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 \_\_\_\_\_(Name of Airport Company) 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;
- 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 \_\_\_\_\_(Name of Airport Company) 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 \_\_\_\_\_(Name of Airport Company) 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 \_\_\_\_\_(Name of Airport Company)'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 \_\_\_\_\_Name of Airport Company'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 \_\_\_\_\_Name of Airport Company bears the total costs for AAI equipment which is over and above ICAO recommendations and which is requested by \_\_\_\_\_(Name of Airport Company).
- 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 \_\_\_\_\_(Name of Airport Company) 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 \_\_\_\_\_(Name of Airport Company)'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 \_\_\_\_\_(Name of Airport Company) shall take such steps as are reasonably necessary to implement the variation.

## 7. Revenues and Charges

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

AAI shall, in consideration of it performing the relevant services, be entitled to recover the Route Navigation Facilities Charges (RNFC) directly from airlines and \_\_\_\_\_(Name of Airport Company) 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 \_\_\_\_\_(Name of Airport Company) 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 \_\_\_\_\_ (Name of Airport Company) shall deposit in advance the quarterly, estimated cost of CNS/ATM services by 15<sup>th</sup> January/April/July/October of every year. However, TNLC collected by AAI during the previous year shall be deducted from the actual cost of providing the CNS/ATM services during that year. In case of any deficit the same shall be borne by the \_\_\_\_\_ (Name of Airport Company). In addition, \_\_\_\_\_ (Name of Airport Company) shall give a Bank Guarantee, equivalent to six months cost of CNS/ATM services to AAI. This BG shall be initially for a period 2 years, to be renewed from time to time, at the expiry of period.

#### 7.5. Rental Fee Payable by AAI

No rental fee shall be payable by AAI to \_\_\_\_\_ (Name of Airport Company) 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) and shall require \_\_\_\_\_ (Name of Airport Company) to incur all expenses in relation to the provision of AAI Services or AAI Equipment by way of work deposit.

8.1.2. AAI shall ensure that its Personnel shall participate, at \_\_\_\_\_ (Name of Airport Company) cost, in any quality improvement measures initiated by \_\_\_\_\_ (Name of Airport Company) at any time, if required, and shall assist \_\_\_\_\_ (Name of Airport Company) 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, 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.

## 10. Termination

10.1. \_\_\_\_\_(Name of Airport Company) Termination Events AAI shall be entitled to issue a notice of termination to \_\_\_\_\_(Name of Airport Company), if:

- i. \_\_\_\_\_(Name of Airport Company) 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 \_\_\_\_\_(Name of Airport Company) which is not, if capable of being so, discharged or, as the case may be, revoked within ninety (90) days thereafter,
- iii. \_\_\_\_\_ (Name of Airport Company) 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. Under the Concession Agreement it is directed by GOI to terminate this Agreement;
- v. The Concession Agreement if terminated.

And further provided in each case that timely remedial action by \_\_\_\_\_(Name of Airport Company) has not been prevented by GOI, the Government of (Name of State) or AAI

#### 10.2. AAI Termination Events

\_\_\_\_\_ (Name of Airport Company) shall be entitled to issue a notice of termination to AAI, if the applicable law permits \_\_\_\_\_(Name of Airport Company) to perform the CNS/ATM Services, subject to suitable amendments to the Concession Agreement.

#### 10.3. Effect of a Termination Notice

If a notice of termination is served by AAI or \_\_\_\_\_(Name of Airport Company) pursuant to this Clause 10, 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..

#### 10.4. Consequences of Termination

If this Agreement terminates pursuant to this Clause 10.2 by \_\_\_\_\_(Name of Airport Company) 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 \_\_\_\_\_(Name of Airport Company) 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 \_\_\_\_\_(Name of Airport Company) to achieve the aforesaid purpose.

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

### 11. Assignment

#### 11.1. 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 \_\_\_\_\_(Name of Airport Company) 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.

11.2. Assignment by \_\_\_\_\_(Name of Airport Company)

Notwithstanding anything herein to the contrary, but subject to Clause 16.5, \_\_\_\_\_(Name of Airport Company) 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 \_\_\_\_\_(Name of Airport Company) 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 \_\_\_\_\_(Name of Airport Company) ;
- ii. Transfer all or any part of its rights and obligations hereunder to a purchaser of ownership interests in \_\_\_\_\_(Name of Airport Company).
- iii. Transfer to Lenders, \_\_\_\_\_(Name of Airport Company)'s rights under this Agreement as collateral security for amounts payable under any financing agreement under which \_\_\_\_\_(Name of Airport Company) 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.

12. Dispute Resolutions

12.1. Negotiation and Conciliation

The Parties shall use their respective reasonable endeavours 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.

12.2. 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 12.1 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 .

12.3. 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.

12.4. Decision/Award

Any decision or award of an arbitral tribunal appointed pursuant to this Clause 12 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.

13. Maintenance of Insurance

13.1. AAI shall effect and maintain on cost recovery basis work deposit basis from \_\_\_\_\_(Name of Airport Company), 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, \_\_\_\_\_(Name of Airport Company) and the Lenders shall be names co-insured under AAI's insurance policies under this agreement.

13.2. Policies

With thirty (30) days of receiving any insurance policy certificates in respect of insurances required to be obtained and maintained under Clause 13.1, AAI shall inform \_\_\_\_\_(Name of Airport Company) that such insurances have been obtained and shall furnish to \_\_\_\_\_(Name of Airport Company), if requested by the Lenders, copies of such policy certificates, copies of the insurance policies and evidence 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 \_\_\_\_\_(Name of Airport Company).

13.3. Remedy for Failure to Insure

If AAI fails to effect and keep in force all insurances for which it is responsible pursuant hereto, \_\_\_\_\_(Name of Airport Company) shall have the option to keep in force any such insurances, and pay such premia and recover the costs thereof from AAI.

13.4. 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.

14. Notices

14.1. 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.

14.2. 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:



\_\_\_\_\_ (Name of Airport Company):

Fax No.

Attention:

AAI:

Rajiv Gandhi Bhavan Safdarjung Airport New Delhi - 110 003 India

Fax: [011 24641088]

Attention: Chairman

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.

15. 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 fax) 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 13.2 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.

16. Miscellaneous

16.1. 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.

16.2. Entire Agreement

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

16.3. Amendment

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

16.4. Additional Documents and Actions

16.4.1. \_\_\_\_\_ (Name of Airport Company) 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 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 \_\_\_\_\_(Name of Airport Company) and DGCA in the performance of any checks and procedures and conform to all the prescriptions of DGCA in respect of CNS-ATM services.

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

16.5. 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 \_\_\_\_\_(Name of Airport Company), 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 \_\_\_\_\_(Name of Airport Company) under the Agreement.

16.6. 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 Reserve Bank of India Prime Lending Fee in effect from time to time.

16.7. 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.

16.8. 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.

16.9. 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.

16.10. 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.

16.11. Computation of Time

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

17. 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.

18. Governing Law

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

19. 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).

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

SIGNED by on behalf of AAI:

SIGNED by on  
behalf of \_\_\_\_\_(Name of Airport Company):

Witnessed by:

(1) (2)

## Schedule I

### Part 1: Airport Company 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

## Part 2: AAI Equipment

AAI would provide the CNS-ATM equipment 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 as minimum following equipment is provided

1. VHF Communication sets with accessories
2. DVOR/DME or NDB
3. Voice Recorder

## Schedule II

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

1. Control Tower : \_\_\_\_\_(Name of Airport Company) shall make available an area of 21/32/50 square meters (as applicable), technical block to house various ATS units as per the requirement, Nav-Aids and Radar building
2. Offices : \_\_\_\_\_(Name of Airport Company) shall make available an area of specified square meters
3. Car Parking : \_\_\_\_\_(Name of Airport Company) shall make available 25 (Twenty five) car parking spaces at the Airport
4. Standby Supply : \_\_\_\_\_(Name of Airport Company) 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.\*

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

### Schedule III

#### 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

## Schedule IV

### 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 ionising 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;

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 its 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.

Schedule V (to be in same format as agreed in the CA)

Form of AAI Direct Agreement

Airport Company

ADDRESS \_\_\_\_\_ [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 Airport Company (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 \_\_\_\_\_, in the State of \_\_\_\_\_.

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
- 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 11.2 of the CNS/ATM Agreement.

b) AAI agrees that:

- i. 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; and

- ii. If the Mortgage Trustee shall sell or otherwise dispose of all or any part of the Collateral pursuant to the exercise of remedies under the security interests granted by the Company (whether by foreclosure or otherwise), the purchaser shall, at the request of the Mortgage Trustee and with the prior written consent of AAI, which consent shall not be unreasonably withheld, be substituted for the Company under the CNS/ATM Agreement, and in either case, the substituted party will succeed to all rights, title and interest of the Company with respect to such Collateral sold or disposed of under the CNS/ATM Agreement and may perform and shall be entitled to the benefits of the CNS/ATM Agreement as if it were the Company under the CNS/ATM Agreement.
- c). AAI agrees that it will pay money due to the Company under the CNS/ATM Agreement exclusively for deposit directly and in immediately available funds to such account in (Name of the place of Airport Location ) as the Mortgage Trustee may from time to time direct (and the Company hereby authorises and directs AAI to make such payments as aforesaid). In the event of exercise by the Mortgage Trustee or its designee of its rights pursuant to the security interests granted by the Company, AAI will comply with any and all written instructions received from the Mortgage Trustee to pay money due from AAI under the CNS/ATM Agreement directly to or to the order of the Mortgage Trustee in lieu of paying such money to the account designated in the previous sentence (all other terms and conditions of such payments shall remain as provided in the previous sentence) and in full satisfaction of its obligations to pay these amounts to the Company.
- d) AAI agrees that it will recognise the Mortgage Security Trustee as the true and lawful attorney of the Company pursuant to the Mortgage.
- e) 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.
- f) 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
- g) 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 10.1 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.
- h) This Agreement shall be governed by and construed in accordance with the laws of India.
- i) 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 12 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.
- j) The provisions of Clause 18 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.
- k) 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.

- l) This Agreement shall become effective on the Effective Date.

Yours faithfully,

Airport Company

By \_\_\_\_\_

Name:

Title:

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:

**Schedule Z**

**MEMORANDUM OF UNDERSTANDING**

**In relation to the establishment**

Of the

**Between**

**[Government of India]**

And

[\_\_\_\_\_]

*[Changes are as per the draft Agreement provided by MoCA]*

## MEMORANDUM OF UNDERSTANDING

This **MEMORANDUM OF UNDERSTANDING** is made in on the \_\_\_\_ day of 20

1. **The President of India acting through the Secretary, Ministry of Civil Aviation, Government of India** (hereinafter referred to as “**GOI**” which expression shall be deemed to include its successors and permitted assigns), of the first part; and
2. [●], a company incorporated in India under the Companies Act, 2013, having its registered office at [●] (hereinafter referred to as the “**Concessionaire**”, which expression shall be deemed to include its successors and permitted assigns), of the second part.

GOI, and the Concessionaire are hereinafter collectively referred to as “**Parties**” and individually as “**Party**”.

### **WHEREAS:**

- A. The GOI, has given its in-principle approval (“In-Principle Approval”) to the Authority, for the establishment of an airport for public use at Jewar, GB Nagar in the State of Uttar Pradesh (“Airport”), subject to the terms and conditions stipulated in the In-Principle Approval.
- B. The Authority has resolved to establish the Noida International Airport near Jewar on design, build, finance, operate and transfer basis (“Project”). The Authority had accordingly invited proposals by its Request for Proposal cum Qualification No. \*\*\* dated \*\*\* (“RFP cum RFQ”) for construction, operation and maintenance of the Airport on DBFOT basis. Pursuant to the evaluation of the bids, the Authority accepted the Bid of the Concessionaire.
- C. The Authority and the Concessionaire have entered into a Concession Agreement (hereinafter the “Concession Agreement”) whereby they have agreed upon the terms and conditions upon which the Concessionaire shall construct, operate and maintain the Noida International Airport near Jewar on DBFOT basis.
- D. GoI acknowledges that implementation of the Project requires continued support and grant of certain rights by GoI to the Concessionaire as hereinafter set forth and is an essential pre-requisite for mobilisation of resources for the Project.
- E. In consideration of the Concessionaire having entered into Concession Agreement and to enhance the smooth functioning and viability of the Concessionaire, in addition to the obligations of the Authority under the Concession Agreement, the GOI is agreeable to provide some support to the Concessionaire as stated herein.

**NOW IT IS HEREBY AGREED** as follows:

## CLAUSE 1

### DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this MoU, except to the extent that the context requires otherwise, the following terms shall have the following meaning:

**“Animal Quarantine Services”** shall mean the quarantine services (forming part of the Reserved Services) as set out in Schedule 1 attached hereto;

**“Animal Quarantine Services Representative”** shall mean the authorized representative of the department/agency providing Animal Quarantine Services, nominated by GOI, from time to time, on the Joint Co-ordination Committee;

**“Applicable Permits”** shall mean all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained from the GOI or any department/agency of the GOI and/or thereafter maintained under Applicable Laws in connection with the Project during the subsistence of this MoU;

**“Arbitral Tribunal”** shall have the meaning ascribed to the term in Clause 7.3.2 hereunder;

**“Authority”** shall mean \_\_\_\_\_ represented by the \_\_\_\_\_.

**“Authority Representative”** shall mean the authorized representative of the Authority, nominated by the Authority, from time to time;

**“CNS/ATM Services”** shall mean the services related to communications, navigation and surveillance systems for air traffic management, (forming part of the Reserved Services) as set out in Schedule 2 attached hereto;

**“CNS/ATM Services Representative”** shall mean the authorized representative of the department/agency providing the CNS/ATM Services, nominated by GOI, from time to time, on the Joint Co-ordination Committee;

**“Concession Agreement”** shall have the meaning ascribed to it in Recital (C);

**“Concessionaire”** shall have the meaning ascribed to the term in the array of Parties or any other party as may be accepted by the Authority as the Concessionaire for the Project;

**“Concessionaire Representative”** shall mean the representative(s), holding the rank of at least director, nominated by the Concessionaire, from time to time, on the Joint Coordination Committee;

**“Customs Control”** shall mean customs related services as set out in Schedule 3 attached hereto;

**“Customs Control Representative”** shall mean the authorized representative of the department/agency providing the Custom Control Services, nominated by GOI, from time to time, on the Joint Co-ordination Committee;

**“DGCA”** means the Directorate General of Civil Aviation or any substitute thereof;

**“Effective Date”** shall mean the date as may be mutually agreed between GOI and the authority, but not later than the Appointed Date as Provided in the Concession Agreement;

**“GOI”**, shall have the same meaning ascribed to the term in the preamble of this MoU;

**“GOI Support”** shall have the meaning ascribed to the term in Clause 3 of this MoU;

**“Health Services”** shall mean the mandatory health services (forming part of the Reserved Services) as set out in Schedule 4 attached thereof;

**“Health Services Representative”** shall mean the authorized representative of the department/agency providing the Health Services, nominated by GOI, from time to time, on the Joint Co-ordination Committee;

**“Immigration Services”** shall mean the immigration services (forming part of the Reserved Services) as per Applicable Law as set out in Schedule 5 attached hereto;

**“Immigration Services Representative”** shall mean the authorized representative of the department/agency providing the immigration Services, nominated by GOI, from time to time, on the Joint Co-ordination Committee;

**“Joint Co-ordination Committee”** shall have the meaning ascribed to the term in Clause 4.1.1 hereunder;

**“Master Plan”** shall have the meaning ascribed to it in the Concession Agreement; **“Meteorological Services”** shall mean the meteorological services (forming part of the Reserved Services) as set out in Schedule 6 attached hereto;

**“Meteorological Services Representative”** shall mean the authorized representative of the department/agency providing the Meteorological Services, nominated by GOI, from time to time, on the Joint Co-ordination Committee;

**“MoU”** or **“this MoU”** shall mean this Memorandum of Understanding;

**“Plant Quarantine Services”** shall mean the quarantine services (forming part of the Reserved Services) as set out in Schedule 7 attached hereto;

**“Plant Quarantine Services Representative”** shall mean the authorized representative of the department/agency providing the Plant Quarantine Services, nominated by GOI, from time to time, on the Joint Co-ordination Committee;

**“Project”** means the construction, operation and maintenance of the Airport in accordance with the provisions of the Concession Agreement;

**“Reserved Services”** shall have the meaning ascribed to the term in Clause 3.3.1 hereunder;

**“Security Services”** shall mean the security services (forming part of the Reserved Services) as set out in Schedule 8 attached hereto;



**“Security Services Representative”** shall mean e the authorized representative of the department/agency providing the Security Services, nominated by GOI, from time to time, on the Joint Co-ordination Committee; and

**“Term”** shall have the meaning as ascribed to the term in Clause 5.1 hereunder.

Other Capitalised terms used herein (and not defined herein) but defined under the Concession Agreement shall have the meaning ascribed to the term under the Concession Agreement.

1.2 In this MoU, unless the context otherwise requires, the interpretation rules as mentioned in Clause 1.2 of the Concession Agreement shall apply.

## **CLAUSE 2**

### **EFFECTIVE DATE**

The provisions of this MoU (other than those contained in Clauses 1, 2, 3,4,5,6, 7, 8 and 9, which are, accordingly, binding on the Parties as from the date of this MoU) shall take effect and become binding on the Parties from the Effective Date.

**CLAUSE 3**  
**GOI SUPPORT**

With effect from the Effective Date, GOI hereby undertakes to provide the following support in relation to the Project (“**GOI Support**”):

**3.1 Applicable Permits**

3.1.1 GOI shall, upon written request from the Concessionaire and subject to the Concessionaire complying with Applicable Laws, grant to the Concessionaire such Applicable Permits as are required for or in connection with the Project within the relevant statutory period (if any). The Parties agree that where no statutory period is prescribed, GOI shall use all reasonable efforts to grant such Applicable Permits as are required for, or in connection with the Project within forty-five (45) days from the date of receipt of written request from the Concessionaire, subject to the Concessionaire fulfilling all criteria specified for the purpose of obtaining Applicable Permit.

3.1.2 The Concessionaire hereby undertakes that in order to expedite the grant of Applicable Permits, it will, in a diligent and timely manner, (i) prepare and file applications, which are in full compliance with the Applicable Law, with the concerned authorities; (ii) follow-up the aforesaid applications with the concerned authorities; and (iii) respond in a timely manner to all requests for further information and clarifications.

**3.2 Single Window Clearance**

GOI hereby undertakes to establish a single window clearance mechanism/route by means of a single point of contact in GOI for providing assistance to the Concessionaire in liaising with the relevant agencies, authorities, departments, inspectorates, ministries under the control and direction of GOI.

**3.3 Reserved Services**

3.3.1. GOI shall, throughout the Term, provide, or cause to be provided, at the Airport, the following services (“**Reserved Services**”):

- i. CNS/ATM Services;
- ii. Customs Control;
- iii. Immigration Services;
- iv. Plant Quarantine Services;
- v. Animal Quarantine Services;
- vi. Health Services;
- vii. Meteorological Services; and
- viii. Security Services.
- ix. Any other services as may be designed by GOI from time to time

3.3.2 The parties recognize that the fee levied for security services and its collection and utilization thereof will be regulated in accordance with the applicable guidelines issued by Ministry of Civil Aviation from time to time.

3.3.3. The concessionaire shall, during the drawing/designing stage, consult with the Bureau of Immigration, Department of Revenue (for customs services), and Central Industrial Security Force (CISF), Ministry of Health and Family Welfare and other relevant Government agencies as suggested by Ministry of Civil Aviation. Reasonable suggestions/requests of such agencies will generally be adhered to by the Concessioner, unless there exists an overruling reason to not be able to adhere to the suggestions and requests.

#### **3.4 Memoranda of Understanding with GOI Agencies:**

The GOI hereby undertakes to procure the execution of memorandum of understanding between the Concessionaire and each GOI agency/department providing the following Reserved Services hereunder, setting out the terms and conditions on which the Reserved Services shall be provided by the relevant GOI agencies/departments.

#### **3.5 Master Plan**

GoI undertakes that in the event any modification to the Master Plan of the Airport is required, which is in deviation of the guidelines prescribed by the DGCA or any other applicable guidelines, GOI shall procure approval of the Master Plan by the appropriate authority within 30 (thirty) days of a written request from the Authority. Provided that GoI may refuse to grant such approval if such modifications are not in harmony with the overall design and environment of the Airport.

#### **3.6 Principles of Determination and Revision of Aeronautical Charges**

3.6.1 The Parties hereto acknowledge and agree that any and all Aeronautical Charges that the Concessionaire can levy, collect and appropriate from a User shall be determined and revised by AERA, by way of an order by AERA, in accordance with the provisions of the AERA Act and as per the extant guidelines issued by AERA.

3.6.2. The GOI has, vide its letter no. F. No. AV.24011/12/2013-AD dated April 13, 2015, approved the 30% (thirty percent) shared-till framework for the determination and regulation of the Aeronautical Charges at the Airport, and the same shall be accordingly considered by AERA. For avoidance of doubt, revenues of the Concessionaire from City Side Development shall be excluded from the shared-till framework for the determination and regulation of the Aeronautical Charges.

3.6.3. The Annual Premium shall not be considered as a part of the capital outlay for the Airport or the regulatory asset base or operating expense for the purpose of the determination of the Aeronautical Charges, and shall always be excluded from being considered as a part of the cost for the determination of the Aeronautical Charges. The Concessionaire hereby acknowledges and agrees that the Annual Premium payable by the Concessionaire to the Authority shall not be considered for any purposes, for the determination or revision of the Aeronautical Charges, by AERA.

3.6.4 The Concessionaire shall be entitled to levy, collect and appropriate the Aeronautical Charges with effect from the COD for Phase I from the Users of the Airport, at the initial/ad-hoc rates of

the tariff as may be approved by AERA. Such initial/ad-hoc rates of tariff shall be applicable and valid until the approval of Aeronautical Charges by AERA in accordance with the provisions of the AERA Act.

3.6.5. Any under-recovery or over-recovery of the Aeronautical Revenues in respect of the ad-hoc or final Aeronautical Charges approved by AERA for the first tariff control period (currently 5 (five) years) commencing from COD for Phase I, shall be carried forward and adjusted by AERA, while determining the allowable Aeronautical Revenues in the second tariff control period, as per AERA act and as per the extant guidelines issued by AERA. .

3.6.6. Any under-recovery or over-recovery of Aeronautical Revenues after the first tariff control period shall be adjusted by AERA in accordance with AERA act and as per the extant guidelines issued by AERA..

3.6.7. The Concessionaire shall have to work with AERA to explore ways to keep the tariffs comparable with the tariffs of the neighbouring airports.

3.6.8. Any payments made by the Concessionaire to any Government Instrumentality for providing sovereign functions shall be considered as a part of the capital outlay for the Airport and an operating expense for the purpose of the determination of the Aeronautical Charges, and shall accordingly be considered as a part of the cost for the determination of the Aeronautical Charges.

## CLAUSE 4

### JOINT CO-ORDINATION COMMITTEE

#### 4.1 Joint Co-ordination Committee

- 4.1.1 In order to ensure smooth and efficient rendering of the Reserved Services, the Parties hereby undertake and agree to set up a joint co -ordination committee (the “**Joint Co-ordination Committee**”) consisting of (i) the Authority Representative; (ii) the CNS/ATM Services Representative; (iii) the Customs Control Representative; (iv) the Immigration Services Representative; (v) the Meteorological Services Representative; (vi) the Security Services Representative; (vii) the Plant Quarantine Services Representative; (viii) Animal Quarantine Services Representative (ix) Health Services Representative and (x) the Concessionaires Representative.
- 4.1.2 The Joint Co-ordination Committee shall, unless otherwise agreed by the Parties to hold the meeting at a later date, meet at least once every quarter at the Airport, starting in the first instance within thirty (30) day(s) of the Effective Date.

## CLAUSE 5

### TERM AND TERMINATION

- 5.1 Subject to Clause 2 above, this MoU shall come into full force and effect from the Effective Date and shall continue to be in full force and effect unless mutually terminated by the Parties (“**Term**”). Provided that upon termination of the Concession Agreement in terms thereof, the Concessionaire shall cease to be a Party to this MoU and, unless the Concessionaire is substituted by the Authority with another entity, the rights and obligations of the Concessionaire under this MoU shall vest in the Authority. For the avoidance of doubt, termination of the Concession Agreement shall have no bearing on the Term.

## **CLAUSE 6**

### **FORCE MAJEURE**

- 6.1 Any Party shall be entitled to suspend or excuse performance of its respective obligations under this MoU to the extent that it is/ they are unable to render such performance due to an event of Force Majeure.
- 6.2 Where a Party is claiming suspension of its obligations on account of Force Majeure, it shall promptly, but in no case later than seven (7) days after the occurrence of the event of Force Majeure, notify the other Parties in writing giving full particulars of the Force Majeure, the estimated duration thereof, the obligations affected and the reasons for its suspension.
- 6.3 A Party claiming Force Majeure shall exercise reasonable diligence to seek to overcome the Force Majeure event and to mitigate the effects thereof on the performance of its obligations under this MoU. The Party affected shall promptly notify the other Parties as soon as the Force Majeure event has been removed and no longer prevents it from complying with the obligations, which have been suspended and shall thereafter resume compliance with such obligations as soon as possible.
- 6.4 Where a Party is prevented from exercising any rights or performing any obligations under this MoU due to an event of Force Majeure, the time for the performance of the obligations affected thereby or the exercise of any right dependent thereon, shall be extended by such additional period as corresponding to the period of pendency of the event of Force Majeure preventing and/or delaying performance, or such other period as may be agreed between the Parties.
- 6.5 Notwithstanding anything contained hereinabove, if an event of Force Majeure occurs and continues for a period of ninety (90) days, the Parties shall meet to discuss the consequences of such event of Force Majeure and the course of action to be taken to mitigate the effects thereof or to be adopted in the circumstances.



## CLAUSE 7

### GOVERNING LAW AND DISPUTE RESOLUTION

- 7.1 This MoU (including this Clause 7) and all questions of its interpretation shall be construed in accordance with the laws of the Republic of India.
- 7.2 The Parties agree that they shall attempt to resolve through good faith consultation, disputes arising in connection with this MoU, and such consultation shall begin promptly after a Party has delivered to the other Party a written request for such consultation. Provided that if such good faith consultations have not resulted in a resolution of the dispute within sixty (60) days of such consultations having commenced, the provisions of Clause 7.3 shall apply.

#### 7.3 Arbitration

- 7.3.1 Any dispute, which could not be settled by the Parties through amicable settlement (as provided for under Clause 7.2 hereinabove) shall be finally settled by arbitration in accordance with the Indian Arbitration and Conciliation Act, 1996.
- 7.3.2 The disputes shall be referred to a tribunal comprising three (3) arbitrators. Each Party to the arbitration shall appoint one arbitrator and the two arbitrators thus appointed shall choose the third arbitrator who will act as a presiding arbitrator of the tribunal (together forming the “**Arbitral Tribunal**”). In the event of failure by the either Party to appoint their arbitrator(s) or by the two arbitrators appointed by the Parties to appoint the third arbitrator, the said arbitrator(s) shall be appointed by the High Court of Uttar Pradesh.
- 7.3.3 Such arbitration shall, unless otherwise agreeable to the Parties, be held at Lucknow, India. All proceedings of such arbitration shall be in the English language.
- 7.3.4 The decision(s) of the Arbitral Tribunal shall be final and binding on the Parties. 7.3.5 Subject to this Clause 7, the Courts at Uttar Pradesh shall have jurisdiction over this MoU.

**CLAUSE 8**  
**MISCELLANEOUS**

**8.1 Notice**

8.1.1 Any notice required or permitted under the terms of this MoU or required by law shall (unless otherwise agreed) be in writing and shall be delivered in person, sent by registered mail or air mail as appropriate, properly posted and fully prepaid in an envelope properly addressed or sent by facsimile to the respective parties as follows:

**GOI:**

**Secretary to Government of India, Ministry of Civil Aviation** Address: Rajiv Gandhi Bhawan, New Delhi.

Fax No.: 011

**Concessionaire:**

**[●] Attention:**

**Fax No:**

or to such other address or facsimile number as may from time to time be designated by notice hereunder.

8.1.2 Any such notice shall be in the English language and shall be considered to have been given at the time when actually delivered if delivered by hand, or upon the next working day following sending by facsimile or in any other event within three (3) days after it was mailed in the manner hereinbefore provided.

**8.2 Severability**

8.2.1 In the event that any or any part of the terms, conditions or provisions contained in this MoU shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such terms, conditions or provisions shall to that extent be severed from the remaining terms, conditions and provisions which shall continue to be valid and enforceable to the fullest extent permitted by Applicable Law.

**8.3 Entire Agreement**

8.3.1 This MoU, together with all Schedules and attachments hereto, represents the entire agreement and understanding between the Parties with respect to the subject matter of this MoU and supersedes any prior agreement or understanding, written or oral, that the Parties may have had.

**8.4 Amendment**

8.4.1 No addition, amendment or to or modification of this MoU shall be effective unless it is in writing and signed by the Parties.

**8.5 Assignment**

8.5.1 Notwithstanding any change in the Applicable Law after the date hereof which might otherwise permit the assignment of this MoU, no Party may assign this MoU or any right or obligation arising under or pursuant to it or any benefit or interest herein.

8.5.2. Provided however that notwithstanding the foregoing, the GOI hereby expressly agrees to transfer and novate this MoU in favour of a substitute entity selected pursuant to the terms of the Substitution Agreement or any other entity accepted by the Authority as the Concessionaire in relation to the Project.

## **8.6 No Partnership**

8.6.1 This MoU shall not constitute or be interpreted to constitute a partnership between the Parties. No Party shall have any authority (unless expressly conferred in writing by virtue of this MoU or otherwise and not revoked) to bind any other Party as its agent or otherwise.

## **8.7 No Waiver**

8.7.1 No failure on the part of GOI to exercise, and no delay on their part in exercising, any right, power, privilege or remedy under this MoU will operate as a waiver thereof, nor will any single or partial exercise of any right, power, privilege or remedy preclude any other or further exercise thereof or the exercise of any other right, power, privilege or remedy. Unless specified otherwise, the rights, powers, privileges and remedies provided in this MoU are cumulative and not exclusive of any other rights, powers, privileges or remedies (whether provided by law or otherwise).

## **8.8 Bilaterals**

8.8.1 Without impinging on or in any way restricting the sovereign rights of the Government of India, GOI shall, where feasible, endeavour to renew all existing agreements in relation to the Airport and endeavour not to revoke or terminate any existing agreements affecting the Airport. For the avoidance of doubt, GOI shall be entitled to revoke or terminate any such existing agreement for reason of the failure of another state or its designated carriers(s) to comply with their obligations under, or as a result of a breach by or default of the other party to, such air services agreement.

**Schedule 9**

**DEFENCE AND MILITARY SERVICES**

[Clause will be in accordance with the NOC issued by Ministry of Defence and any other terms discussed and agreed with MoCA]

**IN WITNESS WHEREOF** the Parties have caused this MoU to be executed by their duly authorized officers and representatives as of the day and year first above written.

**Signed by**

▲

For and on behalf of <b>GOI</b>  Signed by	Witnessed by:
For and on behalf of the Concessionaire  Signed by	

## **SCHEDULE 1**

### **ANIMAL QUARANTINE SERVICES**

#### **REGULATORY FUNCTIONS:**

Before Arrival:

- On receipt of application for import of the animal, all the sheds and feed stoves are thoroughly cleaned, disinfected with suitable disinfectants and also fumigated
- All animals are transported on a suitable animal carrier as per the standards and requirements for different species of animals
- The animal carrier is properly disinfected one day prior to the schedule date of arrival of animals
- All the arrangements are made for collection of necessary samples On Arrival at the Point of Entry:
- On the day of arrival and time fixed with the Importer, the Regional/Quarantine Officer and other staff reach the airport
- The animal or the products are thoroughly examined physically
- The veterinary certificate accompanying the animals or products is checked thoroughly to ascertain the specified health requirements
- After ensuring that the animals are clinically healthy and the health certificates accompanying the consignment are in order, a Provisional Quarantine Clearance Certificate (Import) or Veterinary Health Certificate (Import) is issued depending on the case to the importing agency for customs clearance
- The imported live animals are brought to the quarantine station under the supervision of the Regional/Quarantine Officer
- The animals are kept under the quarantine for 30 days or as specified in the health protocol by the Government of India for monitoring the health status of the animals.
- In case of investock products, representative samples shall be drawn and tested in the relevant laboratories as per conditions laid down in the sanitary import permit.

## SCHEDULE 2

### **CNS/ATM SERVICES**

GOI through AAI or Designated GOI Agency, throughout the Term, provide or cause to be provided, at the Airport following CNS / ATM Services through a separate CNS/ATM agreement:

- (a) cause to be provided, the CNS/ATM Services at the Airport, in accordance with the practices established or recommended from time to time pursuant to the Chicago Convention and on the same terms as applicable to similar services at other airports in India, and in compliance with the directions of DGCA;
- (b) cause to be maintained, the CNS/ATM Equipment, including carrying out of periodic flight calibration and tests of the CNS/ATM Equipment;
- (c) cause to be upgraded, the CNS/ATM Equipment from time to time (i) as a minimum to comply with the relevant provisions of the Civil Aviation Requirements notified by DGCA to meet the operational requirements of current traffic demand and in accordance with Applicable Laws including the relevant ICAO Documents and Annexes; and (ii) as a result of the expansion /upgradation of the Airport;
- (d) cause to be purchased at its own cost or at the cost of the Designated GOI Agency, as the case may be, the equipment required from time to time for providing CNS/ATM Services at the Airport;
- (e) procure Meteorological Facilities for provision of CNS/ATM services at the Airport in accordance with the practices established or recommended from time to time pursuant to the Chicago Convention and on the same terms as AAI provides at other similar airports in India; and
- (f) cause the Designated GOI Agency empowered to control and regulate air traffic to enable movement of aircrafts on the Runway in accordance with Applicable Laws and Good Industry Practice.

**SCHEDULE 3**  
**CUSTOMS CONTROL**

**Functions:**

- Customs Control at Walkthrough channel
- Customs Control at Baggage examination counters in Green / Red Channel
- Provision of the services of the Baggage Assistant / Deputy Commissioner within the Baggage Mall
- Customs Control for detained goods
- Customs Control for mis-handled baggage
- Customs Control for valuables
- Customs Control for re-shipment goods
- Customs Control for confiscated goods
- Manning by the gate Officer near Exit Gate
- Issuance of Export Certificate
- Services of relevant officials in connection with Custom's functions
- Air Intelligence Unit

## SCHEDULE 4

### HEALTH SERVICES

#### **Obligations of Directorate General Health Services (DGHS)**

- 1 The Parties hereby record that it is the intention of the DGHS to endeavour to provide at the Airport terminal, the following services and undertake the following activities (hereinafter collectively referred to as the “**Health Services**”):
  - a) Medical facilities at the Airport terminal and the cargo complex at all times during the day for the benefit of the passengers, visitors, airline staff, employees and other personnel of the GOI, the Authority, the Concessionaire and other relevant Government departments;
  - b) Medical officers and other DGHS personnel to be located at the Airport terminal as decided by DGHS from time to time;
  - c) DGHS shall from time to time determine the number of staff and fix timings of medical facilities at/around the airport;
  - d) DGHS shall also undertake such other functions at the airport as may be directed by the Central Government from time to time.
  
2. It is clarified that in the event the DGHS does not provide all or any of the Health Sciences and/ or the facilities mentioned in Clause 1 above, it shall have no liability of any kind whatsoever to the Concessionaire. Any such liability is hereby expressly disclaimed. The Concessionaire hereby expressly acknowledges that it shall have no recourse against the DGHS or any other government body for non-provision or partial provision of any of the Health Services or the facilities mentioned in Clause 1 above.



## **SCHEDULE 5**

### **IMMIGRATION SERVICES**

Providing immigration facilitation service at Airport and work relating to registration of foreigners under various Acts.

## **SCHEDULE 6**

### **METEOROLOGICAL SERVICES**

This include aviation weather services according to the technical provisions of the International Civil Aviation Organization (ICAO), Annex 3 and the World Meteorological Organization (WMO), as well as standards and recommended practices of designated GOI Agency and conventions in air navigation towards the safety of aircraft operation.

## **SCHEDULE 7**

### **PLANT PROTECTION AND QUARANTINE SERVICES**

#### **Regulatory Functions**

- (a) Inspection testing, treatment & release of imported agriculture commodities to prevent ingress of exotic pests & diseases
- (b) Visual examination & treatment of agriculture commodities meant for export
- (c) Issuance of Phyto-Sanitary Certificate for agricultural commodities meant for export
- (d) Inspection and treatment of imported wood packaging materials
- (e) Post entry quarantine inspection
- (f) Fumigation/ disinfestations/ disinfection of agricultural commodities

These functions are performed under the Destructive Insects & Pest Act, 1914 and the Plant Quarantine (regulation of import into India) Order, 2003 and its amendments to minimize risk of entry of exotic pests and diseases into the country that may render adverse impact on Indian agriculture. These practices are accepted internationally under the International Plant Protection Convention and are recognized under the Sanitary and Phyto-sanitary agreement of the WTO.

**SCHEDULE 8**  
**SECURITY SERVICES**

Functions

- Providing security through designated GOI Agency in accordance with Annex 17 to Chicago Convention of TCAO for airport operators, airlines operators, and their security agencies responsible for implementing AVSEC measures and in accordance with the terms contained in the agreement entered into between the Concessionaire and BCAS, as per the format provided by BCAS.
- Ensure that designated GOI Agency and its persons implementing security controls are appropriately trained and possess all competencies required to perform their duties.
- Planning and coordination of Aviation security matters.
- Conducting - Surprise/Dummy checks through designated GOI Agency to test professional efficiency and alertness of security staff and mock exercise to test efficacy of Contingency Plans and operational preparedness of the various agencies.

**Schedule AA**  
**STATE GOVERNMENT SUPPORT AGREEMENT**

*(See Clause 4.1.2(c)(vi))*

**THIS STATE GOVERNMENT SUPPORT AGREEMENT** is made at [\_\_\_\_] on the [\_\_] day of [\_\_\_\_], 20[\_\_]

**BY AND AMONGST:**

**THE GOVERNOR OF UTTAR PRADESH**, represented by [\_\_\_\_], having its principal office at [\_\_\_\_] (hereinafter referred to as the “**GoUP**”, which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns);

AND

Noida International Airport Limited, with its registered office at 1-15 block P-2-sector Omega -1, Greater Noida, Gautam Buddha Nagar, Uttar Pradesh (hereinafter referred to as the “**Authority**”, which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns);

AND

[\_\_\_\_], a company incorporated under the provisions of the [Companies Act, 2013], having corporate identity number [\_\_\_\_] and its registered office at [\_\_\_\_] (hereinafter referred to as the “**Concessionaire**”, which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes).

As the context may require, GoUP, the Authority and the Concessionaire are hereinafter collectively referred to as “**Parties**” and individually as “**Party**”.

**WHEREAS:**

- A. The Government of India (“**GOI**”), vide its letter no. [\_\_\_\_] dated [\_\_\_\_] (“**GOI Approval**”) granted its approval for the establishment of an international airport for public use at Jewar in the State of Uttar Pradesh through Public Private Partnership (“**PPP**”), subject to the terms and conditions stipulated therein, and had resolved to establish the Airport in accordance with the terms and conditions set forth in this Agreement.
- B. Based on the GOI Approval, the Government of Uttar Pradesh (“**GoUP**”) vide its Government Resolution No. [\_\_\_\_] dated [\_\_\_\_] (“**GoUP Approval**”), approved the implementation of the Project (*as defined below*), and appointed the Authority as a Nodal Agency for the purposes of the development, operations and maintenance of the Project.

- C. Based upon the approvals granted for the Project, the international bids were invited for the selection of the preferred bidder, and pursuant to the completion of such process, the preferred bidder was selected and the Concessionaire was incorporated.
- D. Upon the incorporation of the Concessionaire, the Authority and the Concessionaire entered into a Concession Agreement dated [\_\_\_\_\_] (“**Concession Agreement**”), *inter-alia*, agreeing and providing for the terms and conditions, upon which the Concessionaire would develop, operate and maintain the Airport on DBFOT basis.
- E. GoUP acknowledges that implementation of the Project requires continued support and grant of certain rights by the GoUP to the Authority and the Concessionaire, as hereinafter set forth, and is an essential pre-requisite for mobilisation of resources for the Project.
- F. In consideration of the Concessionaire having entered into the Concession Agreement and to enhance the smooth functioning and viability of the Concessionaire, in addition to the obligations of the Authority under the Concession Agreement, the GoUP is agreeable to provide certain support to the Concessionaire as stated herein.

**NOW IT IS HEREBY AGREED AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1. Definitions**

In this Agreement, except to the extent that the context requires otherwise and unless otherwise defined as below or otherwise elsewhere specifically in this Agreement, other capitalised terms used herein (and not defined herein) but defined under the Concession Agreement, has the meaning ascribed to the term under the Concession Agreement:

“**Agreement**” shall mean this State Government Support Agreement;

“**Clearances**” means the written consent, license, 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 the GoUP, from time to time, in connection with the Project;

“**Entity**” means any person, body corporate, trust, partnership firm or other association of persons/ individuals whether registered or not;

“**Existing Access and Egress**” has the meaning ascribed to it in Clause 2.1 hereunder;

“**GOI**” means the Government of India and any agency, authority (including any regulatory authority), department, inspectorate, ministry or statutory person (whether autonomous or not) under the control and direction of GOI;

“**GOI Approval**” has the meaning ascribed to it in Recital A hereunder;

“**GoUP**” means the Government of Uttar Pradesh and any agency, authority (including any regulatory authority), department, inspectorate, ministry or statutory person (whether autonomous or not) under the control and direction of GoUP;

“**GoUP Approval**” has the meaning ascribed to it in Recital C;

“**PPP**” has the meaning ascribed to it under Recital B;

“**Project**” means the design, development, construction, modernization, upgradation, finance, management, operation and maintenance of the Airport as provided for under the Concession Agreement;

“**Term**” has the meaning ascribed to it in Clause 3.1 hereunder;

“**Third Party**” shall mean any Entity not a Party to this Agreement;

“**Utilities**” collectively refers to water, electricity and infrastructure for sewage disposal and solid waste management at the Airport, and “**Utility**” refers to any one of them.

## **1.2. Rules of Interpretation**

- 1.2.1.** The words and expressions beginning with capital letters and defined in this Agreement has the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.
- 1.2.2.** References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- 1.2.3.** 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. GoUP SUPPORT**

### **2.1. Surface Access to the Airport**

The Parties hereby acknowledge that currently the only way to access, or egress from the Airport is through the [\_\_\_\_\_] (“**Existing Access and Egress**”). The Parties further acknowledge that the Existing Access and Egress may be insufficient to cater to increasing passenger and other traffic at the Airport. In light of the foregoing, GoUP hereby confirms that (i) it shall procure 4 lane access connectivity to the Airport and (ii) it shall make best endeavours to upgrade, modernize and maintain the Existing Access and Egress to keep pace with the increasing passenger and other traffic at the Airport and shall further make reasonable endeavours to develop, additional modes of public transport (such as railway/ metro connections) of access to, and egress from, the Airport as per the terms of the Concession Agreement, in accordance with the overall town planning for the area in and around the Airport and taking into account such inputs, if any, in relation thereto supplied by the Concessionaire as the GoUP may, in its sole discretion, deem fit. Towards this end, the GoUP and the Concessionaire shall consult with each

other during the development of the Master Plan in order to identify possible areas of surface access development.

## **2.2. Utilities**

The Parties acknowledge that going forward, as the Airport development and expansion takes place in the manner contemplated in the Concession Agreement and as passenger and other traffic at the Airport increases with the efflux of time, there may be a need to expand the capacity of Utilities. In the light of the foregoing, the GoUP hereby confirms that it shall make best endeavours to provide sufficient quantities of the Utilities at the Site boundary (to the extent that these service are generally provided by the GoUP or its departments/ agencies/ entities substantially owned or controlled by the GoUP) for the Airport, to enable development and expansion of the Airport and to cater to increasing passenger and other traffic. GoUP further confirms that it shall make best endeavours to maintain and develop existing facilities in relation to Utilities (to the extent that these service are generally maintained by the GoUP or its departments/ agencies/ entities substantially owned or controlled by the GoUP).

## **2.3. Safety and Security Requirements at Airport**

**2.3.1.** The Parties hereby acknowledge that cleanliness needs to be maintained in and around the Airport so as to avoid the presence of birds and animals which may interfere with the smooth operation of the Airport and affect the safety of the aircraft. Accordingly, the GoUP hereby confirms that it shall endeavour to maintain cleanliness in and around the area surrounding the Airport to prevent any kind of interference in, or harm to, the operation of the Airport resulting from the presence of birds and animals in such area.

**2.3.2.** The GoUP shall undertake at its own cost to provide normal and routine policing at the Airport for the maintenance of law and order. The Concessionaire shall make available at the Airport reasonable office accommodation at its cost to enable the GoUP to carry out the said function.

## **2.4. Clearances**

**2.4.1.** Notwithstanding anything to the contrary contained in this Agreement, the Parties hereby expressly acknowledge and agree that GoUP shall not be responsible nor be liable for any and all actions, proceedings, losses, damages, liabilities, claims, costs and expenses whatsoever of any third parties or the Concessionaire, arising out of, or in relation to, maintaining cleanliness in and around the area surrounding the Airport. The Parties hereby expressly acknowledge and agree that it shall be the sole responsibility and obligation of the Concessionaire to obtain and, at all times, continue to maintain all Clearances which are required by Applicable Law for undertaking and implementing the Project as set forth in detail in the Concession Agreement. Towards this end, the GoUP shall, upon application by the Concessionaire in full compliance and sustenance with Applicable Law (provided that under Applicable Law, the Concessionaire is entitled to receive such Clearance and the Concessionaire has made its application in due



process and time), endeavour to grant such Clearances as are required for or in connection with the Project, within the relevant statutory period (if any), and where no statutory period is prescribed, the GoUP shall endeavour to grant such Clearances as are required for or in connection with the Project within a reasonable time after the relevant application is duly completed, and in full compliance with Applicable Laws, has been submitted.

**2.4.2.** The GoUP further undertakes to provide its full assistance in procuring the approval of the Master Plan by the competent local authority.

**2.4.3.** In order to facilitate the grant of Clearances, the GoUP shall nominate a senior officer of the rank of [\_\_\_\_\_] or above designation, who shall provide assistance to the Concessionaire in liaising with the relevant agencies, authorities, departments, inspectorates, ministries under the control and direction of the GoUP.

The Concessionaire hereby undertakes that in order to expedite the grant of Clearances, it will, in a diligent and timely manner: (a) prepare and file applications, which are in full compliance with the Applicable Law, with the concerned authorities; and (b) follow-up the said applications with the concerned authorities. Deleted

### **3. TERM AND TERMINATION**

#### **3.1. Term**

**3.1.1.** Except Clause 2 and Clause 5, this Agreement shall be effective from the date first written hereof.

**3.1.2.** Clause 2 and Clause 5 of this Agreement shall be valid and effective with effect from the Appointed Date.

**3.1.3.** This Agreement shall terminate automatically with the determination and/or early termination, for whatsoever reason, of the Concession Agreement (“**Term**”).

#### **3.2. Termination**

**3.2.1.** This Agreement shall terminate with immediate effect and shall not become effective if the Appointed Date is not achieved by the Concessionaire, as per the terms of the Concession Agreement.

**3.2.2.** This Agreement shall be co-terminus with the Concession Agreement.

**3.2.3.** The rights and benefits granted to the Concessionaire pursuant to this Agreement shall stand transferred to, and shall ensure to the benefit of, any successor and permitted assignee of the Concessionaire or any other Person (including the Authority or any successor of the Authority), that may operate the Airport at any time, in accordance with the terms of the Concession Agreement.

### **4. REPRESENTATIONS AND WARRANTIES**

#### **4.1. By the Concessionaire**

The Concessionaire hereby represents and warrants to the GoUP that, each of the representations and warranties made by it under the Concession Agreement shall *mutatis mutandis* hold true and correct for the purposes of this Agreement in the form and manner contained therein, including but not limited to its power and authority and requisite corporate actions for the execution and delivery of this Agreement.

#### **4.2. By the GoUP**

The GoUP hereby represents and warrants to the Company that it has the right, power and authority, and has taken all actions necessary to execute this Agreement, exercise its rights and perform its functions, under this Agreement on best endeavour basis.

### **5. CO-ORDINATION MECHANISM**

Any issues arising out of this Agreement shall be resolved through the mechanism of a coordination committee to be formed by the GoUP and to be chaired by the Chief Secretary, GoUP, with representatives from the GOI and other concerned parties.

This Agreement shall not confer any right against GoUP for enforcement of any obligations by the state of Uttar Pradesh and consequently for damages/losses etc. incurred by the Concessionaire or any party.

### **6. GOVERNING LAW AND DISPUTE RESOLUTION**

- 6.1.** This Agreement (including this Clause 6) and all questions of its interpretation shall be construed in accordance with the laws of the Republic of India.
- 6.2.** The Parties agree that they shall attempt to resolve through good faith consultation, disputes arising in connection with this Agreement, and such consultation shall begin promptly after a Party has delivered to the other Party a written request for such consultation. Provided that if such good faith consultations have not resulted in a resolution of the dispute within 60 (sixty) days of such consultations having commenced, the provisions of Clause 6.3 shall apply.

#### **6.3. Arbitration**

- 6.3.1.** Any dispute, which could not be settled by the Parties through amicable settlement (as provided for under Clause 6.2 hereinabove) shall be finally settled by arbitration in accordance with the Arbitration and Conciliation Act, 1996.
- 6.3.2.** The disputes shall be referred to a tribunal comprising 3 (three) arbitrators. Each Party to the arbitration shall appoint one arbitrator, and the two arbitrators thus appointed shall choose the third arbitrator who will act as a presiding arbitrator of the tribunal (together forming the “**Arbitral Tribunal**”). The arbitration proceedings shall be conducted in accordance with the Rules.
- 6.3.3.** Such arbitration shall, unless otherwise agreeable to the Parties, be held at Lucknow ], India. All proceedings of such arbitration shall be in the English language.

**6.3.4.** The decision(s) of the Arbitral Tribunal shall be final and binding on the Parties.

**6.3.5.** Subject to this Clause 6, the Courts at [\_\_\_\_\_] shall have jurisdiction over this Agreement.

## **7. MISCELLANEOUS**

### **7.1. Notice**

**7.1.1.** Any notice required or permitted under the terms of this Agreement or required by law shall (unless otherwise agreed) be in writing and shall be delivered in person, sent by registered mail or air mail as appropriate, properly posted and fully prepaid in an envelope properly addressed or sent by facsimile to the respective parties as follows:

**GoUP**

**Address:** [\_\_\_\_\_]

**Attention:** [\_\_\_\_\_]

**E-mail:** [\_\_\_\_\_]

**Fax No.:** [\_\_\_\_\_]

**Authority:**

**Address:** [\_\_\_\_\_]

**Attention:** [\_\_\_\_\_]

**E-mail:** [\_\_\_\_\_]

**Fax No.:** [\_\_\_\_\_]

**Concessionaire:**

**Address:** [\_\_\_\_\_]

**Attention:** [\_\_\_\_\_]

**E-mail:** [\_\_\_\_\_]

**Fax No.:** [\_\_\_\_\_]

or to such other address or facsimile number as may from time to time be designated by notice hereunder.

**7.1.2.** Any such notice shall be in the English language and shall be considered to have been given at the time when actually delivered if delivered by hand, or upon the next working day following sending by facsimile or in any other event within 7 days after it was mailed in the manner hereinbefore provided.

### **7.2. Severability**

In the event that any or any part of the terms, conditions or provisions contained in this Agreement shall be determined by any competent authority to be invalid, unlawful or unenforceable to any

extent, such terms, conditions or provisions shall to that extent be severed from the remaining terms, conditions and provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.

**7.3. Entire Agreement**

This Agreement represents the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement and supersedes any prior agreement or understanding, written or oral, that the Parties may have / had.

**7.4. Amendment**

No addition, amendment to or modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

**7.5. Assignment**

Notwithstanding any change in the Applicable Law, after the date hereof which might otherwise permit the assignment of this Agreement, no Party may assign this Agreement or any right or obligation arising under or pursuant to it or any benefit or interest herein or create or permit to subsist any security over this Agreement or any right or obligation arising under or pursuant to it or any benefit or interest in it.

**7.6. No Waiver**

No failure on the part of GoUP or the Authority to exercise, and no delay on their part in exercising, any right, power, privilege or remedy under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right, power, privilege or remedy preclude any other or further exercise thereof or the exercise of any other right, power, privilege or remedy. Unless specified otherwise, the rights, powers, privileges and remedies provided in this Agreement are cumulative and not exclusive of any other rights, powers, privileges or remedies (whether provided by law or otherwise).

**IN WITNESS WHEREOF** the Parties have caused this Agreement to be executed by their duly authorized officers and representatives as of the day and year first above written.

**Signed by**

For and on behalf of <b>GoUP</b>  Signed by _____	Witnessed by:
For and on behalf of the <b>Authority</b>  Signed by _____	Witnessed by:

For and on behalf of the <b>Concessionaire</b>  Signed by _____	Witnessed by:
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