



Chhatrapati Shivaji
INTERNATIONAL AIRPORT
MUMBAI



CONCESSION AGREEMENT

FOR

NAVI MUMBAI INTERNATIONAL AIRPORT PROJECT

BY AND BETWEEN

**CITY AND INDUSTRIAL DEVELOPMENT CORPORATION
OF MAHARASHTRA LIMITED**
(as "Authority")

AND

**NAVI MUMBAI INTERNATIONAL AIRPORT PRIVATE
LIMITED**
(as "Concessionaire")

Dated: January 8, 2018



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Part I
Preliminary



CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT (“Agreement”) is entered into at **Mumbai** on this **8th** day of **January, 2018**

BY AND BETWEEN:

CITY AND INDUSTRIAL DEVELOPMENT CORPORATION OF MAHARASHTRA LIMITED, a company incorporated under the Companies Act, 1956, having corporate identification number U99999MH1970SGC014574 and its registered office at Nirmal, 2nd Floor, Nariman Point, Mumbai – 400 021, Maharashtra, represented by its Vice Chairman & Managing Director (hereinafter referred to as the “**Authority**”, which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns);

AND

NAVI MUMBAI INTERNATIONAL AIRPORT PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956, having corporate identification number U45200MH2007PTC169174 and its registered office at Office of the Airport Director, Terminal 1-B, CSI Airport, Santacruz, Mumbai – 400 099, Maharashtra (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, the Authority and the Concessionaire will hereinafter be referred to individually as a “**Party**” and collectively as the “**Parties**”.

WHEREAS:

- A. The Government of India (“**GOI**”), vide its letter no. AV.24011/1/95-VB (Vol.VI) dated July 6, 2007 (“**GOI Approval**”) granted its approval for the establishment of an international airport for public use at Navi Mumbai in the State of Maharashtra through Public Private Partnership (“**PPP**”), subject to the terms and conditions stipulated therein.
- B. Based on the GOI Approval, the Government of Maharashtra (“**GOM**”) vide its Government Resolution No. CID-3307/1541/Pra. Kra-144/07/Na Vi-10 dated July 30, 2008 (“**GOM Approval**”), approved the implementation of the Project (*as defined below*), and appointed the Authority as a Nodal Agency for the purposes of the construction, operations and maintenance of the Project.
- 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. In view of the GOI Approval, GOM Approval and other Applicable Permits as above, the Authority, while prescribing the technical and commercial terms and conditions for construction, operation and maintenance of the Airport on design, build, finance, operate and transfer (“**DBFOT**”) basis, invited applications by its Request for Qualification No. CIDCO/T&C/NMIA/01/2013-14 dated February 5, 2014, as amended from time to time (collectively, “**Request for Qualification**” or “**RFQ**”).
- E. Pursuant to the RFQ and based upon the fulfilment of the technical, financial and operation & maintenance criteria set out in the RFQ, and receipt of the security clearance from the Ministry



of Home Affairs, GOI, applicants were pre-qualified to participate in the next stage of the bidding for the Project.

- F. The Authority called upon such qualified bidders to provide their commercial bid in accordance with the terms and conditions prescribed in the Request for Proposal issued by letter No. CIDCO/T&C/NMIA/01/2013-14 dated May 4, 2016 (“**Request for Proposal**” or “**RFP**”).
- G. After evaluation of the bids received from the pre-qualified bidders, the Authority accepted the Bid of the bidder Mumbai International Airport Private Limited (“**Preferred Bidder**”), and issued its Letter of Award No. CIDCO/MD/NMIA/051 dated October 25, 2017 (“**LOA**”) to the Preferred Bidder, requiring the Preferred Bidder, *inter alia*, to execute this Agreement as per the terms of the RFP, through a special purpose vehicle.
- H. The Preferred Bidder has promoted and incorporated a special purpose vehicle as the Concessionaire as a private limited company under the Companies Act, 1956, 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 Preferred Bidder under the LOA, including the obligation to enter into this Agreement for undertaking the implementation, operation and maintenance of the Project.
- I. By its letter dated November 29, 2017, the Concessionaire, while representing that it has been promoted by the Preferred Bidder for the purposes hereof, joined in the request of the Preferred Bidder to the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the Preferred Bidder including the obligation to enter into this Agreement pursuant to the LOA.
- J. The Authority has accordingly agreed to enter into this 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 Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement shall, unless the context otherwise requires, have the meaning ascribed thereto, and the words and expressions defined in the Schedules and used therein have the meaning ascribed to it in the Schedules:

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 Airports Authority of India Act, 1994, and will include its successors and assigns;

“**Accounting Year**” means the financial year commencing from the 1st (first) day of April of any calendar year and ending on 31st (thirty-first) day of March of the next calendar year,



provided that, for the purposes of the 1st (first) year, such period shall commence from the date of the Appointed Date and end on immediate following 31st (thirty-first) of March and for the last calendar year of the Concession Period, such period shall commence from 1st (first) day of April and shall end on the last day of the Concession Period;

“**ACT**” has the meaning as set forth in Clause 22.7.1;

“**Additional Auditors**” shall mean the auditors identified in Clause 30.2.3;

“**Additional Termination Payment**” means the amount payable upon Termination in respect of Specified Assets, if any, as limited by the provisions of Clause 31.9 and Clause 34.4.3;

“**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) 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 (“**Reference Date**”) and shall be calculated in reference of the Total Project Cost 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:

- (a) on or before Phase I COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in Price Index occurring between the first day of the month of Appointed Date and the Reference Date;
- (b) from Phase I COD and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on Phase I COD shall be deemed to be the base (“**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 Phase I COD to the extent of variation in Price Index occurring between Phase I COD and the Reference Date; and
- (c) after the 4th (fourth) anniversary of Phase I COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.17% (zero point one seven percent) thereof at the commencement of each month following the 4th (fourth) anniversary of Phase I COD and the amount so arrived at shall be revised to the extent of variation in Price Index occurring between Phase I COD and the Reference Date;

provided that in the event Price Index increases, on an average, by more than 3% (three percent) per annum for the period between the date thereof and Phase I COD, the Parties shall meet, as soon as reasonably practicable, and agree upon revision of the amount hereinabove specified such that the effect of increase in Price Index, in excess of such 3% (three percent), is reflected in the Total Project Cost;

and 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;

“**ADMC**” shall mean the Airport Development Monitoring Committee, as provided in Clause 12.8;



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

“**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;

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

“**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**” has the meaning as set forth in Clause 31.1;

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

“**Aircraft Fuelling Services**” has the meaning as set forth in Clause 18.3;

“**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 in accordance with the provisions contained in the relevant ICAO Documents and Annexes;

“**Airport**” means the airport located at the Site, and includes civil, mechanical and electrical works, the Terminal Building, Cargo Facilities, Runway and all Project Assets necessary for and associated with operation and expansion of the Airport;

“**AODB**” has the meaning as set forth in Clause 20.1;

“**Appendix**” has 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 guidelines, circulars, rules, regulations and notifications, 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, expansion, operation and maintenance of the Airport during the subsistence of this Agreement;



“**Appointed Date**” means the date on which every Condition Precedent is either satisfied or waived, as the case may be, in accordance with the provisions of this Agreement;

“**Architectural Design**” has the meaning as set forth in Clause 12.4.1;

“**ASMU**” has the meaning as set forth in Clause 17.15.4;

“**ASQ**” means Airport Service Quality;

“**Associate**” or “**Affiliate**” means, in relation to either Party and/or Preferred Bidder, a person who controls, is controlled by, or is under the common control with such Party or Preferred Bidder (as used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty percent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

“**ATC**” means the Air Traffic Control;

“**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;

“**Authority**” has the meaning attributed to such term in the array of Parties;

“**Authority Default**” has the meaning as set forth in Clause 34.2.1;

“**Authority’s Share**” has the meaning as set forth in Clause 5.4.1;

“**Award**” has the meaning as set forth in Clause 39.3.3;

“**Bank**” means a scheduled bank incorporated in India and having a minimum net worth of Rs. 1000,00,00,000/- (Rupees One Thousand Crore), or any other bank acceptable to Senior Lenders, but does not include a bank in which any Senior Lender has an interest;

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

“**Base Adjusted Equity**” means an amount equal to the Adjusted Equity as on Phase I COD;

“**BCAS**” means the Bureau of Civil Aviation Security or any substitute or assign thereof;

“**Bid**” means the documents in their entirety comprised in the bid submitted by the Preferred Bidder in response to the Request for Proposal in accordance with the provisions thereof;

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

“**Cargo Facilities**” means the buildings, structures and equipment, docking space and parking,



as the case may be, required for handling of incoming and outgoing cargo, including short-term warehousing thereof;

“**Change in Ownership**” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the Preferred Bidder in the total Equity to decline below 51% (fifty one percent) thereof, until the 7th (seventh) anniversary of Phase I COD, if the Preferred Bidder is a single bidder; “**Change of Scope**” has the meaning as set forth in Clause 16.1.1;

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

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

“**CSIA**” means Chhatrapati Shivaji International Airport in Mumbai;

“**Check-in Services**” has the meaning as set forth in Clause 18.10.1;

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

“**CNS/ATM Agreement**” means an agreement between AAI and the Concessionaire, substantially in the form set forth in Schedule T for provision of CNS/ATM Services;

“**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;

“**COD**” or “**Commercial Operation Date**” has the meaning as set forth in Clause 15.1.1 in context of a particular Phase, and in respect of, Phase I, shall mean **Phase I COD**, and in respect of the subsequent Phase(s), shall mean the concerned COD for such Phase;

“**Complaint Register**” has the meaning as set forth in Clause 41.1.1;

“**Complainant**” has the meaning as set forth in Clause 41.1.1;

“**Completion**” has the meaning as set forth in Clause 14.2;

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

“**Completion Report**” has the meaning as set forth in Clause 14.2;

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

“**Concessionaire**” has the meaning attributed thereto in the array of Parties;

“**Concession Fee**” has the meaning as set forth in Clause 26.1;

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



“**Concession Year**” means each period of 1 (one) year, commencing from the Appointed Date and ending on the expiry of 365 days for all years except the leap year and 366 days for a leap year, provided that such period shall end on the Transfer Date for the last Concession Year;

“**Concessionaire’s Default**” has the meaning as set forth in Clause 34.1.1;

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

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

“**Construction Works**” means all works and things necessary to complete a Phase of the Airport in accordance with this Agreement, and includes the Aeronautical Assets, Non-Aeronautical Assets and the Project Facilities;

“**Contractor**” means the person or persons, as the case may be, with whom the Concessionaire has entered into any of the EPC Contracts, 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;

“**Contracts**” has the meaning as set forth in Clause 5.6.2;

“**Covenant**” has the meaning as set forth in Clause 5.2.5;

“**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;

“**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 as specified in such notice;
- (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement or under the Applicable Laws; and
- (c) not in any way be extended by any period of Suspension under this Agreement;

provided that if the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the Authority hereunder, the applicable Cure Period shall be extended by the period taken by the Authority to accord their approval;

“**DBFOT**” has the meaning as set forth in Recital D;

“**Damages**” has the meaning as set forth in Sub-Clause (y) of Clause 1.2.1;

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



on the Transfer Date, and shall at all times be calculated in reference of the Total Project Cost:

- (a) the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (“**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 the Phase I COD, shall in no case exceed 70% (seventy percent) of the Total Project Cost for Phase I of the Airport;

“**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**” has the meaning set forth in Clause 9.4;

“**Defence Area**” has the meaning set forth in Schedule B;

“**Defence Forces**” mean the Indian army, navy or air force, and also includes the paramilitary forces, as may be notified by GOI from time to time;

“**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, airport security, meteorological, health, etc., in respect of the implementation, operation and management of the Airport;

“**Development Plan**” has the meaning as set forth in Para 3 of Annex II of Schedule A;

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

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

“**Dispute**” has the meaning as set forth in Clause 39.1.1;

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



in ARTICLE 39;

“**Divestment Requirements**” means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 35.1;

“**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 Clause 12.3, 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 life or property 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, 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 existing 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, 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 Concessionaire. *Provided however that*, the amount specified in Clause 12.9.2 as Authority’s equity capital infusion shall be considered as Equity for the purposes of this Agreement;

“**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**” has the meaning as set forth in Clause 28.1.2;

“**Escrow Bank**” has the meaning as set forth in Clause 28.1.1;

“**Escrow Default**” has the meaning as set forth in Schedule O;

“**Exempted Person**” means the persons/ categories of persons notified as exempted from pre-embarkation security check at the civilian airports by the Ministry of Civil Aviation, GOI, from time to time;



“**Fee**” means the charge levied on and payable by a User for availing any or all of the: (a) Aeronautical Services, as 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 Capacity**” has the meaning as set forth in the RFQ;

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

“**Financial Default**” has the meaning as set forth in Schedule R;

“**Financial Model**” means the financial model provided as a part of the Financing Agreements, setting forth the capital and operating costs of each Phase of the Project and revenues therefrom on the basis of which financial viability of the relevant Phase 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 each Phase 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 and Subordinated Debt, if any;

“**Financing Agreements**” means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Project, and includes amendments or modifications made in accordance with Clause 5.2.3;

“**Force Majeure**” or “**Force Majeure Event**” has the meaning ascribed to it in Clause 31.1;

“**Force Majeure Costs**” has its meaning as set forth in Clause 31.7.2;

“**GDCR**” means the General Development Control Regulations of the Authority;

“**GOI**” has the meaning as set forth in Recital A;

“**GOI Approval**” has the meaning as set forth in Recital A;

“**GOM**” has the meaning as set forth in Recital B;

“**GOM Approval**” has the meaning as set forth in Recital B;

“**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 Services and Non-Aeronautical Services;



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

“**Government Indemnified Persons**” shall have its meaning as set forth in Clause 38.1.1;

“**Government Instrumentality**” means any department, division or sub-division of the Government of India or the GOM 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;

“**Government Resolutions**” means the resolution nos.: CID-1812/File No. 274/UD-10 dated March 1, 2014 read with CID-1812/File No. 274/UD-10 dated May 28, 2014, issued by the Urban Development Department of the GOM and resolution nos.: LQN-05/2014/File No. 39/A-2 dated June 16, 2014 and RPA 2014/File No. 52/R-3 dated June 25, 2014, issued by Revenue and Forest Department of the GOM in respect of the Project Affected Persons;

“**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 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 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 Accounting Year provided these pertain to past deposits on which Premium has been paid to the Authority.

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;
- (ii) 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;
- (iii) Gross Revenue will be computed on an annual basis for an Accounting Year, in accordance with the Indian Generally Accepted Accounting Principles, as applicable on March 31, 2016;



- (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;

“**Ground Handling Services**” has the meaning as set forth in Clause 18.2;

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

“**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 Clause 38.3;

“**Indemnifying Party**” means the Party obligated to indemnify the other Party pursuant to Clause 38.3;

“**Independent Engineer**” has the meaning as set forth in Clause 23.1.1;

“**Indirect Political Event**” has the meaning as set forth in Clause 31.3;

“**Inspection Report**” shall mean the report made by the Independent Engineer as per Clause 13.2;

“**Insurance Cover**” means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire, pursuant to ARTICLE 29, and includes all insurances required to be taken out by the Concessionaire under Clause 29.2, 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, trade-marks, service marks, logos, get-up, trade names, internet domain names, patterns, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, semiconductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

“**Key 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**” has the meaning as set forth in Clause 22.1;

“**Land Development Works**” means the land development related works forming part of the Pre-development Works and are specifically identified as such in Annex to Schedule B hereto;

“**LDS Agreement**” means the contract to be executed substantially in the form and manner provided in Schedule W for the substitution of the Authority under the contracts executed by it in relation to the implementation of the Land Development Works limited to the extent of the Site;

“**Letter of Award**” or “**LOA**” means the letter of award referred to in Recital G;

“**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;

“**Master Plan**” means the plan for construction of the Airport in Phases, as prepared by the Concessionaire in the manner set forth in Schedule A covering Aeronautical Services and Non-Aeronautical Services for the Concession Period, and updated from time to time as per the requirements of the Project;

“**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;

“**Monthly Statement**” means a statement to be furnished to the Authority, within 7 (seven) days of completion of each month by the Concessionaire as per Clause 27.9;

“**MRO**” means maintenance, repair and overhaul;

“**MRO Facilities**” means the buildings, structures, and equipment, as may be required for MRO of aircraft in accordance with the provisions of Clause 12.10;

“**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;

“**Non-Aeronautical Services**” means the services, other than the Aeronautical Services;

“**Non-Political Event**” has the meaning as set forth in Clause 31.2;

“**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 for O&M of the Airport under Applicable Laws, Applicable Permits or this Agreement;

“**O&M Inspection Report**” has the meaning as set forth in Clause 20.5;

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

“**Panel of Chartered Accountants**” has the meaning as set forth in Clause 30.2.1;

“**Parking**” has the meaning as set forth in Clause 18.12;

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

“**Passenger Traffic**” means the total number of passengers, including embarking, disembarking and transit passengers, who used the Airport during an Accounting Year;

“**Peak Hour**” means the hour determined on the basis of that hour in the preceding Accounting Year in which the Passenger Traffic was the 30th (thirtieth) busiest hour during such Accounting Year;

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

“**Performance Security**” has the meaning as set forth in Clause 9.1.1;

“**Performance Guarantee**” shall have its meaning as set forth in Clause 36.2.3;

“**Phase**” means the works 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 I**” means all the works forming part of the Airport for handling annual passenger throughput of a minimum of 10 (ten) million passengers and cargo handling capacity of a minimum of 260,000 tonnes per annum as per the Master Plan, in accordance with the terms of



this Agreement;

“**Phase Completion Schedule**” means the progressive Phase Milestones for Completion of the respective Phase of the Airport on or before the Scheduled Completion Date for such Phase;

“**Phase Milestone**” means the progressive milestones as defined in Clause 12.5.2 and Schedule G;

“**Police**” means a law enforcement agency and includes the state police 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;

“**Police Aid Post**” has the meaning as set forth in Clause 19.4;

“**Political Event**” has the meaning as set forth in Clause 31.4;

“**Pre-development Works**” has the meaning as set forth in Clause 12.9.1;

“**Preferred Bidder**” has the meaning as set forth in Recital G;

“**Preservation Costs**” has the meaning as set forth in Clause 13.5.3;

“**Premium**” has the meaning as set forth in Clause 26.2.1;

“**Price Index**” shall comprise:

- (a) 70% (seventy percent) of WPI; and
- (b) 30% (thirty percent) 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, construction, operation and maintenance of the Airport in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project, for a minimum annual passenger handling capacity of 60 million, with separately identified areas for domestic passengers and international passengers, and minimum annual cargo handling capacity of 1.5 million tonnes;

“**Project Affected Persons**” means the persons affected due to the development and implementation of the Project, and whose land and structures have been falling within the Site and acquired or affected by the Authority in respect thereof, and are entitled to receive the benefits of 100 (one hundred) Equity Shares (*as defined in Schedule S (Shareholders' Agreement)*) in terms of the Government Resolutions;

“**Project Agreements**” means this Agreement, Financing Agreements, EPC Contract, O&M Contracts, Non-Disclosure Agreement, Shareholders' Agreement, Memorandum of Understanding with GOI, CNS-ATM Agreement, State Government Support Agreement with GOM, LDS Agreement(s), airport operator's agreement and sub-licenses 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 and have a contract worth of more than Rs. 25,00,00,000/- (Rupees Twenty Five Crore) annually or cumulatively,



but does not include the Escrow Agreement and Substitution Agreement;

“Project Assets” means all physical and other assets relating to and forming part of the Site including:

- (a) rights over the Site in the form of 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) all rights of the Concessionaire under the Project Agreements;
- (f) financial assets, such as receivables, security deposits etc.;
- (g) insurance proceeds; and
- (h) Applicable Permits and authorisations relating to or in respect of the Airport;

“Project Facilities” means all the amenities and facilities situated on the Site, as described in Schedule C;

“Promoter SPV” has the meaning as set forth in Clause 5.3.3;

“Protected Documents” means the documents, instruments and information, which are exempted under the provisions of Section 8 of the Right to Information Act, 2005, or any other substituted, amended and modified provision from time to time;

“Provisional Completion” has the meaning as set forth in Clause 14.3;

“Punch List” has the meaning ascribed to it in Clause 14.3.1;

“Reference Date” means the first day of the current month;

“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;

“Related Party”, with reference to the Concessionaire, has the meaning as assigned to such term under the Companies Act, 2013;

“Related Party Transaction” means, any transaction of lease, sub-lease, license, sub-license, transfer or allocation of function(s), resource(s) or obligation(s) between Related Parties regardless of whether or not a price is charged, and shall at all times comply with the contracting principles set out in Clause 5.6.2;

“Request for Proposal” or **“RFP”** has the meaning as set forth in Recital F;



“**Request for Qualification**” or “**RFQ**” has 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 Clause 18.8 and Clause 19.7;

“**Reserved Parking**” has the meaning as set forth in Clause 18.12.4;

“**Reserved Services**” has the meaning as set forth in Clause 19.1.1;

“**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;

“**Route Navigation Facilities Charges**” means amounts charged by AAI or any other Designated GOI Agency, to airlines and/or aircraft operators for the provision of route navigation facilities in accordance with Applicable Laws;

“**Rs.**” or “**Rupees**” or “**Indian Rupees**” means the lawful currency of the Republic of India;

“**Rules**” means Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi, as amended or modified from time to time;

“**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**” has the meaning as set forth in Clause 17.15;

“**Scheduled Completion Date**” has the meaning as set forth in Clause 12.5.1 for Phase I, and in respect of the other Phases, shall be determined by the Authority in consultation with the Independent Engineer for such Phase prior to the commencement of the Construction Works;

“**Scope of the Project**” has 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, as per the terms hereof;

“**Service Quality Requirements**” has the meaning as set forth in Annex I of Schedule I;

“**Shareholders’ Agreement**” has the meaning as set forth in Clause 5.4.1;

“**Site**” shall have the meaning as set forth in Clause 10.1;

“**Soft Loan**” means, an interest free loan of an amount mentioned in Clause 12.9.1, as spent by the Authority on Pre-development Works;

“**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;



“**Specified Assets**” means and includes the assets forming part of the expansion of the Airport in accordance with the provisions of Clause 12.7 and the Master Plan, but shall in no case include land;

“**State**” means the state in which the headquarters of the Authority are situated;

“**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 30.2.1;

“**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 percent) 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 percent) 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**” has the meaning as set forth in Clause 37.3.1;

“**Suspension**” has the meaning as set forth in Clause 33.1;

“**Taxes**” means any Indian taxes including goods and service tax, 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. Taxes shall not include taxes on corporate income;

“**Technical Capacity**” has the meaning as set forth in the RFQ;

“**Terminal**” means and includes the Terminal Building, Parking, approach roads, Cargo Facilities and the land appurtenant thereto;

“**Terminal Building**” means the passenger terminal building with separately identified areas for domestic passengers and international passengers on the Site and the land appurtenant thereto, including the kerbside and approach roads, as described and demarcated in the Master



Plan;

“**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 H to determine the Completion 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 this Agreement and the Master Plan;

“**Total Project Cost**” means the capital cost incurred on construction and financing of Phase I excluding metro/ mass rapid transit system, if any, including the Aeronautical Assets and the Non-Aeronautical Assets forming part of Phase I, and shall be limited to the lowest of:

- (a) actual capital costs of the Construction Works incurred in relation to the construction, implementation and commissioning;
- (b) the capital cost, as set forth in the Financial Package; and
- (c) a sum of Rs. 55,34,00,00,000/- (Rupee Five Thousand Five Hundred and Thirty Four Crore);

provided 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 the Phase I;

“**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**” has the meaning as set forth in Clause 31.12.1;

“**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;

“**User Charter**” has the meaning as set forth in Clause 22.10;

“**User Survey**” has the meaning as set forth in Clause 22.7.3;

“**Vesting Certificate**” has the meaning as set forth in Clause 35.4; 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.

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 the Applicable Laws, 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, expansion 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, expansion, 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 Phase Milestone shall mean and include such date, period or Phase 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 shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party, 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;

- (x) 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;
- (y) 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 (“**Damages**”);
- (z) the words ‘*hereof*’, ‘*herein*’, ‘*hereto*’ and ‘*hereunder*’ and words of similar import, when used in this Agreement or any other Project Agreements, shall refer to this Agreement or such other Project Agreement, as the case may be, as a whole and not to any particular provision of this Agreement or such other Project Agreement, as the case may be;
- (aa) unless otherwise specified herein, all accounting terms used herein will be interpreted, and all financial statements and certificates and reports as to financial matters required to be furnished hereunder will be prepared, in accordance with generally accepted accounting principles in India, and all technical terms and statements will be interpreted and applied in accordance with the Good Industry Practices;
- (bb) no specific provision, representation or warranty will limit the applicability of a more general provision, representation or warranty, and it is the intent of the Parties that, each representation, warranty, covenant, condition and agreement contained in this Agreement, will be given full, separate, and independent effect and that such provisions are cumulative; and
- (cc) 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 shall be provided free of cost and in 3 (three) copies, and if the Authority 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 Subject to the rules of interpretation contained in Clause 1.2 above, 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 agreements and documents at (b).

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
SCOPE OF THE PROJECT**

2.1 Scope of the Project

The scope of the Project (“**Scope of the Project**”) shall mean and include the following:

- (a) undertake the performance and ensure the completion of the Land Development Works in accordance with the LDS Agreement(s);
- (b) design, development, construction and expansion of the Airport in a phased manner, on the Site and as per the requirements broadly set forth in Schedule A and 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, and in accordance with the Applicable Laws and Applicable Permits;
- (c) operation, maintenance and management of the Airport in accordance with the provisions of this Agreement, Applicable Laws and Applicable Permits; and
- (d) performance and fulfilment of all other obligations of the Concessionaire and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement, in accordance with the provisions of this Agreement, Applicable Laws and Applicable Permits.



**ARTICLE 3
GRANT OF CONCESSION**

3.1 The Concession

3.1.1 Subject to and in accordance with the provisions of this Agreement, GOI Approval, 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 30 (thirty) years commencing from the Appointed Date, and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.

Provided that the Concessionaire shall, at any time not earlier than 25th (twenty fifth) anniversary of the Appointed Date and no later than 27th (twenty seventh) anniversary of the Appointed Date, intimate the Authority about its interest and request for extending the term of this Concession by a period of 10 (ten) years. While making such request, the Concessionaire shall submit each of the following documents:

- (a) a certificate confirming that there has been no material default by the Concessionaire under this Agreement (including compliance of provisions relating to any of the Key Performance Indicators), resulting in the accrual of a right in favour of the Authority to identify any such event as Concessionaire's Default;
- (b) a certificate confirming from Airports Council International or any other equivalent agency of similar international repute confirming that the Airport has been within top 20 (twenty) percentile of all airports in its category in the world, for a continuous period of preceding 5 (five) years as on the date of such application; and
- (c) an undertaking that the Concessionaire shall continue to comply with the terms and conditions of the Agreement in its full form and effect for the remainder of the Concession Period.

Provided further that the Concessionaire shall, 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 20 (twenty) years. 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 20 (twenty) 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 05.00% 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, and (b) the Affiliate(s) of the Concessionaire shall not be qualified, either directly or indirectly, participating in any such bidding process.

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 default of the provisions of this Agreement, then, the Authority shall not be under any obligation to extend the Concession Period under this Clause 3.1.1.

In any event, at all times, any decision concerning the extension of the Concession Period will



vest with the Authority.

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

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



**ARTICLE 4
CONDITIONS PRECEDENT**

4.1 Conditions Precedent

4.1.1 Save and except as expressly provided in ARTICLE 4, ARTICLE 5, ARTICLE 6, ARTICLE 7, ARTICLE 8, ARTICLE 9, ARTICLE 10, ARTICLE 12, ARTICLE 23, ARTICLE 24, ARTICLE 26, ARTICLE 31, ARTICLE 34, ARTICLE 39 and ARTICLE 42, 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 ("**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 Clause 4.1.2 or Clause 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 60 (sixty) days from the date of this Agreement, by notice require the Authority to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within the period prescribed in such notice and such period shall not be less than the period available for the Concessionaire to achieve the Appointed Date, and the Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:

- (a) procured for the Concessionaire, the Right of Way to the Site in accordance with the provisions of Clause 10.3 and shall have executed LDS Agreement(s) in the form provided in Schedule W;
- (b) procured Applicable Permits relating to pre-construction activities, which are required to be mandatorily obtained by the Authority, and shall include the following:
 - (i) Defence Clearance No. 3(15)/07/D(Air-II) dated October 11, 2010, from the Ministry of Defence, GOI;
 - (ii) Environment and CRZ Clearance F. No. 10-53/2009-IA.III dated November 22, 2010, from the Ministry of Environment and Forests, GOI;
 - (iii) Wildlife Clearance F. No. 6-43/2007 WL-I dated August 1, 2013 from the Wildlife Division, Ministry of Environment and Forests, GOI;
 - (iv) Permission for Removal of Mangroves pursuant to order dated October 29, 2013, of the Hon'ble Bombay High Court;
 - (v) Forest Clearance No. 8-95/2012-FC dated December 17, 2013 (Stage I), from the Ministry of Environment and Forests, GOI;
 - (vi) Forest Clearance No. 8-95/2012-FC dated April 24, 2017 (Stage II), from the Ministry of Environment and Forests, GOI;
 - (vii) Consent to Establish for construction of Phase I of the Project, No. Format 1.0/BO/ CAC-cell/ EIC-RD-3154-15/CE/CAC-12995 dated October 14, 2015.
- (c) caused the execution of the relevant following agreements:



- (i) Escrow Agreement in the form provided in Schedule O,
- (ii) Substitution Agreement in the form provided in Schedule R,
- (iii) Shareholders' Agreement in the form provided in Schedule S,
- (iv) CNS-ATM Agreement in the form provided in Schedule T,
- (v) Memorandum of Understanding in the form provided in Schedule U,
- (vi) State Government Support Agreement in the form provided in Schedule V, and
- (vii) LDS Agreement in the form provided in Schedule W,

by itself, GOI, GOM or the concerned 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,

- (d) procured the appointment of the Independent Engineer, in accordance with the provisions of ARTICLE 23 hereof.

Provided that upon written intimation to the Concessionaire, the Authority may fulfil its Conditions Precedent set forth in this Clause 4.1.2 within an extended period of 120 (one hundred twenty) days, after the expiry of the date prescribed in the notice provided by the Concessionaire under this Clause 4.1.2.

4.1.3 Except as may have been specifically otherwise provided in this Agreement, the Conditions Precedent required to be satisfied by the Concessionaire within a period of 180 (one hundred eighty) days from the date of this Agreement shall be deemed to have been fulfilled, when the Concessionaire shall, subject to the satisfaction of the Authority, have:

- (a) provided Performance Security to the Authority in accordance with Clause 9.1,
- (b) procured all the Applicable Permits as may be required for the commencement of the Construction Works for Phase I, including but not limited to the Applicable Permits 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,
- (c) the Master Plan has been finalised and submitted by the Concessionaire as per Clause 12.2,
- (d) executed and procured execution of the Escrow Agreement in the form provided in Schedule O and the same shall have become effective in accordance with the terms thereof,
- (e) executed and procured execution of the Substitution Agreement in the form provided in Schedule R and the same shall have become effective in accordance with the terms thereof,
- (f) executed and procured execution of the Shareholders' Agreement in the form provided



in Schedule S and the same shall have become effective in accordance with the terms thereof,

- (g) executed and procured the execution of the CNS-ATM Agreement in the form provided in Schedule T and the same shall have become effective in accordance with the terms thereof,
- (h) executed and procured execution of the Memorandum of Understanding in the form provided in Schedule U and the same shall have become effective in accordance with the terms thereof,
- (i) executed and procured execution of the State Government Support Agreement in the form provided in Schedule V and the same shall have become effective in accordance with the terms thereof,
- (j) executed and procured execution of the LDS Agreement(s) in the form provided in Schedule W and the same shall have become effective in accordance with the terms thereof,
- (k) executed the Financing Agreements for Phase I and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire,
- (l) achieved the Financial Close,
- (m) the Preferred Bidder shall have infused at least 10% (ten percent) of the Total Project Cost for Phase I in the Concessionaire, before the Concessionaire avails any debt from the Senior Lenders,
- (n) 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,
- (o) delivered to the Authority from the Preferred Bidder, confirmation of the correctness of the representations and warranties, set forth in Sub-Clauses (c), (d), (g), (h), (k), (l), (m), (p) and (q) of Clause 7.1 of this Agreement,
- (p) executed and procured execution of the airport operators' agreement, if applicable, and the same shall have become effective in accordance with the terms thereof,
- (q) procured the appointment of the Independent Engineer, in accordance with the provisions of ARTICLE 23 hereof, and
- (r) 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 hereof:

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 purposes of the achievement of the Appointed Date. The Authority may, in its sole discretion, grant any waiver hereunder with such conditions as it may deem fit.



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

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

4.2 Damages for delay by the Concessionaire

In the event that (a) 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 (b) the delay has not occurred as a result of failure to fulfil the obligations by the Authority 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 percent) of the Performance Security for each day of 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 having a direct impact on the fulfilment of any the Conditions Precedent to be fulfilled by the Concessionaire under Clause 4.1.3, no Damages shall be due or payable by the Concessionaire under this Clause 4.2 until the date on which the Authority shall have procured fulfilment of the Conditions Precedent specified in Clause 4.1.2. The payment of Damages pursuant to this Clause 4.2 is independent of the Concessionaire's obligations under any other provision of this Agreement.

4.3 Deemed Termination upon delay

4.3.1 Without prejudice to the provisions of Clause 4.2, and subject to the provisions of Clause 9.1 and Clause 9.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, before the expiry of the 360 (three hundred sixty) days of the date of execution of this Agreement or any extended period, as per the terms of this Agreement or may be 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 this 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, then, notwithstanding the provisions of Clause 4.2 above, the Performance Security of the Concessionaire shall be encashed and appropriated by the Authority as Damages thereof.

4.3.2 Upon such termination, the:

- (a) Preferred Bidder shall discharge all liabilities, if any created, in any form whatsoever, within 7 (seven) days of such termination;
- (b) Preferred Bidder shall transfer its entire shareholding in the Concessionaire to the Authority or any of its nominees, at its own cost, within 15 (fifteen) days of the termination, and each of the Concessionaire and the Preferred Bidder shall take all such actions and proceedings, as may be required under the Applicable Laws, to complete



such transfer;

- (c) Concessionaire shall cause all the Directors on the Board of the Concessionaire, except as may be appointed by the Authority or its nominees, to resign from the Board within 15 (fifteen) days of the termination in consideration of the Termination Payment, and each of such resigning Directors shall take all actions and proceedings, as may be required under the Applicable Laws, to complete such process.



ARTICLE 5
OBLIGATIONS OF THE CONCESSIONAIRE

5.1 Obligations of the Concessionaire

- 5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Airport, in accordance with the provisions of the GOI Approval, Applicable Permits, Applicable Laws, this Agreement 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, necessary for the construction, operations and maintenance.
- 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 and Non-Aeronautical Assets in accordance with the provisions of this Agreement and Good Industry Practice.
- 5.1.6 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.
- 5.1.7 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) 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;

- (f) 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;
- (g) procure that all facilities and amenities within the Airport are operated and maintained in accordance with this Agreement and Good Industry Practice and ensure that the Users have non-discriminatory access for use of the same in accordance with the provisions of this Agreement, Applicable Laws and Applicable Permits;
- (h) ensure that Users are treated with due courtesy and consideration and provided with ready access to services and information;
- (i) provide, or cause to be provided, Aeronautical Services and Non-Aeronautical Services at the Airport in accordance with the provisions of this Agreement, Applicable Laws and Applicable Permits;
- (j) 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;
- (k) 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, and also arranging for the availability of the electricity for the Users of the Airport and various Aeronautical Services and Non-Aeronautical Services in accordance with the provisions of the Electricity Act, 2003 and rules and regulations made thereunder;
- (l) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement, Applicable Laws and Applicable Permits; and
- (m) 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 The Concessionaire shall, at all times during the term of this Agreement, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreements, and no default under any Project Agreement or any other agreements shall excuse the Concessionaire from its obligations or liability hereunder.
- 5.2.2 Except the Project Agreements which are annexed as Schedule to this Agreement, 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 has 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. 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 neither 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. 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 Except as otherwise contained in this Agreement for the purposes of the construction and operation of the Airport, including Aeronautical Services and the Non-Aeronautical Services, the Concessionaire shall not assign or in any manner create an Encumbrance on any Project Asset without prior written approval of the Authority, which approval the Authority may, in its discretion, deny.
- 5.2.5 The Concessionaire shall procure that, except the Project Agreements in which the Authority or any of the Government Instrumentality is a party thereof, each of the Project Agreement 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”). 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 such Project Agreements and undertakes that it shall, in respect of each of such 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 such 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.
- 5.2.6 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that selection or replacement of any or 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 the public interest perspective and the Designated GOI Agency from national security perspective. The decision of the Authority and the Designated GOI Agency in this behalf shall be final, conclusive and binding on the Concessionaire, and the Concessionaire undertakes that it shall not give effect to any such selection or contract without having such prior approval. It is expressly agreed that approval of the Authority or the Designated GOI Agency hereunder shall be limited to public interest perspective and the national security perspective respectively. 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 EPC Contractors or O&M 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 itself 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 percent) 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 itself or together with any person or persons acting in concert with it,

shall constitute a Change in Ownership requiring prior approval of the Authority from public interest perspective and the Designated GOI Agency from national security perspective. The decision of the Authority and the Designated GOI Agency in this behalf being final, conclusive and binding on the Concessionaire, and the Concessionaire 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. Approval of the Authority and Designated GOI Agency hereunder shall be limited to the public interest perspective and national security perspective, and the Authority and Designated GOI Agency shall endeavour to convey its decision thereon expeditiously. The Authority shall not be liable in any manner on account of grant, delay or otherwise of such approval and that such approval, delay, denial or otherwise 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:

- (i) the expression “acquirer”, “control” and “person acting in concert” has 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;
- (ii) 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
- (iii) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situated in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of 25% (twenty five percent) or more of the Equity of the Concessionaire shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.



- 5.3.3 The Concessionaire hereby agrees that if the Preferred Bidder is a special purpose vehicle established primarily for the purposes of holding Equity in the Concessionaire (such Preferred Bidder being an “**Promoter SPV**”), a transfer of any shareholding in such Promoter SPV shall constitute an indirect transfer of Equity by the Promoter SPV for the purposes of this Agreement and be subject to the restrictions on transfer of shares as set forth in this Agreement and the Shareholders Agreement.
- 5.3.4 The Concessionaire hereby further agrees to ensure the following:
- (a) if the Preferred Bidder is a single bidder, then, the Preferred Bidder holds at least 51% (fifty one percent) of the subscribed and paid up Equity of the Concessionaire till the 7th (seventh) anniversary of the Phase I COD;
 - (b) [Deleted]
 - (c) at no time during the Concession Period:
 - (i) any scheduled airline, cargo airline and/or their respective Associates, hold more than 26% (twenty six percent) of subscribed and paid up Equity of the Concessionaire;
 - (ii) irrespective of any shareholding in the Concessionaire by a scheduled airline, cargo airline and their Associates, any such entity shall not have any right to appoint any Director on the Board of Directors of Concessionaire or any Key Managerial Personnel in the Concessionaire.
- 5.3.5 The Concessionaire hereby also agrees to cause to ensure that the O&M Associate shall remain an Associate of the Preferred Bidder for a period atleast upto 3 (three) years from the Phase I COD. If such entity intends to reduce its shareholding in the O&M Associate in such a manner that it no longer remains an Associate, then, the Concessionaire shall execute service performance contract/ airport operator’s agreement with the O&M Associate, in the form and manner as may be approved by the Authority, prior to effecting any such reduction.

5.4 Obligations relating to Shareholding of the Authority

- 5.4.1 The Concessionaire and the Preferred Bidder shall execute an agreement with the Authority, substantially in the form specified at Schedule S (“**Shareholders’ Agreement**”), providing for the issue and allotment of 26% (twenty six percent) Equity of the Concessionaire (“**Authority’s Share**”) in favour of the Authority and/ or its nominee, and shall *inter-alia* also provide for the following:
- (a) appointment of nominee(s) of the Authority on the Board of Directors of the Concessionaire, in proportion to the Authority’s Share;
 - (b) acknowledgement of a right in favour of the Authority to grant and provide the beneficial interest in the Equity held by it in the Concessionaire to the Project Affected Persons, in the form and manner as it may deem fit;
 - (c) an irrevocable undertaking that the rights vested in the Authority and the Project Affected Persons, shall not be abridged, abrogated or in any manner affected by any act done or purported to be done by the Concessionaire or any of its Associates or Affiliates;



- (d) an irrevocable undertaking that 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 Preferred Bidder and the Concessionaire shall be bound by such undertaking; and
- (e) 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 Authority's Share, an affirmative vote of the Authority or the Director appointed by the Authority shall be necessary and required for the passing of, by the General Meeting of the Concessionaire or the meeting of Board of Directors thereof, as the case may be, any resolution providing for all or any of the of the matters identified as such in the Shareholders' Agreement or are incidental or consequential thereto.

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

5.4.4 Any requirement concerning capital infusion in the Concessionaire shall be the sole and exclusive responsibility of the Concessionaire and the Preferred Bidder, and all such requirements shall be governed by the provisions of the Shareholders' Agreement.

5.4.5 The Authority will not provide any form of support or guarantee at any point during the Concession Period, for meeting any capital requirement of the Concessionaire, in its capacity as the shareholder of the Concessionaire or otherwise.

5.4.6 The Preferred Bidder will, and the Concessionaire will procure that the Preferred Bidder and all shareholders of the Concessionaire other than the Authority (or its nominee), transfer its entire shareholding in the Concessionaire, upon the Termination of this Agreement to the Authority, in consideration of the receipt of the Termination Payment, in accordance with the terms hereof.

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 90 (ninety) days from the date of filing of the due and complete 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 (a) the requirements of Rule 83 of the Aircraft Rules, 1937; (b) any special directions or guidelines issued by the DGCA pursuant to Rule 133A of the Aircraft Rules, 1937; and (c) any other requirement of the DGCA in connection with the issuance of an airport licence.

5.5.3 The provisions of Clause 5.5.1 and Clause 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 sub-licensing or grant or allocation of any space, building, rights or privileges to private entities in the Airport.
- 5.6.2 For procurement of goods, works, services, sub-licenses or any other rights or privilege where the consideration (including deposits in any form in respect thereof) exceeds Rs. 25,00,00,000/- (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. The Parties agree that the Concessionaire should pre-qualify and short-list the applicants in a fair and transparent manner for ensuring that only experienced and qualified applicants are finally selected on arm's length basis 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 Related Party Transaction or a Contract with any Related Party except (a) after the prior written approval of the Authority as a reserved item/ affirmative action, in accordance with the terms of the Shareholders' Agreement; and (b) such transaction is on arm's length basis and is in compliance with the provisions of the Companies Act, 2013. The Parties also agree that before granting any consent hereunder, the Authority shall be entitled to seek any information as it may reasonably require in relation to the Contract and the Related Party with whom the Contract is proposed to be executed including but not limited to the commercial information concerning such Contract 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.
- 5.6.3 Notwithstanding anything contained contrary elsewhere, the Concessionaire shall adhere to the following contracting principles in respect of any of the Related Party Transactions:
- (a) No shareholder of the Concessionaire, and/or Key Managerial Personnel that has an interest in the contract, can be involved in the design of the contract, or the contracting process or decision-making.
 - (b) Where a shareholder of the Concessionaire, Key Managerial Personnel or any Related Party intends to tender for the contract, an independent probity auditor must be appointed to review and monitor the tender to ensure a complete arms' length arrangement. It is clarified that the independent probity auditor shall not be a Related Party of the Concessionaire or any of its shareholders. Concessionaire shall agree to the appropriate terms of reference and the selection procedure of the independent probity auditor as laid down by the Authority.
 - (c) The Concessionaire shall constitute an audit committee headed by a nominee of the Authority which would be responsible for auditing all the Related Party Transactions. The Board of the Concessionaire shall provide the terms of reference of the audit committee at the time of its constitution. The Concessionaire shall enter into any



Related Party Transaction only after obtaining approval of audit committee in writing. Any amendment/ modification in the terms and conditions of the Related Party Transaction shall also require prior approval of the audit committee.

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 and security clearance, if any required. The obligation to apply for and obtain such approvals and permits will always be of the Concessionaire and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such approvals and permits 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 endeavour to employ as many local personnel including but not limited to the Project Affected Persons and/ or any of their family personnel 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. 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.

5.10 Obligations relating to non-discriminatory access

Subject to the Applicable Permits, the Concessionaire shall operate and manage 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 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 to provide emergency medical aid, which shall be equipped to render first aid and to assist in accessing emergency medical aid from hospitals in the vicinity.

5.12 Obligations relating to noise control

The Concessionaire shall take all such measures as may be necessary in accordance with



Applicable Laws and Good Industry Practice to control and mitigate the noise arising from the Airport and its impact on Users and the neighbourhood.

5.13 Sole purpose of the Concessionaire

The Concessionaire has been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, i.e., the design, development, implementation, operation and management of the Project. The Concessionaire hereby agrees to not to have any shareholding interest or otherwise in any entity, or any other form of arrangement with any person, which may allow it to undertake or perform any other business activity. The Concessionaire hereby agrees to not to have any subsidiary or joint venture or any other form of arrangement, or be or become directly or indirectly engaged, concerned or interested in any business.

5.14 Branding of the Airport

5.14.1 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 except the Authority. Save and except as may be necessary in the normal course of business and always along with the name of the Authority, 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.

5.14.2 The Airport shall be known, promoted, displayed, advertised and branded by the name as shall be agreed between the Parties and approved by the relevant Government Instrumentality prior to the COD, and the Concessionaire shall at all times, for the purpose of any advertisement, display, reflection, branding or otherwise, shall display the Airport as such. If it intends to display its own name or its shareholders name at the spots where other public notices are displayed for the Users in the normal course of business, the same shall be preceded by the Authority's name.

5.15 Facilities for differently abled and elderly persons

The Concessionaire shall, in conformity with the regulations and 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
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 cause to procure the Applicable Permits required from any Government Instrumentality for development, 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) 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;
- (d) subject to and in accordance with Applicable Laws and the Applicable Permits, grant to the Concessionaire the authority to regulate Users at the Site and the Airport;
- (e) assist the Concessionaire in procuring assistance from Designated GOI Agency for regulation of the Users, removal of trespassers and security on or at the Airport;
- (f) 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;
- (g) support, cooperate with and facilitate the Concessionaire in the development, operation and maintenance of the Project in accordance with the provisions of this Agreement in accordance with the Applicable Laws and Applicable Permits; and
- (h) 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.

6.2 Maintenance obligations prior to Appointed Date

The maintenance of the Site during the Development Period shall be subject to the provisions of Clause 12.9. During the Development Period, until the execution of the LDS Agreement(s), the Authority shall be responsible for the security, management and maintenance of the Site, at



its own cost and expense. However, upon the execution of the LDS Agreement(s) during the Development Period, all such obligation of the security, management and maintenance of the Site, shall be passed on the Concessionaire with immediate effect from the date of the execution of the LDS Agreement(s), and the Authority shall be deemed to have complied with its obligations under Clause 4.1.2, Clause 10.2 and Clause 10.3, regarding the handing over of the Site.

6.3 Obligations relating to Reserved Services

- 6.3.1 Subject to and in accordance with the provisions of this Agreement, Applicable Laws and the Applicable Permits, the Authority shall extend support in procuring the services to be provided through the Designated GOI Agency, the CNS/ATM Services in accordance with the provisions of ARTICLE 19, and shall at all times cause to 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, Applicable Permits and Good Industry Practice.
- 6.3.2 Subject to the provisions of ARTICLE 19, the Authority shall extend support for the performance of all the Reserved Services in accordance with the provisions of this Agreement and Applicable Laws and the Applicable Permits.
- 6.3.3 The Authority agrees and undertakes that in order to enable the Concessionaire to discharge its obligations under this Agreement, Applicable Laws and Applicable Permits, 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, from time to time, 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, and such refinancing reduces the Debt Due as may be outstanding as on the date thereof. 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, and shall always be on the terms better than the one, as may be existing at such time, and is for the benefit and the interests of the Users.



ARTICLE 7
REPRESENTATIONS AND WARRANTIES

7.1 Representations and warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

- (a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) the Preferred Bidder (including the members thereof, if any) has the financial standing and capacity including but not limited to the Financial Capacity and the Technical Capacity (including O&M experience) to undertake the Project in accordance with the terms of this Agreement;
- (d) it does not have the equity ownership of any scheduled airline, cargo airline or any of their Associates, exceeding 26% (twenty six percent) of the total Equity of the Concessionaire;
- (e) 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;
- (f) 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 hereunder including any obligation, liability or responsibility hereunder or issue of jurisdiction;
- (g) the information furnished in the Bid by the Preferred 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;
- (h) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association or those of any member of the Preferred Bidder 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;
- (i) 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;
- (j) 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 result in the Material Adverse Effect on the performance of its obligations under this Agreement;

- (k) neither it nor the Preferred Bidder (including the members thereof, if any) and the respective Associates, have been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on its ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community;
- (l) neither it nor the Preferred Bidder (including the members thereof, if any) and the respective Associates, have been charge sheeted by any Government Instrumentality or convicted by any Court of Law, in respect of the matters relating to the security and integrity of India;
- (m) no investigation by a regulatory authority is pending either against it or the Preferred Bidder (including the members thereof, if any) and the respective Associates, or against any of their respective chief executive officer or any of the directors, managers or employees;
- (n) 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;
- (o) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3;
- (p) the Preferred Bidder and its Associates (including the members thereof, if any) 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;
- (q) the Preferred Bidder (including the members thereof, if any) is duly organised and validly existing under the laws of the jurisdiction of its incorporation or registration, 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;
- (r) all its rights and interests in the Airport shall pass to and vest in the Authority on the Transfer Date as per the Applicable Laws and the Applicable Permits, 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;
- (s) 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;



- (t) 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 or any Government Instrumentality, in connection herewith or during the bid process;
- (u) all information provided by the Preferred Bidder in response to the Request for Qualification and Request for Proposal or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects; and
- (v) all undertakings and obligations of the Concessionaire arising from the Request for Qualification and Request for Proposal or otherwise shall be binding on the Concessionaire as if they form part of this Agreement.

7.2 Representations and warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement pursuant to the GOI Approval and other Applicable Permits, 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 the financial standing and capacity to perform its obligations under this Agreement;
- (c) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (d) 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;
- (e) it has complied with Applicable Laws in all material respects; and
- (f) it has good and valid right to the Site, and has power and authority to grant a licence in respect thereto to the Concessionaire.

7.3 Disclosure

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



ARTICLE 8 DISCLAIMER

8.1 Disclaimer

- 8.1.1 The Concessionaire acknowledges on its behalf and on behalf of the Preferred Bidder, that prior to the execution of this Agreement, the Preferred Bidder and the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Qualification, Request for Proposal, Scope of the Project, Specifications and Standards, Site, requirements of the Applicable Permits for effectuating its rights under this Agreement, 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 Preferred Bidder that it 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 Preferred Bidder, 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 Preferred Bidder and its Associates or any person claiming through or under any of them.
- 8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement or render it voidable.
- 8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error, provided, however, that a failure on part of the Authority to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the Authority contained in Clause 8.1.1 and shall not in any manner shift to the Authority any risks assumed by the Concessionaire pursuant to this Agreement.
- 8.1.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Authority shall not be liable in any manner for such risks or the consequences thereof.



Part III
Development and Operations



ARTICLE 9 PERFORMANCE SECURITY

9.1 Performance Security

- 9.1.1 The Concessionaire shall, for the performance of its obligations hereunder in respect of Phase I, provide to the Authority, no later than 60 (sixty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs. 100,00,00,000/- (Rupees One Hundred Crore) in the form set forth in Schedule F (“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 90 (ninety) days from the date of this Agreement, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.
- 9.1.3 The Concessionaire shall provide separate Performance Securities prior to undertaking the Construction Works for any of the subsequent Phases, for an amount equivalent to 2% (two percent) of the cost approved for such Phase by the Senior Lenders of each such Phase of the Project. The term Performance Security as used in this Agreement shall refer to and include all the Performance Securities to be provided by the Concessionaire for each Phase of the Project.

9.2 Appropriation of Performance Security

Upon occurrence of a Concessionaire’s Default or failure to meet any Condition Precedent, the Authority shall, without prejudice to its other rights and remedies hereunder or in Applicable Law, be entitled to encash and appropriate from the Performance Security, the amounts due to it, for and in respect of such Concessionaire’s Default or for failure to meet any Condition Precedent. Upon such encashment and appropriation from the Bid Security or Performance Security, as applicable, the Concessionaire shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to its original level, and in case of appropriation of the entire Bid Security or Performance Security, provide a fresh Performance Security, failing which the Authority shall be entitled to terminate this Agreement in accordance with ARTICLE 34. Upon such replenishment or furnishing of a fresh Performance Security, the Concessionaire shall be entitled to an additional Cure Period of 60 (sixty) days for remedying the Concessionaire’s Default or 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 34.

9.3 Release of Performance Security

The Performance Security shall remain in force and effect for a period of 7 (seven) years from the COD for the respective Phases of the Project and shall be released after 3 (three) months from such expiry, provided, however, that any of 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, 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 provisions of Clause 9.3, a substitute Performance Security for a like amount, separately for each Phase, 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 Concession Period (“**Deemed Performance Security**”). The Deemed Performance Security shall be unconditional and irrevocable, and shall, notwithstanding anything to the contrary contained in Clause 28.3, 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. 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’s Default shall be liable to appropriation hereunder.

9.5 Appropriation of Deemed Performance Security

Upon occurrence of a Concessionaire’s 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’s Default. 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, and the provisions of Clause 9.2 in respect of additional Cure Period shall apply upon such replenishment.

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 may be appropriated from the Bid Security or Deemed Performance Security, as the case may be or available as on such date.



**ARTICLE 10
RIGHT OF WAY**

10.1 The Site

The site of the Airport is described in Schedule A and in respect of which the Right of Way shall be provided and granted by the Authority to the Concessionaire as a licensee under and in accordance with this Agreement ("Site").

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 and such other works as may be necessary pursuant to Clause 12.9 hereof. 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 Fees and Premium, 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 including the continuing Pre-development Works, hereby grants to the Concessionaire, 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, free of any Encumbrances, to develop, operate and maintain the 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 purposes permitted under this Agreement, and for no other purpose whatsoever, for the Concession Period.

10.2.3 The Concessionaire acknowledges that, it has, after a complete and careful examination, made an independent evaluation of the Site as a whole and has determined the nature and extent of the difficulties, upgradations, inputs, costs, time, resources, risks and hazards that are likely to arise or may be faced by it in the course of the performance of its obligations under this Agreement and the extent and manner of efforts required. The Concessionaire further acknowledges that it shall have no recourse against the Authority if it is, at a later date, found that the Site is deficient in any manner whatsoever. If a deficiency is found, the Concessionaire hereby acknowledges and agrees that it shall, at its own cost and at no cost to the Authority, take all appropriate measures to remedy the same.

10.2.4 For the purposes of this Agreement, the Concessionaire has:

- (a) inspected the Site and its surroundings;
- (b) satisfied itself as to the nature of the climatic, hydrological and general physical conditions of the Site, the nature of the ground and subsoil, the form and nature of the Site, and the nature of the design, work and materials necessary for the performance of its obligations under this Agreement;
- (c) satisfied itself as to the means of communication with, access to and accommodation on the Airport it may require or as may be otherwise necessary for the performance of



its obligations under this Agreement;

- (d) perused the documents concerning the award and implementation of the Land Development Works, and satisfied itself with the terms and conditions contained therein, which may have an impact on the performance of its obligations under this Agreement;
- (e) perused the documents concerning the award and performance of the roles and responsibilities by the Authority's consultants, including the project management consultant, Authority's engineer, etc. in relation to the implementation of the Land Development Works, and satisfied itself with the terms and conditions contained therein, which may have an impact on the performance of its obligations under this Agreement;
- (f) satisfied itself with the progress of the Pre-development Works and hereby confirms that the continuation of such Pre-development Works will not have any adverse implication on the performance of its obligations under this Agreement;
- (g) obtained for itself all necessary information as to the risks, contingencies and all other circumstances which may influence or affect the Concessionaire and its rights and obligations hereunder and its other rights and obligations under or pursuant to this Agreement.

10.2.5 The licence, access and right of way granted by this Agreement to the Concessionaire shall always be subject to the rights of the persons executing the Pre-development Works, until its successful completion 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 or any Government Instrumentality.

10.2.6 The Concessionaire expressly acknowledges that it shall have no recourse against the Authority in the event of any mistake made or misapprehension harboured by the Concessionaire in relation to any of the foregoing provisions of this ARTICLE 10 and the Authority hereby expressly disclaims any liability in respect thereof.

10.2.7 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. Notwithstanding any temporary or permanent structures erected on the Site by the Concessionaire or its sub-licensees, the licence in respect of the Site including in respect of the Airport, shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.

10.2.8 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 if so required in accordance with any Applicable Laws at such time, 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.

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



Period, and as per the Applicable Permits.

10.2.10 Notwithstanding anything contrary contained elsewhere in this Agreement, the Concessionaire hereby acknowledges, accepts and agrees that it has understood and inspected the scope and performance of the Pre-development Works, and hereby confirms as below:

- (a) the Pre-development Works does not have any impact or affect the Concessionaire's performance obligations under this Agreement in any manner whatsoever;
- (b) except as otherwise specifically provided in Clause 2.4 of the LDS Agreement, neither it shall have any claim in respect of any delay in the completion of the Pre-development Works or any impact thereof in the delay in the completion of the Construction Works, nor the Authority shall be liable in such regard in any manner whatsoever;
- (c) except as otherwise specifically provided in Clause 2.4 of the LDS Agreement, the Concession Period will not be extended under this Agreement on account of any delay caused in the completion of Pre-development Works.

10.3 Procurement of the Site

10.3.1 Pursuant to the notice specified in Clause 4.1.2, the Authority 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 unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Site, along with the execution of the LDS Agreement. Such memorandum shall have appended thereto an appendix ("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 unencumbered Site during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. 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 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 percent) 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 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. 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 or Provisional Completion may not be granted.

10.3.3 On and after signing the memorandum referred to in Clause 10.3.1, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Site and shall ensure that no encroachment or occupation 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 reasonable efforts to procure and grant, no later than 120 (one hundred twenty) 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 Construction Period and the Concession Period at the written request of the Concessionaire. *Provided that*, in any such case, the extension to the Construction Period and the Concession Period shall not be longer than the delayed period. *Provided further that*, the occurrence of any such delay in the grant of the 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 Authority in accordance with Good Industry Practice, provided that the Provisional Completion 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. 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.

10.4 Site to be free from Encumbrances

Subject to the provisions of Clause 10.2 and Clause 10.3, the Site shall be made available by the Authority to the Concessionaire pursuant hereto free from all Encumbrances 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. It is agreed that existing rights of way, easements, privileges, liberties and appurtenances to the Site shall be deemed to be Encumbrances. It is 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 either through or under the Concessionaire or otherwise, 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

- 10.7.1 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, and their respective employees, agents and consultants, to inspect the Construction Works, Airport and to investigate any matter within their authority, and the Concessionaire shall provide to all such persons reasonable assistance necessary to carry out their respective duties and functions.
- 10.7.2 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.

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. 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.

10.9 Licensee Rights

For the purpose of this Agreement, the Concessionaire shall have rights to the use of the Site as the 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.

10.10 Property taxes/ service charge and other charges

- 10.10.1 The property tax (currently, in the nature of the service charge, and shall be replaced by the property tax upon the Site being covered within the municipal limits pursuant to the Applicable Laws), shall be payable by the Concessionaire to the Authority/ concerned municipal body as per the rates prevalent at the time of the payment, with effect from the date of the execution of the LDS Agreement.
- 10.10.2 Any charges and Taxes in respect of the Site and if paid by the Authority in accordance with Applicable Laws, shall be reimbursed by the Concessionaire to the Authority within a period of 30 (thirty) days of receiving a notice from the Authority along with necessary particulars thereof.



10.10.3 The Concessionaire shall be responsible for the payment of all the charges to the Authority, as may be leviable under the Applicable Laws including the GDCR and NMDLR, for the available built-up area at the Site. *Provided however that*, the payment of 'water resource development charges' forming a part of such charges as per the Applicable Laws, may be deferred upto a maximum period of 10 (ten) years from the Appointed Date at the written request of the Concessionaire. If the Concessionaire makes the request for any such deferment in the payment of 'water resource development charges', then, the Concessionaire shall be required to make payment of such deferred 'water resource development charges', within 30 (thirty) days of the commencement of the 11th year from the Appointed Date, along with an interest calculated at the rate of 3% (three percent) plus Bank Rate per annum compounded on quarterly rest basis.



**ARTICLE 11
UTILITIES AND TREES**

11.1 Existing Utilities

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

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 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.

11.3 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. 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 develop and maintain the Airport in accordance with this Agreement and Applicable Permits and any damage caused by such use shall be restored forthwith.

11.3.2 The Authority may, by notice require the Concessionaire to facilitate in connecting any adjoining transport system, including a mass rapid transit system/ metro rail, approach roads, overbridges/ underbridges, over-passes or under-passes, to the Site. Upon receipt of a notice hereunder, the connecting portion thereof falling within the Site shall be constructed by the Concessionaire at its cost, and the maintenance thereof shall be undertaken by the Concessionaire in accordance with the provisions of Clause 17.1.3.

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 development, 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. 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
CONSTRUCTION OF THE AIRPORT

12.1 Obligations prior to commencement of construction

Prior to commencement of Construction Works, the Concessionaire shall:

- (a) submit to the Authority, its Master Plan, Development Plan, detailed design, drawings and construction time schedule for Completion of the concerned Phase;
- (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 including of the GDCR and Applicable Permits;
- (d) apply to the concerned town planning authority, which for the time being is the Authority, and obtain the commencement certificate for Phase I, and for subsequent Phases, will seek development permission for the expansion of Terminal Building and construction of other Project Assets; and
- (e) make its own arrangements for quarrying and procurement of materials needed for the Airport under and in accordance with Applicable Laws and Applicable Permits.

12.2 Master Plan

- 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. The guidelines for preparing the Master Plan is provided in Annex II to Schedule A.
- 12.2.2 The Master Plan for the Airport must be consistent with all the regulatory requirements. The Master Plan shall be made pursuant to full consultation with all major stakeholders, in accordance with the terms of the Applicable Laws and this Agreement.
- 12.2.3 The Preferred Bidder has submitted the initial Master Plan to the Authority within 30 (thirty) days of the issuance of the LOA. The Concessionaire hereby undertakes that it shall submit the updated Master Plan, based upon the initial Master Plan submitted by the Preferred Bidder, to the Independent Engineer and the Authority, for its review and comments on or before 90 (ninety) days from the date of execution of this Agreement.
- 12.2.4 Within 30 (thirty) days of the submission of the Master Plan as per Clause 12.2.3, the Authority shall provide to the Concessionaire, any comments or suggested 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, submit to the Authority a revised Master Plan by suitably incorporating such comments and/or changes suggested by the Authority. However, if the Authority does not provide any comments or suggest any changes, within the said time period, it shall be deemed that the Authority has no comments and/or any changes to suggest to the Master Plan and the Master Plan submitted to the Authority shall be deemed to be the final Master Plan. The Master Plan shall accordingly be finalised by the Concessionaire and shall regulate the construction, development, operation



and management of the Airport in a Phase-wise manner.

- 12.2.5 Notwithstanding anything to the contrary contained in this Agreement, the Parties hereby acknowledge and agree that nothing in this Clause 12.2 shall be deemed to be an approval by the Authority of the Master Plan (or any part thereof) submitted by the Concessionaire. It shall be the sole responsibility and obligation of the Concessionaire to ensure that the final Master Plan is in full compliance with the requirements of the Applicable Laws and this Agreement, and is, additionally, in accordance with the parameters set out in other Project Agreement and nothing in this Agreement shall, in any way, absolve the Concessionaire of its obligation to ensure that the final Master Plan is in accordance with the provisions and all other obligations under any of the Project Agreements.
- 12.2.6 If the Concessionaire does not submit the initial Master Plan to the Authority as per Clause 12.2.3, then, the Authority has the right to levy liquidated damages on the Concessionaire at the rate of Rs. 10,00,000/- (Rupees Ten Lakh) for every day of delay, provided however that, the Concessionaire's total liability in such case shall not exceed Rs. 5,00,00,000 (Rupees Five Crore).
- 12.2.7 The Concessionaire further agrees to update and resubmit the Master Plan periodically, every 5 (five) years to the Authority for its review and comments.
- 12.2.8 The Development Plan for Phase I and the subsequent Phases shall be prepared by the Concessionaire as per the provisions of this Agreement, Applicable Laws and Applicable Permits.
- 12.2.9 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, Applicable Permits and Good Industry Practice.
- 12.2.10 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 minimise or eliminate the congestion, and upon receipt of any request hereunder, the Authority shall grant approval to the extent reasonably required herein.

12.3 Drawings

- 12.3.1 The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Phase Completion Schedule, 1 (one) soft copy and 1 (one) hard copy each of all drawings to the Independent Engineer, Authority and/ or any Government Instrumentality as per the Applicable Laws and the Applicable Permits, for review.
- 12.3.2 By submitting the drawings for review to the Independent Engineer and the Authority, 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, Applicable Permits and Good Industry Practice.
- 12.3.3 The Independent Engineer and the Authority shall, within 30 (thirty) days of the receipt of the



drawings, review the same and convey its respective observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project, the Specifications and Standards or otherwise. The Concessionaire shall not be obliged to await the observations of the Independent Engineer or the Authority on the drawings submitted pursuant hereto beyond the said 30 (thirty) days period and may begin or continue Construction Works, at its own discretion and risk.

- 12.3.4 If the aforesaid observations of the Independent Engineer or the Authority 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 for review. The Independent Engineer and the Authority shall give its observations, if any, within 15 (fifteen) days of receipt of the revised drawings.
- 12.3.5 No review and/or observation of the Independent Engineer or the Authority and/or its failure to review and/or convey its observations on any drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Engineer or the Authority be liable for the same, in any manner.
- 12.3.6 Without prejudice to the foregoing provisions, the Concessionaire shall submit to the Independent Engineer and the Authority for review and comments, its drawings relating to the Aeronautical Assets and Non-Aeronautical Assets and the Independent Engineer and the Authority has 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.
- 12.3.7 Within 90 (ninety) days of the relevant COD including Phase I COD, the Concessionaire shall furnish to the Authority 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 Terminal Building

- 12.4.1 The Concessionaire shall, prior to commencement of construction of the Terminal Building and/ or any part of the Airport, furnish to the Authority and to the Independent Engineer, the architectural parameters, controls, building profiles, facades, dimensions, designs, building materials, specifications, bill of quantities and cost estimates (“**Architectural Design**”). Once the same is reviewed and commented on by the Independent Engineer and/or Authority, then only, the Concessionaire shall make it available in the form of any supporting submission or otherwise to any Government Instrumentality for the purposes of its compliance under the Applicable Laws, Applicable Permits and/ or to obtain the relevant the Applicable Permits.
- 12.4.2 Within 30 (thirty) days of the receipt of the Architectural Design, the Authority and/ or the Independent Engineer, shall convey its observations to the Concessionaire. If the observations of the Authority or the Independent Engineer (submitted through the Authority), indicate that the Architectural Design is not in conformity with the Scope of the Project or the Specifications and Standards or otherwise, it shall be revised by the Concessionaire and resubmitted to the Authority and the Independent Engineer for review within 30 (thirty) days from the date of receipt of observations of the Authority. The Authority and/ or the Independent Engineer shall give their observations, if any, within 7 (seven) days of receipt of the revised Architectural Design.



- 12.4.3 In the event that any modifications to the Architectural Design shall have been determined under and in accordance with Clause 12.4.1, the Architectural Design shall be deemed to be modified to the extent thereof.
- 12.4.4 Subject to the obtaining of the Applicable Permits, 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 12.4.2, and may begin Construction Works at its own discretion and risk. 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.
- 12.4.5 In the event any disagreement arises between the Concessionaire or the Authority as per Clause 12.4.1 or Clause 12.4.2, and notifies the other Party of its intent, a Dispute shall be deemed to have arisen and the provisions of ARTICLE 39 shall apply mutatis mutandis for resolution thereof, provided that the arbitrators to be appointed under the provisions of Clause 39.3 shall only consist of eminent architects of international repute. The fee payable by the Authority to such arbitrators shall, in case the modification has been proposed by the Concessionaire, be reimbursed by the Concessionaire subject to a limit of Rs. 5,00,000 (Rupees Five Lakh) per day.

12.5 Construction of the Airport

- 12.5.1 The Concessionaire shall undertake construction of the Airport as specified in Schedule B and Schedule C with effect from the Appointed Date, and in conformity with the Specifications and Standards set forth in Schedule D and the Master Plan at the Site specified in Schedule A. The Concessionaire shall procure all the Applicable Permits as may be required for the Construction Works for Phase I, including but not limited to the Applicable Permits specified in Part II of Schedule E unconditionally, or if subject to conditions, then, fulfil all such conditions by the date and in the form and manner specified therein in full. Subject to the extension(s) approved in the Construction Period in accordance with the terms of this Agreement and/ or Clause 2.4 of the LDS Agreement, the 1245th (one thousand two hundred forty fifth) day from the Appointed Date shall be the scheduled date for completion of the Phase I of the Project ("**Scheduled Completion Date**") and the Concessionaire agrees and undertakes that construction of the Phase I of the Airport shall be completed on or before the Scheduled Completion Date. The Scheduled Completion Dates for the subsequent Phases shall be determined by the Authority, upon the receipt of the proposal from the Concessionaire in this regard.
- 12.5.2 The Concessionaire shall construct the Airport in accordance with the Phase Completion Schedule set forth in Schedule G. *Provided however that*, any such Phase Completion Schedule shall be subject to the extensions approved in the Construction Period in accordance with the terms of this Agreement and/ or Clause 2.4 of the LDS Agreement and any such Phase Completion Schedule for Phase I shall also comply with the following schedule:

Criteria (as certified by Independent Engineer)		Phase Completion Schedule
Physical Progress	Financial Progress	
10% (ten percent) of Phase I	Expenditure of 10% (ten percent) of the Total Project Cost or 10% (ten percent) of the total cost of implementation of Phase	Within 10 (ten) months of the Appointed Date



Criteria (as certified by Independent Engineer)		Phase Completion Schedule
Physical Progress	Financial Progress	
	I as noted in the Financial Package, whichever is higher	
20% (twenty percent) of Phase I	Expenditure of 20% (twenty percent) of the Total Project Cost or 20% (twenty percent) of the total cost of implementation of Phase I as noted in the Financial Package, whichever is higher	Within 14 (fourteen) months of the Appointed Date
30% (thirty percent) of Phase I	Expenditure of 30% (thirty percent) of the Total Project Cost or 30% (thirty percent) of the total cost of implementation of Phase I as noted in the Financial Package, whichever is higher	Within 17 (seventeen) months of the Appointed Date
40% (forty percent) of Phase I	Expenditure of 40% (forty percent) of the Total Project Cost or 40% (forty percent) of the total cost of implementation of Phase I as noted in the Financial Package, whichever is higher	Within 20 (twenty) months of the Appointed Date

In the event, the Concessionaire fails to achieve any milestone as per the Phase Milestone within a period of 90 (ninety) days from the date set forth for such Phase Milestone in Schedule G, unless such failure has occurred due to Force Majeure or for reasons attributable to the Authority or for any other reason approved specifically in accordance with the terms of Clause 2.4 of the LDS Agreement, it shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one percent) of the amount of Performance Security for delay of each day until such milestone as per the Phase Completion Schedule is achieved, provided that if any or all milestones for a Phase Completion Schedule or the Scheduled Completion Date are extended in accordance with the provisions of this Agreement or Clause 2.4 of the LDS 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 a concerned Phase is achieved on or before the Scheduled Completion Date for such Phase, the Damages paid under this Clause 12.5.2 shall be refunded by the Authority to the Concessionaire, but without any interest thereon. It is agreed that recovery of Damages under this Clause 12.5.2 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination.

- 12.5.3 In the event that the Phase I of the Airport is not completed and Phase I COD does not occur within 365 (three hundred sixty five) 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.

12.6 Development of Project Facilities

- 12.6.1 Subject to the provisions of Clause 12.5, the Concessionaire shall undertake development of the Project Facilities as specified in Schedule B together with provision specified in Schedule C, and in conformity with the Specifications and Standards set forth in Schedule D, Applicable Laws and Applicable Permits.
- 12.6.2 Any development, addition or modification to the Project Facilities shall be in accordance with the design and Master Plan, and in harmony with the overall design and environment of the Airport, but in any event, it shall be cost effective and in the best interests of the Users.



12.7 Expansion of the Airport

- 12.7.1 As and when the existing Phase(s) of the Airport, achieves the traffic trigger as specified in the Master Plan, 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. In such regard, the Concessionaire shall procure all the Applicable Permits as may be required for undertaking any such expansion, unconditionally, or if subject to conditions, then fulfil all such conditions by the date and in the manner specified therein, in full.
- 12.7.2 Without prejudice to the provisions of this ARTICLE 12, the Concessionaire shall ensure and procure that expansion of the Project Facilities shall be in accordance with the Architectural Design and Master Plan, and in harmony with the overall design and environment of the Airport.
- 12.7.3 The additional assets and facilities required to be constructed in pursuance of the provisions of Clause 12.7.1, shall be completed and placed into operation on or before the target date decided for that particular facility in the Master Plan, but not later than 3 (three) years from the date on which the shortfall specified therein occurred. Any assets and facilities constructed under this Clause 12.7 shall be deemed to form part of the Project Assets.
- 12.7.4 The provisions of this Agreement, insofar as they relate to Construction Works including in relation to the right of Termination, 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.

12.8 Airport Development Monitoring Committee

Notwithstanding ARTICLE 6 hereof, in order to perform its obligations hereunder, the Authority shall within 30 (thirty) days of the date of this Agreement, create a separate dedicated unit ("ADMC") under the chairmanship of VC & MD of the Authority and such other members as the Authority may decide. The ADMC shall be the 'single point of contact' for the Concessionaire for all matters concerning this Agreement. The ADMC would meet as often, as may be reasonably required with representatives of the Concessionaire and conduct a joint review of emerging issues and concerns and keep an oversight of the construction, development and operation of the Airport.

12.9 Pre-development Works

- 12.9.1 The Concessionaire acknowledges that the Authority has undertaken certain pre-development works at the Site as specified in Annex of Schedule B ("**Pre-development Works**"), and the Concessionaire hereby accepts the receipt of the Site under Clause 10.2 subject to the continuation of such Pre-development Works. Subject to the provisions of Clause 12.9.2, the amounts paid/ payable by the Authority for the implementation of the Pre-Development Works upto an amount of Rs. 34,20,00,00,000/- (Rupees Three Thousand Four Hundred Twenty Crore), shall be deemed as a soft loan ("**Soft Loan**") for the purposes of this Agreement. The Authority acknowledges, agrees and undertakes that it shall provide the Soft Loan in accordance with the provisions of this Clause 12.9.



- 12.9.2 An amount of Rs. 430,00,00,000/- (Rupees Four Hundred Thirty Crore) out of the Soft Loan shall be considered as the Authority's equity capital infusion in the Concessionaire in consideration for the subscription of the Authority's Share, and the Soft Loan shall be subject to reduction of such amount from repayment accordingly.
- 12.9.3 The Concessionaire agrees and undertakes that any amount or expenditure in excess thereof in respect of the Land Development Works forming part of the Pre-development Works, which are assigned or novated to it in accordance with the terms hereof and have resulted due to change in scope attributable to the Concessionaire, shall be borne directly, entirely and solely by the Concessionaire and the Authority shall not provide any compensation, cost, amount in the form of additional Soft Loan or otherwise for any such excess. Any additional costs incurred on the implementation of the Land Development Works otherwise, shall be paid by the Authority in the form and manner provided in the LDS Agreement (s). Any such additional amount that may be paid by the Authority, shall not be considered as a part of the Soft Loan.
- 12.9.4 The Soft Loan shall be equal to the amount specified in Clause 12.9.1 and Clause 12.9.3, and shall be paid by the Authority in accordance with the terms of this Agreement. The Parties acknowledge that the Soft Loan has neither been included in the sum totalling the Total Project Cost nor will form any part thereof at any point of time.
- 12.9.5 The Land Development Works, which are assigned or novated to the Concessionaire in accordance with the terms hereof, shall be undertaken by the Concessionaire as if they are Construction Works forming part of the Project, and the provisions of this Agreement shall apply *mutatis mutandis* to such Land Development Works, save and except as otherwise provided in this Clause 12.9.
- 12.9.6 The Soft Loan shall be repaid by the Concessionaire to the Authority in 5 (five) equal annual instalments within 7 (seven) days of the commencement of each year in the following manner:
- (a) an amount, as may be reduced upon the adjustment as per Clause 12.9.2 above out of Rs. 23,58,00,00,000/- (Rupees Two Thousand Three Hundred and Fifty Eight Crore), beginning from the 11th (eleventh) anniversary of the Appointed Date,
 - (b) balance amount of Rs. 10,62,00,00,000/- (Rupees One Thousand and Sixty Two Crore) of the Soft Loan, beginning from the 16th (sixteenth) anniversary of the Appointed Date.

Provided however that, the Concessionaire has an option to seek the deferment of the linkage date for the repayment of the Soft Loan from the Appointed Date to such other date as may occur anytime upto the Phase I COD. No such deferment of the linkage date for the repayment of the Soft Loan can occur after Phase I COD. In the event, the Concessionaire is inclined to exercise its option under this Clause 12.9.6, then, it shall:

- (i) intimate as such to the Authority atleast 15 (fifteen) days prior to the occurrence of the Appointed Date, while ensuring that such deferred date is occurring only upto the Phase I COD;
- (ii) pay such amount, which is equivalent to the net present value of the Soft Loan, as of the Appointed Date, arrived at by discounting it at the rate of 2% (two percent) above the Bank Rate, and
- (iii) comply with all other terms and conditions, including but not limited to the number and nature of payment of instalments of the Soft Loan commencing from the 11th and the



16th year of the date as may be deferred from the Appointed Date and notified by the Concessionaire, in accordance with the terms of this Agreement.

12.9.7 Assets forming part of the Pre-development Works and financed by the Soft Loan shall be considered as a part of the capital expenditure for the purposes of the determination of Aeronautical Charges by AERA.

12.10 Development of MRO Facilities

12.10.1 Subject to the provisions of this Clause 12.10 and Clause 18.13, the Concessionaire shall undertake the development of the MRO Facilities and 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 The area earmarked for the MRO Facilities in the Master Plan, may be used for any other facility until any inquiry comes and the Concessionaire enters into any arrangement with any third party or the Concessionaire itself decides for developing and operating the MRO Facilities and for associated activities.

12.10.3 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
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, a monthly report on progress (both physical and financial) of the Construction Works executed and next month's construction plan along with relevant information as may be required by the Authority.

13.2 Inspection

During the Construction Period, the Independent Engineer shall inspect the Airport works, considering the monthly progress reports submitted by the Concessionaire, at least once a month and make a report of such inspection ("**Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Phase Completion Schedule, Scope of the Project, Specifications and Standards, Applicable Laws and the Applicable Permits. It shall send a copy of the Inspection Report to the Authority and if required Authority shall notify Concessionaire to rectify and remedy the defects or deficiencies, if any identified in the Inspection Report and the Concessionaire, within 15 (fifteen) days of receipt of such notification from the Authority, shall rectify and remedy the defects or deficiencies, if any. Such inspection or submission of Inspection Report by the Independent Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

13.3 Tests

13.3.1 For determining that the Construction Works conform to the Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the Independent Engineer from time to time, in accordance with Good Industry Practice, Applicable Laws, Applicable Permits and this Agreement, for quality assurance. The size of sample for such tests shall, to the extent possible, not exceed 10% (ten percent) of the quantity and/or number of tests of the total works performed. 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 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, Applicable Laws, Applicable Permits and this Agreement, and in such an event, the Concessionaire shall cooperate with, and provide the necessary assistance to, the Independent Engineer for discharging its functions hereunder.

13.3.2 In the event that results of any tests conducted under this Clause 13.3 establishes 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.

13.3.3 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, Applicable Laws and the Applicable Permits. 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 12.5.2, if the Concessionaire does not achieve any of the Phase 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, it shall notify the Authority and the Authority in-turn 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 the progress and the period within which it shall achieve Phase I COD.

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 life or property, 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 life and property. 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 31.7, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (“**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. The Preservation Costs shall be specifically excluded for the purposes of the determination of the Aeronautical Charges, to be determined by AERA.

13.5.4 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Authority, on recommendation of Independent Engineer, shall determine any extension of the dates set forth in the Phase Completion Schedule to which the Concessionaire is reasonably entitled. 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

13.6.1 During the Construction Period, the Concessionaire shall provide to the Authority for every



calendar quarter, a video recording, which will be compiled into a 3 (three) hour 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) days of the Appointed Date and thereafter, no later than 15 (fifteen) days after the close of each quarter.

- 13.6.2 The video recording to be provided by the Concessionaire pursuant to this Clause 13.6 hereof, shall cover the activities undertaken by the Concessionaire on evenly weekly distribution basis, and shall be a true reflection of the activities undertaken and performed by the Concessionaire during the relevant recording period.



ARTICLE 14
COMPLETION OF PHASE

14.1 Tests

- 14.1.1 No later than 90 (ninety) days prior to the likely Completion of the relevant Phase of the Airport, the Concessionaire shall notify the Authority and the Independent Engineer of its intent to subject the Airport to the Tests. The date and time of each of the Tests shall be determined by the Concessionaire in consultation with the Independent Engineer, and notified to the Authority who may designate its representative to witness 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 15 (fifteen) days' notice to the Independent Engineer.
- 14.1.2 All Tests shall be conducted in accordance with Schedule H 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 Applicable Permits 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, it has 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 Concessionaire shall provide to the Independent Engineer and the Authority copies of all Test data including detailed Test results.
- 14.1.3 The Authority and/or 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 the Specifications and Standards, Applicable Laws and Applicable Permits, or has a reasonable doubt about the adequacy of the strength of the physical structure of the runway, taxiways, apron, ATC Facility and Terminal Building, 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.

14.2 Completion

Upon completion of the Construction Works as per the provisions of this Agreement (“**Completion**”) and the Independent Engineer determining the Tests to be successful, the Concessionaire shall submit to the Authority with a copy to the Independent Engineer a Completion Report (“**Completion Report**”). The Completion Report will include the test data,



procedures followed, test results and the Independent Engineer shall on verification of the Completion Report of the Concessionaire, recommend the Authority for issue of Completion Certificate (“**Completion Certificate**”) for completion of the physical construction of the relevant Phase of the Airport in accordance with the terms of this Agreement, and the Concessionaire will remain obligated to obtain all the necessary Applicable Permits, before starting the commercial operations, in accordance with the Applicable Laws.

14.3 Provisional Completion

- 14.3.1 The Authority may, at the request of the Concessionaire and subject to the recommendations of the Independent Engineer and obtaining of all the requisite Applicable Permits including DGCA License, allow operations of the Airport 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 (“**Provisional Completion**”). In such an event, the Independent Engineer shall in consultation with Concessionaire, submit to the Authority, a list of outstanding items which shall subsequently signed jointly by the Authority, Independent Engineer and the Concessionaire (“**Punch List**”).
- 14.3.2 The Parties hereto expressly agree that the operation under this Clause 14.3 may, upon request of the Concessionaire to this effect, be allowed 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 allowing operation under this Clause 14.3, 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.
- 14.3.3 The Concessionaire will remain obligated to complete the Punch List items within the prescribed period and obtaining of all the necessary Applicable Permits in accordance with the Applicable Laws.

14.4 Completion of Punch List items

- 14.4.1 All items in the Punch List shall be completed by the Concessionaire before the Scheduled Completion Date 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 percent) of the Performance Security, and (b) 0.2% (zero point two percent) 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. 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.
- 14.4.2 Upon completion of all Punch List items, the Concessionaire shall, if required, undertake the applicable Tests in presence of the Independent Engineer and the Concessionaire shall submit its Completion Report to the Authority and Independent Engineer. 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.



ARTICLE 15
ENTRY INTO COMMERCIAL SERVICE

15.1 Commercial Operation Date

- 15.1.1 Each Phase of the Airport shall be deemed to be complete when the Completion or the Provisional Completion, as the case may be, is achieved under the provisions of ARTICLE 14, and accordingly the commercial operation date of the relevant Phase of the Airport shall be the date on which the Concessionaire shall have obtained the Applicable Permits, including the licence from DGCA to operate the relevant Phase of the Airport (“COD”). *Provided however that, and notwithstanding anything contained contrary elsewhere in this Agreement, if the Concessionaire is of the opinion that at any time prior to the Scheduled Completion Date, any part of the Phase I can be put for commercial operations notwithstanding the Completion or Provisional Completion of the Phase I in entirety, then, the Concessionaire shall subject to the prior approval of the Authority in such regard, can put such part of the Phase I in commercial operations by obtaining all the necessary Applicable Permits and complying with all other terms and conditions of this Agreement and the Applicable Laws. Any such part commissioning of the Phase I will have no impact on the Concessionaire’s obligation to complete the Phase I as per the Phase Milestone by the Scheduled Completion Date. The Airport shall enter into commercial service on the Phase I COD or part commissioning of Phase I as above, whereupon the Concessionaire shall be entitled to demand and collect Fee in accordance with the provisions of ARTICLE 27.*
- 15.1.2 In the event that the Authority or any Designated GOI Agency (responsible for providing Reserved Services at the Airport and such Reserved Services being necessary for the achievement of the COD) prevents, or causes to be prevented, or in any manner delays the entry of the Airport into commercial service after achieving Completion or the Provisional Completion, as the case may be, or where such delay occurs by the Authority for any reason attributable to the Authority, the Concessionaire may declare relevant COD and notify the Authority forthwith. In the event of any Dispute relating to the declaration of relevant COD hereunder, the Dispute Resolution Procedure shall apply.

15.2 Damages for Delay

Subject to the provisions of Clause 12.5, if the Phase I COD 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 percent) of the amount of Performance Security for delay of each day until Phase I COD is achieved.



**ARTICLE 16
CHANGE OF SCOPE**

16.1 Change of Scope

- 16.1.1 Notwithstanding anything to the contrary contained in this Agreement, any provision of additional works and services which are not specified 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 (“**Change of Scope**”). Any Change of Scope shall be made in accordance with the provisions of this ARTICLE 16.
- 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 there for 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 performed as a Change of Scope 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.

16.2 Procedure for Change of Scope

- 16.2.1 In the event, 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 (“**Change of Scope Notice**”).
- 16.2.2 Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary Documentation in support of:
- (a) the impact, if any, which the Change of Scope is likely to have on the 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.
- 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 manner of the implementation of the Change of Scope. Upon reaching an agreement, the Authority shall issue an order (“**Change of Scope Order**”) requiring the Concessionaire to proceed with the performance thereof. In the event, 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.
- 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.



16.2.5 Any such Change of Scope shall be made in accordance with the provisions of this ARTICLE 16.

16.3 Power of the Authority to undertake works and services

16.3.1 Notwithstanding anything to the contrary contained in this ARTICLE 16, the Authority may, after giving notice to the Concessionaire and considering its reply thereto, award any works or services forming part of the Change of Scope, to any person on the basis of open competitive bidding, provided that the Concessionaire has the option of participating in the bid process, subject to payment of 2.50% (two point fifty percent) of the estimated cost of such works or services, to the Authority. The Concessionaire shall be entitled to exercise such one-time option only if it has participated in the bidding process and its bid is within 10% (ten percent) of the first ranked bid thereof. If the Concessionaire is not implementing any such works or services, the Concessionaire shall provide access, assistance and cooperation to the person who undertakes the works or services hereunder.

16.3.2 The works or services undertaken in accordance with this Clause 16.3 shall conform to the Specifications and Standards and shall be carried out in a manner that minimises disruption in the implementation, 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 16.3.

16.4 Costs for implementation of Change of Scope

Notwithstanding the award of the works or services forming part of the Change of Scope to the Concessionaire or otherwise pursuant to this ARTICLE 16, any costs incurred by the Authority herein, shall be informed by the Authority to the Concessionaire on the completion of such works or services. The Concessionaire shall submit a statement of such costs along with its application for the determination of the Aeronautical Charges to AERA, and pay to the Authority, all such amounts in 12 (twelve) equal monthly instalments thereof.



ARTICLE 17
OPERATION, MAINTENANCE AND MANAGEMENT

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 the operation of the Airport, including airside, Terminal and land side, 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 runway end safety area 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 are free from obstructions or that the obstructions shall be limited to the permissible limits specified in Applicable Laws, Applicable Permits and relevant ICAO Documents and Annexes;
- (i) undertaking routine maintenance including prompt repairs of cracks, joints, drainage systems, embankments, structures, buildings, pavement markings, signalling systems, communication systems, lighting, signages and other equipment;
- (j) undertaking major maintenance such as repairs to structures, repairs and refurbishment of equipment, signalling and communication system and major overhaul of equipment;
- (k) ensuring 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 equipment and facilities or endanger the safety of aircraft operations shall be permitted;

- (l) ensuring that appropriate arrangements and precautions have been undertaken at the Airport to prevent bird and animal nuisance in and around the Airport, in accordance with the Applicable Laws and Good Industry Practices;
- (m) maintaining the Airfield Lighting System and the main and standby power supply systems in accordance with the standards prescribed in Applicable Laws and relevant ICAO Documents and Annexes;
- (n) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on, unauthorised entry to or unauthorised 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 Services 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 17;
- (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 or appropriate international guidelines, Applicable Laws, Applicable Permits and Good Industry Practice;
- (w) providing all the requisite information, data, operating statistics, etc., as may be required by the Authority, any of the Government Instrumentality, DGCA, GOM 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 or



utilities situated on the Site, as per ARTICLE 11.

17.2 Maintenance Requirements

The Concessionaire shall at all times comply with Applicable Law in the maintenance of the Airport and will maintain, keep in good operating repair and condition in accordance with Applicable Laws, Applicable Permits, the standards prescribed in the relevant 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.

17.3 Safety, breakdowns and accidents

17.3.1 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, standards prescribed in the relevant ICAO Documents and Annexes and Good Industry Practice. In this regard, the Concessionaire shall also follow the guidelines prescribed for safety in Schedule J herein.

17.3.2 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.

17.4 De-commissioning due to Emergency

17.4.1 If, there exists an Emergency which warrants de-commissioning and closure of the whole or any part of the Airport, the Concessionaire shall, as advised by the Authority or designated GOI Agency, 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.

17.4.2 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.

17.4.3 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.

17.4.4 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.

17.5 Section Closure

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, except with the prior written approval of the Authority and in close coordination with the Designated GOI Agencies who are providing the Reserved Services in the affected section. Such approval shall be sought by the Concessionaire through a written request to be made to 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 Authority in consultation with the Independent Engineer, shall grant permission with such modifications as it may deem reasonable and necessary and a copy of such permission shall be sent to the Concessionaire. The need for origination of a notice to airmen shall be considered in any circumstance which may affect the operations of the aircraft. The Concessionaire shall allow for time necessary for issuance of a notice to airmen when required.

17.6 Overriding Powers of the Authority

- 17.6.1 If in the reasonable opinion of the Authority, the Concessionaire is in material breach of its obligations under this Agreement 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.
- 17.6.2 In the event that the Concessionaire, upon notice under Clause 17.6.1, fails to rectify or remove any hardship or danger within the period notified by the Authority, the Authority may exercise overriding powers under this Clause 17.6 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 this Agreement. The amount so recovered shall not be considered for pass-through in the determination of the Aeronautical Charges.
- 17.6.3 In the event of a national emergency, civil commotion or any other act specified in Clause 31.3, the Authority may take over, or cause 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. It is agreed that the consequences of such action shall be dealt in accordance with the provisions of ARTICLE 31. 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 17.6, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

17.7 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.

17.8 Modifications to the Airport

- 17.8.1 Except as otherwise provided in this Agreement concerning the Phase wise development of the Airport and consequential changes that may be necessary due to such developmental works and approved by the Authority, the Concessionaire shall not carry out any material modifications to the Airport. However, the Concessionaire can undertake any such modifications, where such modifications are necessary for the Airport to operate in conformity with the Master Plan, Specifications and Standards, Good Industry Practice, Applicable Laws, Applicable Permits and the provisions of this Agreement, provided that the Concessionaire shall notify the Authority of the proposed modifications along with particulars thereof at least 30 (thirty) days before commencing work on such modifications and shall reasonably consider any suggestions that the Authority may make within 30 (thirty) days of receiving the Concessionaire's proposal. 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.
- 17.8.2 At no time, such modifications shall adversely impact the operations of the existing and operational parts of the Airport and/ or the Users.
- 17.8.3 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.

17.9 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 without any delay.

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

17.10 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 reasonable 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.

17.11 Use of Airport by Defence Forces and during certain other exigencies

17.11.1 The Concessionaire acknowledges and agrees that the Defence Forces shall, at all times have the right to use the Airport and all facilities thereof as determined by GOI from time to time, without any restriction or constraint of any nature whatsoever.

17.11.2 Without prejudice to the provisions of Clause 17.3.1, 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.

17.11.3 Notwithstanding anything contained contrary elsewhere, the Concessionaire shall:

- (a) make the Airport and the Project Facilities available, free of cost and to the extent necessary, 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 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;
- (c) make available to the security agencies access to the Airport for periodic and surprise inspections;
- (d) obtain approval of the relevant Government Instrumentalities for hiring of foreign nationals for senior decision making positions in any position at Key Managerial Personnel;
- (e) adhere to the security measures laid down by the BCAS and DGCA;
- (f) 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;
- (g) 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;
- (h) ensure the requisite infrastructure for handling international passengers and crew who must pass through immigration and customs; and
- (i) ensure appropriate arrangements for health services and plant quarantine at the Airport.

17.11.4 The Concessionaire shall provide free of cost, parking bays for 2 (two) aircrafts (aeroplane and



helicopter) and space for hangar for the aircrafts of the Authority or its nominees at the area earmarked for this purpose in the Master Plan. The Concessionaire agrees and undertakes to cooperate with and assist the Authority or its nominees in the movement of the aircraft at the Airport and to facilitate the use of the Airport, on priority.

- 17.11.5 The Concessionaire shall carve out (a) a separate parking area for military aircraft for use, whenever required, and (b) a pocket of 16.42 ha of land for the strategic requirement of the Defence Forces, in its Master Plan preferably in north-west corner, as per the provisions mentioned in Schedule B. The Defence Forces shall be allowed the right to construct the required facilities for their use within the earmarked area at their own cost.

17.12 Electricity and Water Supply

- 17.12.1 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.

- 17.12.2 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.

17.13 Environment Audit and Report

- 17.13.1 The Concessionaire agrees and assures the Authority that it shall comply with all the conditions related to the Airport and the Site as laid by the Ministry of Environment and Forests in its Environmental Clearance No. F. No. 10-53/2009-IA.III dated November 22, 2010, Forest Clearance No. 8-95/2012-FC dated December 17, 2013 (Stage I), Forest Clearance No. 8-95/2012-FC dated April 24, 2017 (Stage II) and such other permissions and approvals as may be issued it from time to time, during development, operation and management of the Airport. The Concessionaire shall submit the compliance report along with all the data and reports as per the requirements stated therein on quarterly basis to the Authority.

- 17.13.2 The Concessionaire shall procure the facilities and services for measuring the air quality, noise and other environmental parameters as required by the concerned Government Instrumentality from time to time and also maintain and update the said data in the form as set out by the concerned Government Instrumentalities.

- 17.13.3 The Concessionaire shall within 1 (one) year of the Phase I COD, procure that an independent expert undertakes a full environmental audit of the Airport and provide a copy of such audit to the Authority. Such independent expert shall be appointed with the prior approval of the Authority.

- 17.13.4 Based on the information from the environmental audit, the Concessionaire shall, within a further period of 6 (six) months prepare and submit an environmental management strategy for the Airport, setting out strategies and actions to manage the environmental condition of the Airport and an environmental monitoring program that assesses over time the environmental condition of the Airport.

- 17.13.5 The Concessionaire shall review annually or at such intervals as prescribed by the concerned Government Instrumentality, progress under the environmental management strategy and will from time to time update the said environmental management strategy. The Concessionaire



shall provide bi-annual reports in relation to progress under the environmental management strategy to the Authority as well as the concerned Government Instrumentality.

17.13.6 The Concessionaire shall ensure that at the time of the Termination and on the Transfer Date, the environmental condition of the Airport meets all statutory and regulatory requirements including as stated in the Environmental Clearance and the Forest Clearance.

17.14 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 accordance with the IATA slot allocation guidelines and the guidelines issued by the relevant Designated GOI Agency, Authority and updated from time to time in a fair, reasonable and equitable manner.

17.15 Safety Requirements

17.15.1 The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Users and other persons on or about the Airport, and always ensure the nil or least number of injuries, loss of life or damage to life or property resulting from accidents on or about the Airport, irrespective of the person(s) at fault. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Airport insofar as they relate to safety of the Users while including the measures associated with safe movement, safety management, safety equipment, fire safety, enforcement and emergency response, and shall comply with the safety requirements (“Safety Requirements”) prescribed in the following, as per the Good Industry Practices:

- (a) Applicable Laws and Applicable Permits;
- (b) provisions of this Agreement; and
- (c) relevant ICAO Documents and Annexes, applicable guidelines of DGCA and other relevant Standards/Guidelines contained in internationally accepted codes.

17.15.2 The Safety Requirements will 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.

17.15.3 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.

17.15.4 The Concessionaire shall establish an Airport Safety Management Unit (“ASMU”) to be functional on and after Phase I 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.

17.15.5 The Concessionaire shall keep a copy of every first information report (“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.

17.15.6 The Concessionaire shall submit to the Authority before 31st of 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 for averting or minimising such accidents in future.

17.15.7 All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire, and may be considered by AERA as a part of the expenses incurred by the Concessionaire for the purposes of the Airport, while determining or revising the Aeronautical Charges, in accordance with this Agreement, Applicable Laws and Applicable Permits.



ARTICLE 18
O&M SERVICES

18.1 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, Applicable Permits 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 ensure that the Aeronautical Assets at all times comply with the regulations relating to the safety and security of the User, life and property, at the Site.
- 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 the Users in accordance with Applicable Laws, Applicable Permits and the provisions of this Agreement. Provision of different levels of services for identified categories of the Users 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 19.7.

18.2 Ground Handling Services

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 the Users like aircrafts, passengers and cargo, which shall include ramp handling, traffic handling, aircraft handling, aircraft cleaning, loading and unloading ("**Ground Handling Services**"). Such infrastructure shall include luggage conveyor belts, computer terminals, information technology backbone and associated facilities in accordance with the provisions of this Agreement, Applicable Laws and Good Industry Practice.

18.3 Aircraft Fuelling Services

The Concessionaire shall provide, or cause to be provided, the infrastructure required for operation of fuelling services on equal access basis for all the aircrafts at the Airport in a transparent and non-discriminatory manner ("**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.



18.4 Cargo Facilities

- 18.4.1 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.
- 18.4.2 The Concessionaire shall ensure 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.
- 18.4.3 The Concessionaire shall or cause to, 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.
- 18.4.4 The Concessionaire shall provide, free of charge and in accordance with Good Industry Practice, operational space and other facilities to the customs, security, quarantine and other Designated GOI Agencies, as the case may be, for discharging their statutory functions.
- 18.4.5 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.

18.5 Restrictions on use of Cargo Facilities

- 18.5.1 The area earmarked for Cargo Facilities in the Master Plan shall be used only for handling of cargo and for associated activities.
- 18.5.2 The Concessionaire shall not assign or in any manner create an Encumbrance on any part of the Cargo Facilities, except in accordance with the provisions of Clause 5.2.

18.6 Terminal Building

- 18.6.1 The Concessionaire shall undertake the operation and management of the Terminal Building in accordance with the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice. Without prejudice to the generality of this ARTICLE 18, the Concessionaire shall procure that the spaces within the Terminal Building are used for the respective purposes specified in Schedule B and Schedule C.
- 18.6.2 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.
- 18.6.3 The Concessionaire shall regulate the use of the Terminal Building and provide non-discriminatory access to all the Users in accordance with Applicable Laws and the provisions of this Agreement. Provision of different levels of services for identified categories of the Users shall not be construed as discrimination hereunder.



- 18.6.4 The Concessionaire shall at all times keep free from obstruction all areas meant for circulation and use by the Users.
- 18.6.5 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. The Parties agree that advertisements may be displayed on the trolleys.
- 18.6.6 The Concessionaire shall, depending on demand, procure the availability of porter services for Users on payment.
- 18.6.7 The Concessionaire shall at all times provide, or cause to be provided, within the Terminal Building, the facilities concerning the free drinking water, seating space, waiting area, vending machines for dispensation of bottled water and popular beverages at maximum retail price, etc., in accordance with the Master Plan.
- 18.6.8 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 the Users and assist them in finding their way to airlines counters, travel facilities, amenities and Cargo Facilities.
- 18.6.9 The Concessionaire agrees and undertakes that the level of service in the Terminal Building shall, during the Peak Hour, not be inferior to 'Level of Service-C' (optimum standards) 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-C' (optimum standards) during Peak Hours in any quarter and does not cure within 90 (ninety) days from the occurrence of such degradation of level of service in any Concession Year, the Concessionaire shall pay Damages to the Authority which shall be determined at the rate of 0.5% (zero point five percent) of the total revenue from Fees for the immediate preceding quarter.
- 18.6.10 The Concessionaire shall publish and implement the User Charter in accordance with the provisions of Clause 22.10.

18.7 Users who require Special Assistance

- 18.7.1 The Concessionaire shall ensure that the Terminal Building shall meet the travelling needs of elderly persons, and physically or visually challenged Users and visitors, including the provision of ramp ways, modified toilets, wheel chairs and earmarked parking slots for Users requiring special assistance in conformity with Good Industry Practice and at no cost to such Users and visitors.
- 18.7.2 The Concessionaire shall ensure provision of child care room and facilities within the Terminal Building, at no cost to the Users.
- 18.7.3 The Concessionaire shall set up and operate first aid facilities within the Terminal Building in the manner specified in Clause 5.11.

18.8 Reserved Area

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



- (a) the Authority;
- (b) security;
- (c) VIP lounges;
- (d) immigration;
- (e) customs;
- (f) quarantine; and
- (g) health.

18.8.2 The control over the Reserved Area shall vest in the respective Authority or the Designated GOI Agencies responsible for carrying out the functions for which the space shall be earmarked under Clause 18.8.1 or for any other purpose analogous to the purposes specified in Clause 18.8.1. 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.

18.8.3 The Concessionaire shall supply electricity and water, on chargeable basis, to the Reserved Area within the Terminal Building.

18.8.4 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 lounges and other common areas within the Terminal Building.

18.8.5 Notwithstanding anything to the contrary contained in this Clause 18.8, the Authority and/ or the Designated GOI Agencies, as the case may be, 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 and/ or the Designated GOI Agencies, including the agencies designated by it, for procuring a safe and efficient environment in the Reserved Area.

18.9 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 as may be notified by GOI, Designated GOI Agencies, GOM and/ or the Authority to the Concessionaire from time to time.

18.10 Check-in Services

18.10.1 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 Users (“**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 including and applicable DGCA regulations for ground handling services, relevant ICAO Documents and Annexes and Good Industry



Practice.

18.10.2 The Concessionaire shall provide or cause to be provided the Check-in Services to the Users, for and on behalf of airlines, in accordance with the provisions of this Agreement and Good Industry Practice.

18.10.3 Notwithstanding anything to the contrary contained in this Clause 18.10, the Concessionaire shall enable each 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.

18.11 Commercial use of Specified Areas

18.11.1 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 and retail.

18.11.2 The Concessionaire shall not assign or in any manner create an Encumbrance on any part of the Airport except in accordance with the provisions of Clause 5.2.

18.11.3 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.

18.12 Parking

18.12.1 The Concessionaire shall or cause to, develop, operate and maintain the Parking in accordance with the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.

18.12.2 The Concessionaire shall regulate the use of Parking by Users or visitors to the Airport 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 Parking.

18.12.3 The Concessionaire shall:

- (a) 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;
- (b) ensure that adequate parking space shall be provided for two wheelers, cars, private taxis, regular taxis, buses, auto-rickshaws, etc.;
- (c) provide parking for different usage like short term, long term and overnight parking;
- (d) separate parking space for Reserved Parking and parking for the employees working at the Airport or any part thereof;
- (e) ensure that the Parking is used only for parking of motor vehicles and for no other purpose, save and except advertising, shops and provision of facilities and amenities for Users; and



- (f) not create an Encumbrance on any part of the Parking except in accordance with the provisions of Clause 5.2.

18.12.4 The Concessionaire shall develop, operate and maintain a reserved parking (“**Reserved Parking**”), and shall facilitate free use thereof by Exempted Persons and persons who are entitled to use VIP lounges. Along with the Exempted Persons, the following persons shall also be entitled for free parking:

- (a) persons engaged in maintenance of law and order and are visiting the Airport or any part thereof, in their official capacity on duty;
- (b) fire-fighting personnel and persons on emergency medical service, in their official capacity on duty; and
- (c) persons entering the Terminal Building for inspection, survey, construction, operation and maintenance thereof in their official capacity on duty.

18.12.5 The Concessionaire shall at all times provide or cause to be provided, at the Car Park, the minimum of all of the following:

- (a) free drinking water outlets at the convenient locations;
- (b) food stalls/ vending machines installed at convenient locations for bottled water and popular beverages, hot and cold, at a price which shall not exceed the maximum retail price of each of such product as prevalent in the market outside the Airport.

18.12.6 The Concessionaire shall, adjacent to the entry or exit point of the Parking, provide a waiting hall for the drivers, with adequate seating facilities and toilets in the Parking 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. Such waiting rooms and the toilets shall be located at the convenient locations and the visitors/ drivers using such waiting room, toilets and other amenities shall not be charged any money for such usage.

18.12.7 The Concessionaire may remove any vehicle that is parked at a place not earmarked or authorised for parking, and park such vehicle in the Parking. If the Concessionaire is not able to shift the vehicle to the Parking 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 Parking, as the case may be. The Concessionaire shall procure that any shifting or immobilising of vehicles under the provisions of this Clause is undertaken in a manner that does not cause damage to such vehicles.

18.12.8 The Concessionaire shall not stop the movement of, or charge any Fee from vehicles (private and commercial) that use the approach roads (for departure and arrival) to pass through in no more than 8 (eight) minutes, for a Terminal Building with frontage road length of upto 1000 meters from the entry barrier to the exit point. If such distance of the road length exceeds 1,000 (one thousand) meters, the Concessionaire shall allow an additional time of 1 (one) second(s) for every 4 (four) meters increase in the above distance over 1,000 (one thousand) meters over and above 8 minutes, and shall be rounded off to the nearest minute.

18.12.9 The Concessionaire shall procure that the parking slots provided in the Parking are sufficient to meet the requirements of Users. In the event that 80% (eighty percent) of the parking slots



are on an average occupied during any 8 (eight) hours in a 24 hour period having the most parked vehicles for any continuous period of 3 (three) months, the capacity of the Parking shall be deemed to be inadequate and the Concessionaire shall undertake capacity addition and expansion thereof and construct additional parking space forthwith in accordance with Good Industry Practice and the provisions of this Agreement.

18.13 MRO Facilities

As and when developed or caused to be developed, the Concessionaire shall operate and maintain or cause to be operated and maintained the MRO Facilities, and provide or cause to be provided, the associated services to airlines and consignors as per the requirements specified in Schedule B and in accordance with the provisions of this Agreement, Applicable Laws and Good Industry Practice.



ARTICLE 19
RESERVED SERVICES

19.1 Reserved Services

19.1.1 The Concessionaire acknowledges and agrees that only the Designated GOI Agencies are authorised to undertake the following services (“**Reserved Services**”) at the Airport:

- (a) CNS/ATM Services;
- (b) security services;
- (c) meteorological services;
- (d) mandatory health services;
- (e) customs control;
- (f) immigration services;
- (g) quarantine services;
- (h) any other services, as may be notified by GOI;

Provided that, subject to the Applicable Laws and the Applicable Permits, 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.

19.1.2 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.

19.2 CNS/ATM Services

19.2.1 The Authority shall, upon fulfilment of the applicable terms and conditions by the Concessionaire, at the request of the Concessionaire, procure the execution of an agreement between AAI and the Concessionaire, substantially in the form set forth in Schedule T, unless otherwise any specific format is prescribed by AAI (“**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. If the format of the CNS/ATM Agreement is changed or modified by AAI in its sole discretion any time after the date of this Agreement but before its execution by the Concessionaire, then, the Concessionaire shall execute the CNS/ATM Agreement in such changed or modified format.

19.2.2 The Designated GOI Agency, may at its own cost, install at the Airport, any radars, equipment or facilities necessary for the provision of enroute and terminal air navigation services and the Concessionaire hereby undertakes to provide all necessary civil infrastructure and necessary support and assistance in respect thereof.



19.3 Airport security

- 19.3.1 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.
- 19.3.2 The Concessionaire agrees and undertakes that the practices and procedures to be adopted for the security of the Airport, Users, and persons working at the Airport and other persons or property at the Airport shall be in accordance with the guidelines prescribed by the BCAS or Designated GOI Agency.
- 19.3.3 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.
- 19.3.4 The Concessionaire shall not be entitled to any compensation for disruption of its operations or loss or damage resulting from the actions or any Designated GOI Agency, save and except those resulting from wilful or grossly negligent acts or omissions or the Designated GOI Agency, as the case may be.

19.4 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 (“Police Aid Post”) at the Airport by the Concessionaire.

19.5 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 Designated GOI Agency in accordance with the practices established or recommended from time to time pursuant to the Chicago Convention and on the same terms as it is being provided at other similar airports in India.

19.6 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 Designated GOI Agency, 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 or the Designated GOI Agency, 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 Designated GOI Agencies in the discharge of their obligations under this ARTICLE 19;
- (h) provide such information as the Authority and the Designated GOI Agency, may reasonably require for the provision of Reserved Services;
- (i) provide continuous supply of electricity and water that may be required by the Designated GOI Agencies for provision of Reserved Services or otherwise; and
- (j) notify the Authority and the Designated GOI Agency, in advance of 7 (seven) days, 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.

19.7 Reserved Area

19.7.1 Subject to the provisions of Clause 18.8, the Concessionaire undertakes that it shall, at all times during the Concession Period, provide to the Authority or its nominees, 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. Without prejudice to the above, the Concessionaire shall separately earmark and provide 3,000 sq. ft. of the constructed area/ office space in the Terminal Building for the Authority.

19.7.2 The Reserved Area shall be used by the Authority or its nominees, in the form and manner, as



it may deem so fit, and the same shall not be available to, or used by, the Concessionaire for any other purposes, at any time during the Concession Period. The control and management over the Reserved Area shall vest in the Authority or its nominees, 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.

- 19.7.3 The Concessionaire shall not reduce or restrict the access, space and facilities provided to the Authority or its nominees, for the provision of Reserved Services, except with the prior consent of the Authority or its nominees, as the case may be.
- 19.7.4 Notwithstanding anything to the contrary contained in this Clause 19.7, 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.
- 19.7.5 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 or its nominees, as the case may be, and mutually determine any modifications that may be required in respect thereof.
- 19.7.6 In the event, additional space is required for discharging the specified functions in the Reserved Area, the Authority or its nominees, may, with the consent of the Concessionaire, increase the space comprising the Reserved Area.



ARTICLE 20
MONITORING OF OPERATION AND MAINTENANCE

20.1 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 provide 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.

20.2 Quarterly and daily status reports

20.2.1 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 a quarterly report, in a form acceptable to the Authority, stating in reasonable detail the condition of the Airport including its compliance or otherwise with the Safety Requirements and the details of the occurrence of any event, and shall promptly give such other relevant information as may be required by the Authority. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

20.2.2 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 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;
- (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;
- (c) key financial parameters for the quarter, as benchmarked against the quarterly budget, the reasons for shortfall, if any, and proposals to remedy the same; and
- (d) quarterly budget for the succeeding quarter, along with strategies for improving the Airport's financial performance.

20.2.3 The Concessionaire shall submit the following reports to the Authority on regular basis:

- (a) quarterly activity report (passenger traffic, aircraft movements, cargo, etc.);
- (b) quarterly financial accounts;
- (c) annual budget;



- (d) latest update of business plan;
- (e) annual maintenance program;
- (f) other operating statistics as may be required by any Government Instrumentality, including GOI, GOM, Ministry of Civil Aviation, DGCA or AAI;
- (g) such other reports/ information (or analysis thereof) in relation to the development, construction, operations and maintenance of the Airport and that the Authority may request from time to time.

20.3 Service level monitoring

The Concessionaire will:

- (a) throughout the Concession Period, regularly monitor traffic flows at the Airport and regularly examine operations at the Airport, for the purpose of determining the IATA level of service at Terminal Building;
- (b) after achieving the Phase I COD, regularly monitor and count Peak Hour passengers enplaning to and deplaning from aircraft at the Airport;
- (c) by the 7th (seventh) day after the end of each quarter, provide to the Authority, a detailed report: (i) confirming that the IATA level of service at the Airport over the preceding quarter (or part thereof) never fell below IATA Level of Service-C or describing the dates on or periods of time during which the IATA level of service at the Airport fell below Level of Service-C (optimum standards), and (ii) setting forth its analysis (along with any and all supporting data) of the IATA level of service anticipated at the Airport over the reporting quarter, including any period of time when the IATA level of service at the Airport is projected to fall below Level of Service C (optimum standards); and
- (d) promptly advise the Authority in writing, if it otherwise determines that the IATA level of service at the Airport is projected to fall or has fallen below IATA Level of Service-C (optimum standards) at any time and provide to the Authority any and all data related to such determination along with the mitigation plan for such deficiency.

20.4 Reports of unusual occurrence

The Concessionaire shall, prior to the close of each day, notify the Authority and Designated GOI Agency, by facsimile and e-mail, a report stating accidents and unusual occurrences on the Airport relating to the safety and security of the Users and Airport. A quarterly summary of such reports shall also be sent within 3 (three) days of the closing of each quarter, as the case may be. For the purposes of this Clause 20.3, 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, flooding of the Airport;
- (p) substantial damage or destruction to any of the Project Facilities; and
- (q) such other relevant information as may be reasonably required by the Authority.

20.5 Inspection

The Authority or its designated agency may, if require, inspect the Airport at least once a year with prior intimation to the Concessionaire. It shall make a report of such inspection (“**O&M Inspection Report**”) stating in reasonable detail the compliance of the requirements of this Agreement, Applicable Laws, Applicable Permits, relevant ICAO and IATA standards, service quality requirements prescribed by AERA and Good Industry Practices, any defects or deficiencies, and send a copy thereof to the Concessionaire within 7 (seven) days of such inspection.

20.6 Remedial measures

20.6.1 The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report referred to in Clause 20.5 and furnish a report in respect thereof to the Authority within 15 (fifteen) days of receiving the O&M Inspection Report, 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.

20.6.2 The Authority 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 this Agreement and the procedure set forth in this Clause 20.6 shall be repeated



until the Airport conforms to this Agreement.

20.7 Access to Management

The Authority shall be entitled to reasonable access, from time to time, to the senior management staff and other relevant officers and employees of the Airport at reasonable times and following reasonable notice to the Concessionaire.



**ARTICLE 21
TRAFFIC REGULATION AND CENSUS**

21.1 Traffic regulation by the Concessionaire

- 21.1.1 The Concessionaire shall regulate the 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 Designated GOI Agencies or a substitute thereof, empowered in this behalf under Applicable Laws.
- 21.1.2 The Concessionaire shall 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.
- 21.1.3 The Concessionaire has the right and obligation to manage, operate and regulate the Airport on a common carrier basis providing non-discriminatory services to all persons.

21.2 Census

The Concessionaire shall collect data relating to airside and land side passengers and cargo traffic through the Airport. A monthly statement of such data shall be compiled and furnished forthwith by the Concessionaire to the Authority in the format acceptable to the Authority. Each monthly traffic statement shall include *inter-alia* Peak Hour passenger numbers, aircraft movements and cargo tonnage on a daily basis.



ARTICLE 22
KEY PERFORMANCE INDICATORS

22.1 Key Performance Indicators

22.1.1 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 22 and service quality requirements specified in Schedule I (“**Key Performance Indicators**”).

22.1.2 The Concessionaire shall monitor and measure quality of service on the parameters identified under Schedule I herein. The Concessionaire shall submit a performance measurement plan providing details on the measurement mechanism and measurement frequency/ periodicity. The performance measurement plan shall be prepared by the Concessionaire in accordance with the guidance provided under the Applicable Laws.

22.2 Operation of Aeronautical Assets

22.2.1 The Concessionaire shall operate the Aeronautical Assets such that it conforms to the Key Performance Indicators specified in this Clause 22.2 and Schedule I.

22.2.2 The Concessionaire shall, at all times during the Operation Period, 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.

22.3 Operation of Terminal Building

22.3.1 The Concessionaire shall operate and maintain the Terminal Building such that it conforms to the Key Performance Indicators specified in this Clause 22.3.

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

- (a) the Terminal Building and its toilets are clean, hygienic and free of odour;
- (b) there is adequate lighting within the Terminal Building in conformity with the Specifications and Standards as per Schedule D;
- (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) all entry and exit points, passages, circulation areas and vehicular traffic are so managed that they do not have a queue with a waiting time exceeding 5 (five) minutes for 95% of the times; and
- (e) all lifts, escalators, walkalators, flight information systems, public address systems and lighting systems function efficiently and their availability is no less than 98% (ninety eight percent).

22.4 Operation of Parking

22.4.1 The Concessionaire shall operate and manage the Parking such that it conforms to the Key



Performance Indicators specified in this Schedule I (“**Key Performance Indicators**”).

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

22.4.3 The Concessionaire shall procure that the Parking is kept clean and with adequate lighting.

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

22.5 Operation of Cargo Facilities

22.5.1 The Concessionaire shall procure that the Cargo Facilities are kept clean and with adequate lighting.

22.5.2 The Concessionaire shall provide and operate an electronic data interchange facility in accordance with Good Industry Practice and shall ensure that the Users of Cargo Facilities receive efficient and economical services comparable with the Good Industry Practices.

22.5.3 The Concessionaire shall provide adequate number of toilets in the Cargo Facilities and keep them in clean and hygienic condition.

22.6 ISO certification

22.6.1 The Concessionaire shall, within 24 (twenty four) months from Phase I COD, achieve and thereafter maintain throughout the Concession Period, QMS ISO 9001:2008, EMS ISO 14001:2004 and OHSAS ISO 18001:2007 certification and other applicable 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.

22.6.2 In the event of default in obtaining the certification specified in Clause 22.6.1, 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.

22.6.3 If the period of default in obtaining the ISO certification under this Clause 22.6 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 percent) of the total monthly revenue from Fee for every 1 (one) month of default beyond the aforesaid period of 3 (three) months.

22.7 Target Rating and User Survey

22.7.1 The Concessionaire shall participate in the User Survey of ASQ undertaken by Airports Council International (“ACI”) or any substitute thereof, conducted every quarter and shall ensure that the Airport achieves and maintains a rating of at least 4.5 (four point five) out of 5.0 (five) and / or shall appear within top 20 (twenty) percentile of all airports, in its category in the world in such survey within 5 (five) years from the Phase I COD and maintain the same throughout the rest of the Concession Period.

22.7.2 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 User Survey of ASQ 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 User satisfaction.

22.7.3 In addition to the User Survey specified in Clause 22.7.1, the Authority may, at its cost and expense, engage an independent expert agency to conduct a sample survey of User satisfaction (“**User Survey**”) once every calendar quarter to determine the compliance of the provisions of this ARTICLE 22 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. 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.

22.7.4 In the event that the User Survey reveals that more than 20% (twenty percent) of the Users surveyed are not satisfied with the performance of the Concessionaire and rank the services as poor or fair, the Authority may report the findings of the User Survey to Concessionaire for taking appropriate action. In this case the cost of such survey shall be reimbursed by the Concessionaire to the Authority.

22.8 Quarterly status report

During Operation Period, the Concessionaire shall, no later than 21 (twenty one) 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 22 and Schedule I 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 22.9.

22.9 Damages for shortfall in performance

The Concessionaire shall ensure and procure compliance of each of the Key Performance Indicators specified in this ARTICLE 22 and for any shortfall in average performance during a quarter, it shall be liable for Damages. Any such Damages will be determined in consultation with AERA and adjusted against Aeronautical Charges for the specified period.

22.10 User Charter

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



ARTICLE 23 INDEPENDENT ENGINEER

23.1 Appointment of Independent Engineer

- 23.1.1 The Authority and the Concessionaire shall appoint a consulting engineering firm substantially in accordance with the selection criteria set forth in Schedule M, to be the independent consultant under this Agreement (“**Independent Engineer**”). The Independent Engineer shall be appointed in accordance with the provisions of Schedule M.
- 23.1.2 The appointment of the Independent Engineer shall be made within 30 (thirty) days of the date of execution of this Agreement, and such appointment shall be valid until Phase I COD. On or prior to the expiry or termination of the said appointment, the Authority shall appoint an Independent Engineer for a further term of 3 (three) years in accordance with the provisions of Schedule M, and such procedure shall be repeated after expiry of each appointment.

23.2 Duties and Functions

- 23.2.1 The Independent Engineer shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule N.
- 23.2.2 The Independent Engineer shall submit regular periodic reports (at least once every month) to the Authority in respect of its duties and functions set forth in Schedule N.
- 23.2.3 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.
- 23.2.4 All communications required to be sent by the Independent Engineer to the Concessionaire shall be undertaken through the Authority.

23.3 Remuneration

- 23.3.1 The remuneration, cost and expenses of the Independent Engineer shall be paid by the Authority, and all 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.
- 23.3.2 Any amounts paid to the Independent Engineer shall be a pass-through for the determination of the Aeronautical Charges by AERA.

23.4 Termination of Appointment

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

23.5 Dispute resolution

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

23.6 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 approval 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 23.6 shall in any manner restrict the rights of the Authority to enforce compliance of the provisions of this Agreement.



Part IV Financial Covenants



ARTICLE 24
FINANCIAL CLOSE

24.1 Financial Close

- 24.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 180 (one hundred eighty) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding 60 (sixty) 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 of a sum calculated at the rate of 0.05% (zero point zero five percent) 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 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. The Damages payable hereunder by the Concessionaire shall be in addition to the Damages, if any, due and payable under the provisions of Clause 4.2.
- 24.1.2 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.

24.2 Termination due to failure to achieve Financial Close

- 24.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 31.6.1, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 24.1.1 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 this 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 24.2.1 shall not apply.
- 24.2.2 Upon Termination under Clause 24.2.1, 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 4.2, it shall, upon Termination, release the Bid Security or Performance Security, as the case may be, forthwith along with the Damages due and payable under Clause 4.2. 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 25
FINANCIAL PARAMETERS**

25.1 Premium

The Concessionaire acknowledges and agrees that as set forth in the Bid, it shall pay to the Authority for each year, starting from the date of the execution of this Agreement until the expiry of the Concession Period, a Premium, in the form and manner as set forth in Clause 26.2.

25.2 Pre-Operative Expenses

- 25.2.1 The Concessionaire shall pay Rs. 110,00,00,000/- (Rupees One Hundred Ten Crore) towards pre-operative expenses incurred by the Authority on the Project till the execution of this Agreement.
- 25.2.2 The pre-operative expenses shall be paid by the Concessionaire to the Authority as a one-time lump-sum amount within 30 (thirty) days of the Phase I COD.
- 25.2.3 The pre-operative expenses paid by the Concessionaire, as per this Clause 25.2, shall be capitalised over Project Assets which will form part of the regulated asset base for the purposes of the determination of the Aeronautical Charges.



**ARTICLE 26
CONCESSION FEE**

26.1 Concession Fee

26.1.1 In consideration of the grant of Concession, the Concessionaire shall pay to the Authority by way of concession fee ("Concession Fee"), the following amounts to the Authority on annual basis:

Concession Period	Concession Fees (in Rs. Crore)	Concession Period	Concession Fees (in Rs. Crore)
Year 1	5	Year 21	130
Year 2	5	Year 22	135
Year 3	5	Year 23	140
Year 4	5	Year 24	750
Year 5	5	Year 25	790
Year 6	5	Year 26	825
Year 7	5	Year 27	870
Year 8	5	Year 28	910
Year 9	5	Year 29	955
Year 10	10	Year 30	1005
Year 11	10	Year 31	1250
Year 12	10	Year 32	1315
Year 13	10	Year 33	1380
Year 14	10	Year 34	1445
Year 15	10	Year 35	1520
Year 16	100	Year 36	1595
Year 17	105	Year 37	1675
Year 18	110	Year 38	1760
Year 19	115	Year 39	1845
Year 20	120	Year 40	1940

26.1.2 The Concession Fees for the subsequent period of 20 (twenty) years, shall be determined in accordance with the terms and conditions to be prescribed in the bidding documents to be issued as per Clause 3.1.1 above. *Provided that*, any such Concession Fees payable for said period of 20 (twenty) years, shall not be less than Rs. 29,61,00,00,000/- (Rupees Two Thousand Nine Hundred Sixty One Crore) at present value as on March 31, 2016.

26.1.3 The Concession Fees shall be payable in advance within 7 (seven) days of the commencement of each Concession Year during the Concession Period.

26.1.4 The Concession Fees shall be considered as a part of the operating expense for the purpose of the determination of the Aeronautical Charges.

26.2 Premium

26.2.1 Without prejudice to the provisions of Clause 26.1, but subject to Clause 26.2.2, the Concessionaire agrees to pay to the Authority, for each year, commencing from the date of the execution of this Agreement, a premium ("Premium") equal to 12.60% (twelve decimal six zero percent) of the Gross Revenue during that year, in the form and manner provided in this Clause 26.2.



26.2.2 The Premium payable under this Clause 26.2 shall be in addition to the Concession Fees.

26.2.3 The Premium shall be due and payable in annual instalments. Within 30 (thirty) days of the close of each Accounting Year, the Concessionaire shall pay to the Authority against the Premium, a provisional amount calculated on the basis of records available for the immediately preceding Accounting Year, and final settlement thereof, based on audited accounts of the Concessionaire, shall be made within 90 (ninety) days of completion of the respective Accounting Year. It is clarified that the payment of the last instalment of the Premium at the time of end of the Concession Period, would accrue but not have become due and payable, shall become immediately due and payable and shall be paid by the Concessionaire within 30 (thirty) days of the end of the Concession Period.

26.2.4 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.

26.3 Verification of Gross Revenue

26.3.1 The Authority may, in order to satisfy itself that the Concessionaire is reporting its Gross Revenue honestly and faithfully, depute its representatives to the Airport, and the offices of the Concessionaire, and undertake such other measures and actions as it may deem necessary, to ascertain the actual revenues of the Concessionaire. 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 revenue earned by the Concessionaire.

26.3.2 The Concessionaire will obtain a certificate from its Statutory Auditors or another reputed audit firm acceptable to the Authority, certifying the calculation of Gross Revenue as per the terms of this Agreement.



ARTICLE 27
FEES

27.1 Collection of Fees by the Concessionaire

- 27.1.1 On and from Phase I COD and till the Transfer Date, the Concessionaire has the sole and exclusive right to demand, collect and appropriate Fees from the Users for the provision of the Aeronautical Services and Non-Aeronautical Services, including the airlines and passengers, in accordance with the provisions of the AERA Act, extant AERA guidelines and this Agreement including the terms set out in the Schedule U (*Memorandum of Understanding*), 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. 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.
- 27.1.2 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.
- 27.1.3 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.
- 27.1.4 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 as per extant guidelines issued by the Ministry of Civil Aviation, GOI.

27.2 Collection of Reserved Charges

- 27.2.1 The Designated GOI Agency shall be entitled to levy, collect and appropriate the charges for the facilities and services rendered, 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.
- 27.2.2 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 27.2.1, including in respect of suspension of provision of such service to any scheduled or non-scheduled air transport operator.

27.3 Principles of Determination and Revision of Aeronautical Charges

- 27.3.1 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.



extant AERA guidelines and this Agreement including the terms set out in the Schedule U (*Memorandum of Understanding*).

- 27.3.2 The Aeronautical Charges shall be regulated and set/ re-set, in accordance with the shared-till approval letter no. F. No. AV.24011/1/95-VB dated December 8, 2014 of the Ministry of Civil Aviation, GOI, the Applicable Laws and the terms of this Agreement including the terms set out in the Schedule U (*Memorandum of Understanding*).
- 27.3.3 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.

27.4 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, extant AERA guidelines 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.

27.5 Review of Aeronautical Charges

- 27.5.1 The Aeronautical Charges to be levied, collected and appropriated, in accordance with the provisions of ARTICLE 27, shall be reviewed by AERA, in accordance with the provisions of AERA Act, extant AERA guidelines 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.
- 27.5.2 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.
- 27.5.3 Any review of the Aeronautical Charges under the provisions of Clause 27.5.1, 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, extant AERA guidelines and this Agreement.
- 27.5.4 The Parties acknowledge that any review of the Aeronautical Charges under the provisions of this Clause 27.5, shall be undertaken in accordance with Applicable Laws and shall be regulated and proceeded accordingly.



27.6 Certain limitations on increase in Aeronautical Charges

- 27.6.1 In the event any capital cost is required to be incurred in pursuance of the provisions of Clause 27.5.2, the Concessionaire shall submit the specifications and costs in respect thereof to the Authority for its scrutiny and shall also engage in consultation with the affected Users or their representative bodies as per the Applicable Laws.
- 27.6.2 The Concessionaire shall undertake and complete the Construction Works for the subsequent Phases in accordance with the approval granted by the 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 27.6.
- 27.6.3 The capital cost incurred by the Concessionaire in accordance with this Clause 27.6 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.

27.7 Penalty for evasion of Fees

In the event that any User uses the Airport without payment of the Fees due, the Concessionaire shall, subject to Applicable Laws and Applicable Permits, be entitled to determine and collect from such person, the Fees 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 Fees 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.

27.8 Display of Aeronautical Charges

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

27.9 Monthly Statement

The Concessionaire shall, with effect from the Phase I COD, furnish to the Authority, within 7 (seven) days of completion of each month, a statement in the form as set forth in Schedule K ("Monthly Statement") along with all other details, as may be reasonably requested by the Authority.



**ARTICLE 28
ESCROW ACCOUNT**

28.1 Escrow Account

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

28.1.2 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 O.

28.2 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, insurance companies or any other person or otherwise;
- (b) all Fee and all other revenues, from or in respect of the Airport, Project, Project Facilities and/ or Project Assets, including the proceeds of any rentals, deposits, capital receipts, insurance claims, etc.;
- (c) all Fee collected by the Authority in exercise of its rights under this Agreement; and
- (d) all payments by the Authority, after deduction of any outstanding Premium;
- (e) Termination Payments;

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.

28.3 Withdrawals

28.3.1 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) statutory payments, all Taxes due and payable by the Concessionaire for and in respect of the Airport;
- (b) all payments relating to development 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, 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 or any Designated GOI Agency in accordance with the provisions of this Agreement, and certified by the Authority as due and payable;
- (e) Concession Fees and Premium due and payable to the Authority;
- (f) monthly proportionate provision of Debt Service due in an Accounting Year;
- (g) annual instalment of the Soft Loan in accordance with Clause 12.9;
- (h) all payments as may be due and payable pursuant to this Agreement and/ or the Damages certified by the Authority as due and payable to it by the Concessionaire under this Agreement;
- (i) monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- (j) any reserve requirements set forth in the Financing Agreements; and
- (k) balance, if any, in accordance with the instructions of the Concessionaire.

28.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Clause 28.3.1, except with the prior written approval of the Authority.

28.4 Withdrawals upon Termination

28.4.1 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) payroll dues and statutory payments, all Taxes due and payable by the Concessionaire for and in respect of the Airport;
- (b) 90% (ninety percent) of Debt Due excluding Subordinated Debt and Insurance Cover;
- (c) outstanding Concession Fees and Premium;
- (d) outstanding Soft Loan and all other amounts which are outstanding to be paid by the Concessionaire to the Authority, as on the date of the Termination;
- (e) all payments as may be due and payable pursuant to this Agreement and/ or the Damages certified by the Authority as due and payable to it by the Concessionaire;
- (f) retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in ARTICLE 36 of this Agreement;
- (g) outstanding Debt Service including the balance of Debt Due;
- (h) outstanding Subordinated Debt;
- (i) incurred or accrued O&M Expenses;



- (j) any other payments required to be made under this Agreement; and
- (k) balance, if any, in accordance with the instructions of the Concessionaire:

Provided that no appropriations shall be made under Sub-Clause (k) of this Clause 28.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of ARTICLE 35.

28.4.2 The provisions of this ARTICLE 28 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 28.4.1 have been fully discharged.



ARTICLE 29 INSURANCE

29.1 Insurance Obligations

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-assured and that the insurer shall pay the proceeds of insurance into the Escrow Account. 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.

29.2 Insurance Cover

Without prejudice to the provisions contained in Clause 29.1, 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 and not otherwise covered in items (a) to (e) above.

29.3 Notice to the Authority

No later than 30 (thirty) days prior to commencement of the Concession Period, 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 29. 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.

29.4 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this ARTICLE 29 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.

29.5 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 has 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.

29.6 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this ARTICLE 29 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.

29.7 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.

29.8 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 28.3, 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.

29.9 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 30
ACCOUNTS AND AUDIT

30.1 Audited accounts

- 30.1.1 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 (prepared in accordance with accounting standards as per the Applicable Laws), 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. Further, it is expressly clarified that for the purposes of computation of Gross Revenue, Premium and Damages or any other term related to Gross Revenue under this Agreement, accounting standards used, will be in accordance with the standards mentioned in the definition of Gross Revenue. The Authority has the right, either through itself or through any of its authorised representative, 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.
- 30.1.2 The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.
- 30.1.3 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 therefor, (b) Fee charged and received, Gross Revenue and other revenues derived from the Airport, and (c) such other information as the Authority may reasonably require.

30.2 Appointment of auditors

- 30.2.1 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 P. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.
- 30.2.2 The Concessionaire may terminate the appointment of its Statutory Auditors in accordance with the provisions of the Companies Act, 2013, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.
- 30.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority has the right, but not the obligation, to appoint at its cost from time to time and at any time, another firm (“**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.

30.2.4 Further, the Concessionaire shall change the Statutory Auditor from time to time to comply with the provisions of the Companies Act, 2013 and any rules and regulations framed thereunder.

30.3 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. Such certification shall not be required for exchange of information in the normal course of business including the submission of Monthly Statements under Clause 27.9.

30.4 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 30.4, shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

30.5 Dispute resolution

In the event of there being any difference between the findings of the Additional Auditors and the certification provided by the Statutory Auditor, the 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 31 FORCE MAJEURE

31.1 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 Clause 31.2, Clause 31.3 and Clause 31.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (“**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.

31.2 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 31.3;
- (c) 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;
- (d) 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
- (e) any event or circumstances of a nature analogous to any of the foregoing.

31.3 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 development 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 Aeronautical Charges 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.

31.4 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) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;
- (b) 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;
- (c) 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
- (d) any event or circumstance of a nature analogous to any of the foregoing.

31.5 Duty to report Force Majeure Event

31.5.1 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 31 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.

31.5.2 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.

31.5.3 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 31.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

31.6 Effect of Force Majeure Event on the Concession

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

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

- (a) before the COD of a Phase, the Construction Period for such Phase, shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
- (b) after the COD of a Phase, 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 the provisions of the Applicable Laws.

31.7 Allocation of costs arising out of Force Majeure

31.7.1 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.

31.7.2 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 ("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.

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 revenues from Aeronautical Charges 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.

31.7.3 Save and except as expressly provided in this ARTICLE 31, 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.

31.8 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 31, 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.

31.9 Termination Payment for Force Majeure Event

31.9.1 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 percent) of the Debt Due less insurance claim forming part of the Insurance Cover.

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



- (b) 110% (one hundred and ten percent) of the Adjusted Equity; and
- (c) an amount equivalent to the Additional Termination Payment less insurance claim forming part of the 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.

31.9.3 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 34.3.2 as if it were an Authority Default.

31.10 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.

31.11 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.

31.12 Relief for Unforeseen Events

31.12.1 Upon occurrence and continuance 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 (“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 is continuing, and upon reaching agreement on occurrence thereof deal with it in accordance with the provisions of this Clause 31.12.

31.12.2 Upon determination of the occurrence and continuation 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.

31.12.3 The conciliation tribunal referred to in Clause 31.12.2 shall conduct its proceedings in accordance with the provisions of ARTICLE 39, as if it is an arbitration proceeding under that Article, save and except as provided in this Clause 31.12.

31.12.4 The conciliation tribunal referred to in this Clause 31.12 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 31.12.

31.12.5 Upon completion of the conciliation proceedings referred to in this Clause 31.12, 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.

31.12.6 Within 15 (fifteen) days of receiving the order and terms of reference referred to in Clause 31.12.5, 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, by way of entering into a Settlement Agreement setting forth the agreement reached hereunder. The terms of such Settlement Agreement shall have force and effect as if they form part of this Agreement, and would deem to have modified the concerned terms of this Agreement, if any.



**ARTICLE 32
COMPENSATION FOR BREACH OF AGREEMENT**

32.1 Compensation for default by the Concessionaire

Subject to the provisions of Clause 32.4, 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 32.1 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.

32.2 Compensation for default by the Authority

Subject to the provisions of Clause 32.4, 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.

32.3 Extension of Concession Period

Subject to the provisions of Clause 32.4, in the event that a material breach or default of this Agreement set forth in Clause 32.2, causes delay in achieving the COD of any Phase or leads to suspension, the Authority may, consider extending the Concession Period in lieu of the payment of compensation under Clause 32.2. The period for such extension in the Concession Period shall be considered and determined by the Authority at such time.

32.4 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 33
SUSPENSION OF CONCESSIONAIRE'S RIGHTS

33.1 Suspension upon Concessionaire's Default

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 any 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 ("**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.

33.2 Authority to act on behalf of Concessionaire

33.2.1 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 28.3.

33.2.2 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 33.1 to use during Suspension, all Intellectual Property belonging to or licensed to the Concessionaire with respect to the Airport and its design, engineering, development, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

33.3 Revocation of Suspension

33.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding the period set out in Clause 33.1, it shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement. 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.

33.3.2 Upon the Concessionaire having cured the Concessionaire's 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.



33.4 Substitution of Concessionaire

Subject to the Authority exercising its step-in rights as per the provisions mentioned in Clause 37.5, 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 33.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

33.5 Termination

- 33.5.1 At any time during the period of Suspension under this ARTICLE 33, 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 33.4, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with ARTICLE 34 as if it is a Concessionaire's Default under Clause 34.1.
- 33.5.2 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 33.1, this 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's Default.



**ARTICLE 34
TERMINATION**

34.1 Termination for Concessionaire's Default

34.1.1 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 ("**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 15 (fifteen) 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's 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 Phase Milestone due in accordance with the provisions of Clause 12.5.2 and 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) Phase I COD does not occur within the period specified in Clause 12.5.3, or the COD for subsequent Phases does not occur in accordance with the terms of this Agreement;
- (f) the Punch List items have not been completed within the period set forth in Clause 14.4.1;
- (g) the amount of Damages liable to be paid by Concessionaire for the Concession Year due to breach of IATA 'Level of Service C (optimum)' as per Clause 18.6.9 equals to or is more than 2% (two percent) of the Premium for the preceding Concession Year;
- (h) the Concessionaire is in breach of more than 2/3rd (two-third) of the critical objective service quality requirements of Key Performance Indicators specified in Schedule I in any continuous period of 6 (six) months during the Concession Period;
- (i) the Concessionaire fails to achieve ISO and other certifications as per Clause 22.6, within a period of 3 (three) years from the Phase I COD;
- (j) the Concessionaire has failed to make any payment to the Authority within the period specified in this Agreement;
- (k) an Escrow Default has occurred and the Concessionaire fails to cure the default within a Cure Period of 15 (fifteen) days;



- (l) 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;
- (m) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- (n) a breach of the provisions of the Shareholders' Agreement, including but not limited to acting on any item, which has been identified as a Reserved Matter, or of the similar nature under the Companies Act, 2013 (or any of its statutory modification, supersession, etc.), without prior specific written approval of the Authority in such regard;
- (o) the Concessionaire creates any Encumbrance in breach of this Agreement;
- (p) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (q) a Change in Ownership or any other change has occurred in breach of the provisions of Clause 5.3;
- (r) 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;
- (s) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- (t) 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;
- (u) 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;
- (v) 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;
- (w) 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;
- (x) 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;
- (y) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;
- (z) the Concessionaire issues a Termination Notice in violation of the provisions of this Agreement; or
- (aa) 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.

34.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire's 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 34.1.3.

34.1.3 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 34.1.2 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.

Provided also that, no right under this Clause 34.1.3 shall be available to the Lenders' Representative, if the Concessionaire's Default has resulted due to Concessionaire not achieving the Phase Milestone upto 40% of Phase I in accordance with Clause 12.5.2 due to any cause or reason attributable to it, and in any such case, the Authority shall be under no obligation to serve any notice whatsoever upon the Lenders' Representative in any such case.

34.2 Termination for Authority Default

34.2.1 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 ("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 development of the Airport on at least 90% (ninety percent) 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.

34.2.2 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.

34.3 Termination Payment

34.3.1 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 percent) of the Debt Due less insurance claim forming part of the Insurance Cover;
- (b) 70% (seventy percent) 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 percent) of such unpaid claims shall be included in the computation of Debt Due. The Concessionaire hereby acknowledges that no Termination Payment shall be due or payable on account of a Concessionaire Default occurring prior to the Phase I COD, save and except as provided in Clause 34.3.3.

- 34.3.2 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 proceeds received from the available Insurance Cover; and
 - (b) 150% (one hundred and fifty percent) of the Adjusted Equity; and
 - (c) 115% (one hundred and fifteen percent) of the amount representing the Additional Termination Payment.
- 34.3.3 Upon Termination on account of Concessionaire's Default during the Construction Period, no Termination Payment shall be due and payable for and in respect of expenditure comprising the first 40% (forty percent) of the Total Project Cost and in the event of expenditure exceeding such 40% (forty percent) and forming part of Debt Due, the provisions of Clause 34.3.1 shall, to the extent applicable to Debt Due, apply in respect of the expenditure exceeding such 40% (forty percent). By way of illustration, the Parties agree that if the total expenditure incurred prior to Termination is 90% (ninety percent) of the Total Project Cost, the expenditure eligible for computation of Termination Payment hereunder shall be 50% (fifty percent) of the Total Project Cost and the Termination Payment due and payable in such event shall not exceed 45% (forty five percent) of the Total Project Cost. The Parties further agree that for the purposes of this Clause 34.3.3, Total Project Cost shall mean the amount specified in sub-clause (b) of the definition of Total Project Cost. The Parties also agree that for determining the Termination Payment under this Clause 34.3.3, the expenditure comprising upto the latest Phase Milestone shall be reckoned.
- 34.3.4 The 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 percent) above the Bank Rate on the amount of Termination Payment remaining unpaid, provided that such delay shall not exceed 90 (ninety) days. It is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.
- 34.3.5 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 25th (twenty fifth) 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 percent) of the Adjusted Depreciated Value of such Project Assets shall, notwithstanding the provisions of Clause 34.4.1, 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.
- 34.3.6 The Concessionaire expressly agrees that Termination Payment under this ARTICLE 34 shall constitute a full and final settlement of all claims of the Concessionaire on account of



Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof, shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

34.4 Certain limitations on Termination Payment

- 34.4.1 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. The Parties agree that within a period of 60 (sixty) days from Phase I COD, the Concessionaire shall notify to the Authority, the Total Project Cost as on Phase I COD and its disaggregation between Debt Due and Equity. The Parties further agree that in the event such disaggregation is not notified to the Authority, the 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 percent) of the Total Project Cost.
- 34.4.2 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 34.4.2 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.
- 34.4.3 Additional Termination Payment due and payable in respect of expansion of the Airport in accordance with the provisions of Clause 12.7 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.

34.5 Extension of Concession Period

- 34.5.1 The Concession Period may be extended in accordance with the Proviso of Clause 3.1.1. In the event of such extension, the Termination Payment specified in Clause 34.3.5 shall not be due and payable to the Concessionaire.
- 34.5.2 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 hereunder, the Authority shall pay to the Concessionaire the Termination Payment computed in accordance with the provisions of Clause 34.3.5.



34.6 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 35.1; 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. 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.

34.7 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 34.3.6, 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 35
DIVESTMENT OF RIGHTS AND INTEREST

35.1 Divestment Requirements

35.1.1 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 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, development, operation and maintenance, including Master Plan and all programmes and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date. The Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, development, 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) shall cause the Preferred Bidder and/ or any and all other shareholders of the Concessionaire, except the Authority and its nominees, to transfer their entire shareholding in the Concessionaire, to the Authority or any of its nominee, within 30 (thirty) days of the termination in consideration of the Termination Payment, and each of such Persons shall take all actions and proceedings, as may be required under the Applicable Laws, to complete such transfer;
- (g) shall cause all the Directors on the Board of the Concessionaire, except as may be appointed by the Authority or its nominees, to resign from the Board within 30 (thirty) days of the termination in consideration of the Termination Payment, and each of such resigning Directors shall take all actions and proceedings, as may be required under the Applicable Laws, to complete such process;
- (h) execute such deeds of conveyance, documents and other writings as the Authority may 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
- (i) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of



the Concessionaire in the Airport, free from all Encumbrances, absolutely unto the Authority or to its nominee.

- 35.1.2 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.

35.2 Inspection and cure

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Authority 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 terms of this Agreement, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, shall be cured by the Concessionaire at its cost and the provisions of ARTICLE 36 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this ARTICLE 35.

35.3 Cooperation and assistance on transfer of Project

- 35.3.1 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.
- 35.3.2 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.

35.4 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 Q ("**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.

35.5 Divestment costs etc.

- 35.5.1 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 Concessionaire.

35.5.2 In the event of any Dispute relating to matters covered by and under this ARTICLE 35, the Dispute Resolution Procedure shall apply.



ARTICLE 36
DEFECTS LIABILITY AFTER TERMINATION

36.1 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 has the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Authority in the Airport during the aforesaid period. If 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 Key Performance Indicators and the terms of this Agreement. 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 36.2 or from the Performance Guarantee provided hereunder.

36.2 Retention in Escrow Account

- 36.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 36.2.3, a sum equal to 5% (five percent) 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 36.1.
- 36.2.2 Without prejudice to the provisions of Clause 36.2.1, the Authority on its own, or through its nominee, 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 36.2.1 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 Authority or its Independent Engineer shall be retained in the Escrow Account for the period specified by it.
- 36.2.3 The Concessionaire may, for the performance of its obligations under this ARTICLE 36, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under Clause 36.2.1 or Clause 36.2.2, as the case may be, and for the period specified therein, substantially in the form set forth in Schedule F ("**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 36. Upon furnishing of a Performance Guarantee under this Clause 36.2.3, the retention of funds in the Escrow Account in terms of Clause 36.2.1 or Clause 36.2.2, as the case may be, shall be dispensed with.



Part VI
Other Provisions



ARTICLE 37
ASSIGNMENT AND CHARGES

37.1 Restrictions on assignment and charges

37.1.1 Subject to Clause 37.2 and Clause 37.3, 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.

37.1.2 Subject to the provisions of Clause 37.2, 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.

37.2 Permitted assignment and charges

The restraints set forth in Clause 37.1 shall not apply to:

- (a) liens arising by operation of Applicable Laws (or by an agreement evidencing the same) in the ordinary course of business of the Airport;
- (b) hypothecation/pledge of goods/assets other than Project Assets (except receivables) 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. 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; and
- (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.

37.3 Substitution Agreement

37.3.1 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 ("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 R. *Provided however that*, if the Senior Lenders, acting through the Lenders' Representative, are not able to identify or substitute the Concessionaire with any Nominated Company, in accordance with the terms of the Substitution Agreement, then, the Authority shall have a right to substitute the Concessionaire, in such a manner that the Authority is a Nominated Company for the purposes of the Substitution Agreement, and any reference to the Nominated Company shall mean the Authority and all other terms and conditions of the Substitution Agreement shall be construed accordingly.

37.3.2 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.

37.4 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.

37.5 Step-in rights

- 37.5.1 In the event of an emergency (as communicated by the Authority, in writing, at its sole discretion), the Authority has the right to temporarily assume control of the Airport in place of the Concessionaire, either through itself or any nominated Government Instrumentality. During the period in which the control over the Airport is assumed by the Authority or the nominated Government Instrumentality, the Authority shall be deemed to be the Concessionaire for the purpose of discharging the obligations of the Concessionaire under this Agreement for that limited period. The duties and obligations of the Concessionaire shall be suspended during such period and the Authority or its nominated Government Instrumentality shall operate and maintain the Airport in accordance with the provisions of this Agreement. Provided however, within 7 (seven) days of cessation of the aforesaid emergency and any effect thereof, or such longer time-period as may be reasonable taking into account the nature of emergency, the Authority or its nominated Government Instrumentality, as the case may be, shall hand over the Airport (as it stands on that date) back to the Concessionaire, to operate and manage the same in accordance with the terms and conditions set out herein.
- 37.5.2 Any charges in relation to provision of Aeronautical Services or Non-Aeronautical Services levied and collected by the Authority or its nominated Government Instrumentality during such period, shall be held by it, for and on behalf of the Concessionaire and shall be given to the Concessionaire, subject to the Clause 37.5.3 herein below.
- 37.5.3 The Concessionaire shall reimburse and indemnify the Authority or its nominated Government Instrumentality, as the case may be, for any and all costs and expenses incurred by it, relating to operation and maintenance of the Airport, during the period of step-in, which costs and expenses may be set-off by the Authority or its nominated Government Instrumentality from the amounts payable by the Authority to the Concessionaire under Clause 37.5.2 above.
- 37.5.4 In the event, the period of step-in, exceeds 3 (three) months, the same shall be considered as a Political Event of Force Majeure under Clause 31.4 and shall be dealt with accordingly.



ARTICLE 38
LIABILITY AND INDEMNITY

38.1 General indemnity

- 38.1.1 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, (“**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 performance of the obligations by the Concessionaire or from any negligence of the Concessionaire under contract or tort, or on the ground of fraud or negligence, or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any wilful negligent act or omission, or breach or default of this Agreement on the part of the Government Indemnified Persons.
- 38.1.2 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 subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Concessionaire.

38.2 Indemnity by the Concessionaire

- 38.2.1 Without limiting the generality of Clause 38.1, 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 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.
- 38.2.2 Without limiting the generality of the provisions of this ARTICLE 38, 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 the prescribed 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.

38.3 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 38 ("**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.

38.4 Defence of claims

38.4.1 The Indemnified Party has 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 38, 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 in the name of the Indemnified Party, if so required, 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.

38.4.2 If the Indemnifying Party has exercised its rights under Clause 38.3, 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).

38.4.3 If the Indemnifying Party exercises its rights under Clause 38.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:



- (a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party;
- (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action;
- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
- (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
 - (i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
 - (ii) that such claim, action, suit or proceeding involves or could have a Material Adverse Effect upon it beyond the scope of this Agreement:

Provided that if Sub-Clauses (b), (c) or (d) of this Clause 38.4.3 shall be applicable, the counsel for the Indemnified Party has 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.

38.5 No consequential claims

Notwithstanding anything to the contrary contained in this ARTICLE 38, 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.

38.6 Survival on Termination

The provisions of this ARTICLE 38 shall survive Termination.



ARTICLE 39 DISPUTE RESOLUTION

39.1 Dispute resolution

- 39.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (“**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 39.2.
- 39.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

39.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer during the Construction Period and an industry expert during the Operation Period, to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer or the industry expert, as the case may be, or without the intervention of the Independent Engineer or such industry expert, either Party may require such Dispute to be referred to the Vice Chairman & Managing Director of the Authority and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 39.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 39.3.

39.3 Arbitration

- 39.3.1 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 39.2, shall be finally decided by reference to arbitration by an arbitral tribunal in accordance with Clause 39.3.2. Such arbitration shall be held in accordance with the Rules, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The place of such arbitration shall be the capital of the State and the language of arbitration proceedings shall be English.
- 39.3.2 There shall be an arbitral tribunal comprising 3 (three) arbitrators, of whom each Party shall select 1 (one), and the 3rd (third) arbitrator shall be appointed by the 2 (two) arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.
- 39.3.3 The arbitral tribunal shall make a reasoned award (“**Award**”). Any Award made in any arbitration held pursuant to this ARTICLE 39 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.



39.3.4 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.

39.3.5 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.

39.4 Adjudication by Tribunal

Notwithstanding anything contrary contained in this ARTICLE 39, in the event of constitution of a statutory tribunal or other forum with powers to adjudicate upon disputes between the Concessionaire and the Authority in specific or otherwise for dealing with disputes arising out of public private partnership framework, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 39.3, 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 40 DISCLOSURE

40.1 Disclosure

The Concessionaire shall make available for inspection by any person, copies of this Agreement and Safety Requirements, 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 this Agreement for such inspection, and shall provide copies of the same to any person upon payment of copying charges on a 'no profit no loss' basis.

40.2 Disclosure of Documents relating to safety

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

40.3 Withholding disclosure of Protected Documents

Notwithstanding the provisions of Clause 40.1 and Clause 40.2, the Authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents to any person in pursuance of the aforesaid Clauses, and not required to disclose and withhold under the provisions of the Right to Information Act, 2005.



ARTICLE 41
REDRESSAL OF PUBLIC GRIEVANCES

41.1 Complaints Register

- 41.1.1 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.
- 41.1.2 The Complaint Register shall be securely bound and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Concessionaire. Immediately after a complaint is registered, the Concessionaire shall give a receipt to the Complainant stating the date and complaint number.
- 41.1.3 Without prejudice to the provisions of Clause 41.1.1 and Clause 41.1.2, the Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

41.2 Redressal of complaints

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



**ARTICLE 42
MISCELLANEOUS**

42.1 Governing law and jurisdiction

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

42.2 Waiver of immunity

Each Party unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitutes 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).

42.3 Change in Law

Any event or occurrence at any time during the term of this Agreement that may constitute a 'change in law' or alleged 'change in law', shall not be a ground for any alteration or amendment to any term hereof or of any rights and obligations flowing from this Agreement in favour of the Concessionaire. The rights and obligations hereunder shall not be prejudiced by any event that may constitute a 'change in law' or an analogous event or circumstance.

42.4 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. 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.

42.5 Delayed payments

- 42.5.1 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 specifically provided 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 2% (two percent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

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

42.6 Waiver

42.6.1 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.

42.6.2 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 considered or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

42.7 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 of any Project Agreement, Document or Drawing submitted by the Concessionaire nor any observation or inspection of the development, 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.

42.8 Exclusion of implied warranties etc.

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

42.9 Survival

42.9.1 Termination shall:

- (a) not relieve the Concessionaire or the Authority, as the case may be, of any obligations



hereunder which expressly or by implication survive Termination hereof; and

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

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

42.10 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. The Parties hereto agree that any obligations of the Concessionaire arising from the Request for Qualification or Request for Proposal, as the case may be, shall be deemed to form part of this Agreement and considered as such.

42.11 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.

42.12 No partnership

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

42.13 Third parties

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

42.14 Successors and assigns

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



42.15 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: Managing Director
Address: Terminal 1, 1st Floor, CSI Airport, Santacruz (E), Mumbai – 400 099
Fax No: +91-22-66851618
Email: sanjayreddy@gvk.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 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.

Attention: Vice Chairman & Managing Director
Address: 2nd Floor, Nirmal, Nariman Point, Mumbai – 400 021, Maharashtra
Fax No: +91-22-22022509
Email: cidcomdoffice@gmail.com

- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post, it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery, provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

42.16 Language

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

42.17 Stamp Duty

No stamp duty shall be payable on the execution or delivery of this Agreement, under the provisions of the Maharashtra Stamp Act, 1958.

42.18 Counterparts

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



In witness whereof, the Parties have signed this Agreement through their authorised representatives, as above stated, as of the date first hereinabove mentioned:

<p>Signed for and on behalf of: CITY AND INDUSTRIAL DEVELOPMENT CORPORATION OF MAHARASHTRA LIMITED by a duly authorized representative:</p> <p></p> <p>Mr. Bhushan Gagraji Vice Chairman and Managing Director</p>	<p>Signed for and on behalf of: NAVI MUMBAI INTERNATIONAL AIRPORT PRIVATE LIMITED by a duly authorized representative:</p> <p></p> <p>Dr. GVK Reddy Chairman</p> 
<p><i>Signature of the Witness:</i></p> <p></p> <p>Mr. Soma Vijaykumar Chief General Manager (Transport & Airport) City and Industrial Development Corporation of Maharashtra Limited</p>	<p><i>Signature of the Witness:</i></p> <p></p> <p>G.V. Sanjay Reddy Director</p> <p>Navi Mumbai International Airport Private Limited</p>



Schedules



SCHEDULE A
SITE OF THE AIRPORT
(See Clause 10.1)

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 and the Concessionaire, and such inventory shall form part of the memorandum referred to in Clause 10.3.1 of the Agreement.
- 1.3 The Master Plan for the Site is described in Annex II of this Schedule A.
- 1.4 The Site earmarked for the Airport, accommodates all land use in respect of the Aeronautical Assets and Non-Aeronautical Assets.
- 1.5 The Concessionaire hereby acknowledges, confirms and accepts that the land forming part of the Site is good and sufficient from all parameters to undertake the development and implementation of the Project.

2 Additional land for Expansion of Airport

- 2.1 The Authority is neither under any obligation nor will the Concessionaire be entitled to demand any additional land at any time during the Concession Period for undertaking any part of the development or implementation of the Project.



Annex I
(Schedule A)
Site for the Airport

1. Location of the Site

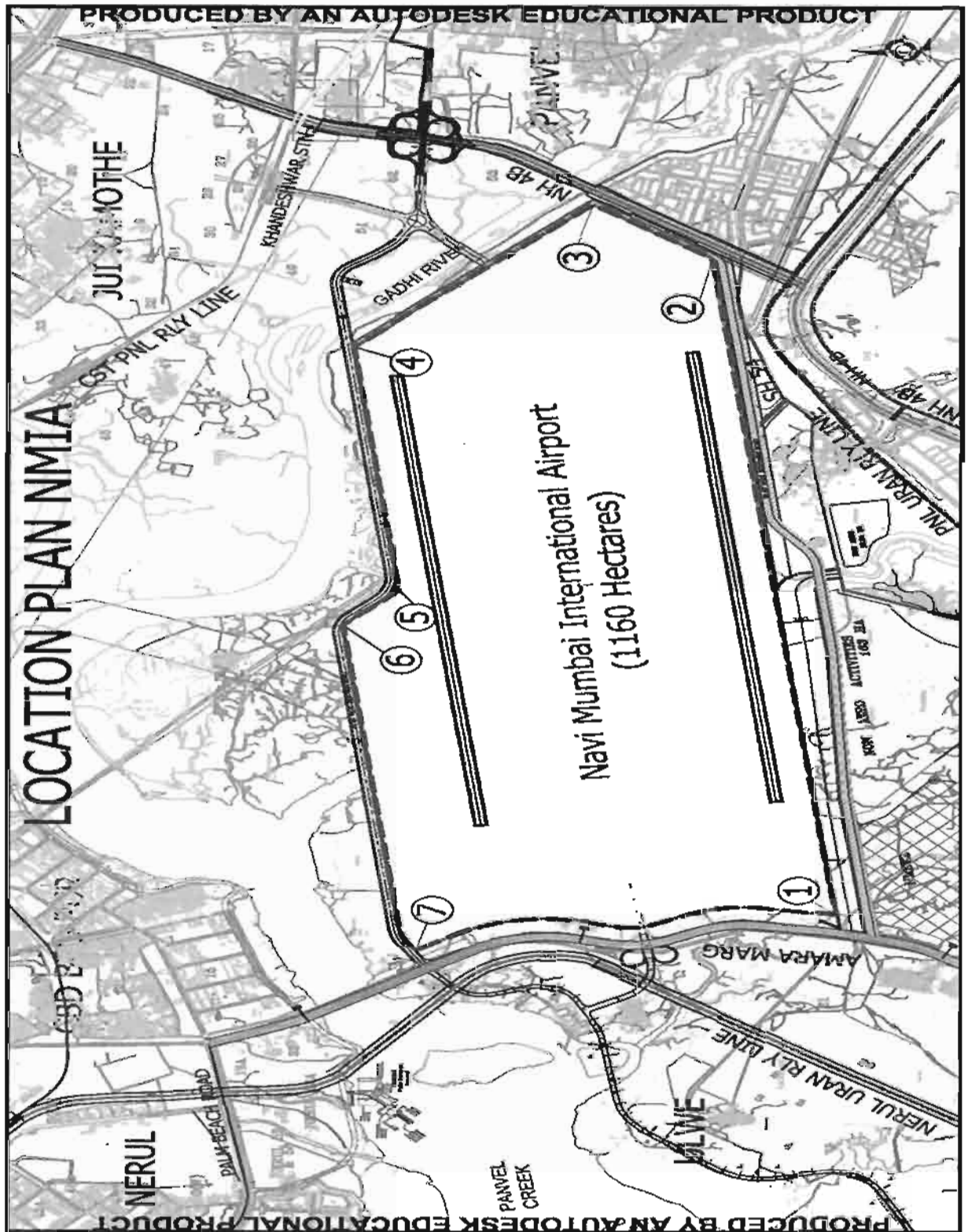
- 1.1. The site for proposed Airport is located at Navi Mumbai in an area admeasuring 1160 ha. It is situated on the National Highway No. 4B, at a distance of approx. 35 km from the existing CSIA. The Site is bound within the following WGS84 Coordinates, subject to marginal variation as per Site demarcation:

Corner No.	Co-ordinate Points	Co-ordinate	Airport Land Elevation (Above Mean Sea Level)
1	South West Corner	18° 58' 45.82" 73° 2' 19.12"	7.00 AMSL
2	South East Corner	18° 59' 8.67" 73° 5' 18.38"	8.00 AMSL
3	North East Corner (1)	18° 59' 33.23" 73° 5' 35.71"	8.00 AMSL
4	North East Corner (2)	19° 0' 11.13" 73° 4' 58.72"	8.00 AMSL
5	North East Corner (3)	19° 0' 2.51" 73° 3' 50.90"	8.0 AMSL
6	North West Corner (1)	19° 0' 12.18" 73° 3' 41.02"	8.00 AMSL
7	North West Corner (2)	18° 59' 57.55" 73° 2' 8.60"	7.00 AMSL

- 1.2. The National Highway 4B and Aamra Marg provides the main road access to the Site from the east and the west. The Airport is also proposed to be accessible from the existing Mankhurd-Belapur-Panvel commuter rail corridor from Khandeshwar Railway Station, and from the proposed Targhar Railway Station on the Nerul-Uran Railway line, which is presently under development. The Airport will derive access from NH-4B at point having coordinates 18° 59' 59.60", 73° 5' 56.92 and Aamra Marg at point having coordinates 18° 59' 17.47", 73° 2' 12.52". In addition to these accesses, the Concessionaire may explore the access from northern arterial road or SH54 state highway, in consultation with the Authority.
- 1.3. A reference drawing is provided herein below showing the location of the Site and approach roads to the Site:



Annex II
 (Schedule A)
 (See Clause 12.2.1)
 Master Plan for the Site



1. Master Plan

- 1.1 The Airport is envisaged to be state-of-the-art with modular and scalable facilities, for both domestic and international passengers, and cargo.
- 1.2 The Master Plan shall be developed for the development and implementation of the Project in a Phase-wise manner, for a minimum annual passenger handling capacity of 60 million and minimum annual cargo handling capacity of 1.5 million tonnes during the Concession Period.
- 1.3 The Concessionaire shall prepare and submit a Master Plan for the Airport within 90 (ninety) days of the execution of this Agreement, setting out the proposed development for the entire Airport, planned over the Concession Period. The Master Plan shall include short term and long term traffic forecasts and link all planned major development to these forecasts. The Master Plan shall be prepared in accordance with and include the following:
- (a) a statement of the overall development strategy and philosophy;
 - (b) details of traffic forecasts and provide the traffic trigger points for subsequent developments of each of the Project Facilities, which are linked to traffic growth, indicating at what traffic level the subsequent Phases will be commenced and completed;
 - (c) approach for preparing the Master Plan shall be as per the philosophy of adaptability to the current and future requirements;
 - (d) 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;
 - (e) requirements of the Master Plan are set forth in Schedule A, Schedule B, Schedule C and Schedule D hereof;
 - (f) obstacle limitation surfaces for the Airport and approach and take-off areas;
 - (g) provide graphic presentation of the development of the Airport in a Phased manner;
 - (h) proposed development through the technical, economic, and environmental investigation of concepts and alternatives;
 - (i) report on the outcome of consultations with users, community, businesses and the government;
 - (j) realistic schedule for the implementation of the development proposed in the Master Plan;
 - (k) propose an achievable financial plan to support the implementation schedule;
 - (l) such other matters that may be specified by the Authority.
- 1.4 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



- 1.5 The area earmarked for development and the implementation of the Airport, including the expansion thereof, location and land use in respect of the Project Assets shall be specified in the Master Plan.
- 1.6 The Master Plan shall incorporate target dates for construction of individual facilities (“Targets”) linked to traffic trigger points or otherwise. The Concessionaire shall ensure that each of the Targets are met fully and on time. At any time after the Phase I COD, in the event that the Concessionaire feels that a Phase set out in the Master Plan, or a traffic trigger or such other trigger needs to be revised due to technological up-gradations, procedural improvement or other such improvisations, it shall submit a request for deviation fully reasoned and explained at least 3 (three) months prior to likely occurrence of the designated trigger. On receipt of the request, the Authority may seek views of Users and stakeholders and shall convey its agreement or otherwise, within 30 (thirty) days of the receipt of the request.

2. Phasing of Master Plan and Development

2.1 Phase I Development

- 2.1.1 The Concessionaire shall plan and develop Phase I of the Airport to cater to the minimum annual passenger throughput capacity of handling of a minimum of 10 million passengers (domestic and international) and annual cargo handling capacity of a minimum of 260,000 tonnes, along with all ancillary facilities.
- 2.1.2 The Concessionaire will prepare the Development Plan based on the provisions of Schedule A, Schedule B, Schedule C and Schedule D, which is to be submitted to the Authority in 60 (sixty) days from the submission of the revised/ final Master Plan in accordance with Clause 12.2.4.

2.2 Development during subsequent Phases

- 2.2.1 The Development Plans for subsequent Phases shall *inter-alia* provide for undertaking specific capital expenditure projects linked to traffic triggers and shall provide for traffic linked capacity expansions. The Concessionaire shall submit the Development Plan for subsequent Phases after Phase I, atleast 3 (three) months prior to the planned date of start of Construction Works for such Phase, as defined in the Master Plan.
- 2.2.2 The Concessionaire shall initiate Construction Works for subsequent Phases after Phase I, within 3 (three) months, upon the earlier occurrence of any one of the following traffic triggers:
- (a) Actual Peak Hour passengers exceeds the design Peak Hour passengers for 50% (fifty percent) of the time in a period of 6 (six) months on a rolling basis;
 - (b) Annual passenger traffic in any Accounting Year is projected to exceed 75% (seventy five percent) of the design throughput capacity of the Airport, by taking into account the observed traffic growth rate over the preceding 6 (six) month period.
- 2.2.3 While following the requirements mentioned in Clause 2.2.2 above, the Concessionaire shall plan its development activities and Construction Works for any Phase, in such a way that in any case, there is no breach of Key Performance Indicators, IATA Level of Service – C (optimal standards), Safety Requirements and any other statutory and regulatory requirements under the Applicable Laws, which are required to be followed for the operations of the Airport.



3. Development Plan

The Concessionaire shall prepare and submit a detailed development plan for each Phase of the Project (“Development Plan”), as follows:

- (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;
- (b) Development Plan shall include:
 - (i) engineering design and drawings for each of the identified Project Facility;
 - (ii) quantity and cost estimates;
 - (iii) Specifications and Standards, requisite materials, equipment, machineries etc.;
 - (iv) Phase Completion Schedule;
 - (v) Financing Plan; and
 - (vi) any other criteria, as may be specified by the Authority or any concerned Government Instrumentality, from time to time.

4. Master Plan Drawing

The finalised Master Plan including its revisions, amendments, modifications and updates from time to time, shall form part of this Agreement.



SCHEDULE B
DEVELOPMENT OF THE AIRPORT
(See Clause 2.1)

The minimum requirements/ parameters, which the Concessionaire has to strictly adhere to, for the development of the Master Plan, are as follows:

1. General

- 1.1 The remaining Land Development Works forming part of the Pre-development Works shall be undertaken by the Concessionaire in accordance with the terms of the LDS Agreement(s) and the master plan requirements.
- 1.2 All the facilities of Master Plan shall be capable of 24/7 all-weather operations.
- 1.3 There should be a provision for metro rail/ mass rapid transit connectivity, which shall be constructed, including stations and line within the Site, at the cost of the Concessionaire, and shall form part of the regulatory asset base. If any construction or maintenance works are being taken by the Authority and/ or its nominees, then, the Concessionaire will ensure and facilitate the regular and proper access, as may be reasonably required by them, and shall reimburse the Authority and/ or its nominees, the cost of such construction or maintenance works.
- 1.4 Airport shall have access from both the sides (East and West), as per Annex I of Schedule A.

2. Airfield Requirements

- 2.1 ICAO Aerodrome Reference Code – 4F;
- 2.2 Critical Aircraft - A380
- 2.3 Fixed separation distance of 1,580 m between the two parallel runway;
- 2.4 Location of Runways are fixed as follows:

2.4.1 Runway North

Runway Orientation	08 L	26 R
Direction	083°	263°
Latitude	18°59'47.58" N	19°00'03.56" N
Longitude	73°02'45.39" E	73°04'50.76" E
WGS 84 Coordinates	2101587.9910	2102038.9076
	294300.8914	297973.3122

2.4.2 Runway South

Runway Orientation	08 R	26 L
Direction	083°	263°
Latitude	18 ° 58'56.66" N	18°59'12.63" N
Longitude	73°02'52.56" E	73°04'57.92" E
WGS 84 Coordinates	2100019.6123	2100470.529
	294492.1734	298164.5942



Aprons must be based on the type of service and projected long-term critical aircraft size.

3. Terminal Building

- 3.1 Level of service for Terminal Building – IATA Level of Service “C” (optimum standards) compliant.
- 3.2 80% (eighty percent) of each of the international and domestic aircrafts gates shall be served by the boarding bridges.
- 3.3 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.
- 3.4 Provide international standard range of retail and other passenger services.
- 3.5 Terminal design must be capable of incremental expansion with minimum impact on extant operations.

4. Defence Area

- 4.1 The Concessionaire shall, in the Master Plan, earmark and carve out (a) a separate parking area for military aircraft for use, whenever required, and (b) a pocket of 16.42 ha of land for the strategic requirement of the Defence Forces (“Defence Area”).
- 4.2 The Defence Area preferably should be located north of Runway 08L-26 R along the northern boundary of the Site.
- 4.3 The Concessionaire shall provide access.
- 4.4 While preparing the Master Plan, the Concessionaire shall also take into consideration providing access to defence aircrafts apron from Runway 08L-26 R with adequate taxiway system.

5. Expansion of Airport

- 5.1 The expansion of the Airport shall take place in Phases.
- 5.2 The Concessionaire shall commence the process and complete the expansion of the Airport by having a subsequent Phase linked to traffic triggers, as identified in the Master Plan.
- 5.3 The expansion of the Airport in Phases shall be completed by the Concessionaire in conformity with the Specifications and Standards set forth in the Schedule D.

6. Development Control

- 6.1 The Master Plan shall be developed in conformity with GDCR and Navi Mumbai Disposal of Land Regulations (“NMDLR”), applicable to Navi Mumbai Area, and as amended from time to time.
- 6.2 The Concessionaire shall get approval from the concerned Government Instrumentalities of the Master Plan.



- 6.3 The Concessionaire will seek prior development permission from the concerned Government Instrumentalities for the construction, development and expansion of all buildings within the Site.
- 6.4 The concerned Government Instrumentalities shall be responsible for monitoring the built-up area and built-up area consumption for the development permissions issued in each Phase. The Airport shall be developed in accordance with General Development Control Regulations (“GDCR”) of the Authority as amended from time to time, in respect of the Airport and Allied Activities zone. As per the GDCR, the maximum permissible FSI is 1.0 for the Site. The total built-up area available for development of the Airport will be 575 ha. However, the initial permissible built-up area available to the Concessionaire will be 250 ha. If the Concessionaire intends to use any built-up area over and above 250 ha, then, it shall seek prior permission from the Authority in such regard and pay the charges at the prevalent rates to the Authority at such time. The Authority shall grant any such permission subject to the overall ceiling of the built-up area of 575 ha, Applicable Laws and the Applicable Permits. No transfer development rights will be available for any such built-up area.

7. MRO Facilities

- 7.1 The Concessionaire shall earmark minimum 13 ha of land within the Site for the development of a MRO Facility in the Airport.
- 7.2 The MRO Facility shall be developed, subject to the requirements specified in Clause 12.10 of the Concession Agreement, serving 1 (one) CODE ‘E’ aircraft or 2 (two) CODE ‘C’ aircrafts, which shall include the buildings, structures and equipment required by the aircraft service area for performing “heavy maintenance visit”. This will be built in accordance with the provisions of this Agreement, Applicable Laws, relevant ICAO Documents and Annexes, DGCA CAR Guidelines and Good Industry Practice.
- 7.3 The Concessionaire shall procure that the MRO Facilities to be provided hereunder includes hangars designed to deal with maintenance of aircraft in a ‘nose-in’ orientation with coverage for the entire aircraft of 1 (one) CODE ‘E’ aircraft or 2 (two) CODE ‘C’ aircrafts. The Concessionaire shall procure that the MRO Facilities allow the aircrafts’ main components, including the wings, entry doors, landing gear, engines, and empennage to be protected from weather, at the time when any maintenance or repair work, as the case may be is being carried out. A high volume bay should be planned to accommodate the housing, repair and maintenance activities of 1 (one) CODE ‘E’ aircraft or 2 (two) CODE ‘C’ aircrafts, expected during the life of the Airport. Adequate bay area, length and width are required for access and staging of maintenance equipment beyond the footprint envelope of the 1 (one) CODE ‘E’ aircraft or 2 (two) CODE ‘C’ aircrafts. This will be built in accordance with the provisions of this Agreement and Good Industry Practice.

8. Housing for Personnel Providing Reserved Services

- 8.1 The Concessionaire will provide and maintain 200 flats (“Reserved Services Housing”) for personnel deployed by Designated GOI Agencies for providing Reserved Services and plan contract for performing active channel duty at the airport. The Concessionaire shall earmark appropriate land within the Site and develop and maintain the Reserved Services Housing in the Airport.
- 8.2 The Concessionaire will seek prior development permission from the concerned Government



Instrumentalities for the construction, development and expansion of all buildings within Reserved Services Housing area.

8.3 The Concessionaire shall provide access to Reserved Services Housing.



Annex
(Schedule B)
(See Clause 12.9)
Pre-development Works

The Pre-development Works include the following:

1. Land Development Works

The Land Development Works include the works of land development within and outside the Site, and shall primarily include the following:

- (a) Cutting of hills in and around the Site upto level of 8 m above mean sea level;
- (b) Ground improvement works;
- (c) Construction of sea wall/ retaining wall along the boundary of the Site;
- (d) Shifting/ relocation of the Utilities.

Exclusion: Any part of the land development works, which falls outside the Site, shall not form part of the remaining Land Development Works for the purposes of the LDS Agreement.

2. Construction of diversion channel for Ulwe river flowing through the Site

This work includes:

- (a) Cutting of 120 m / 200 m wide channel, along the southern boundary of the Airport, for diversion of the Ulwe river, of 3.5 km length, from near the bridge on SH – 54 to Moha creek, including construction of 10 m bund on either side of channel and the lining of channel;
- (b) Crossing on the Aamra Marg by culvert/ bridge.

3. Re-routing of Extra High Voltage Transmission Lines passing through the Site

Extra High Voltage Transmission lines of TATA Power and MSETCL passing through the Site, are being re-routed through underground/at grade cabling and on bridges over mud flats, push through culvert and river/ creek crossings near the Airport periphery. The electrical works shall be executed by the respective Transmission Companies.



SCHEDULE C
PROJECT FACILITIES
(See Clause 2.1)

1 Project Facilities

The Concessionaire shall construct or cause to 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 the relevant COD have been described in Annex I of this Schedule C.



Annex I
(Schedule C)
Project Facilities for Airport

The Concessionaire shall construct or cause to construct the Project Facilities described in this Annex I to form part of the Airport. The Project Facilities shall include:

- (a) Airside infrastructure to comply with DGCA CAR and ICAO Code 4F operation standards;
- (b) Passenger terminal building with all services and amenities necessary for IATA Level of Service "C" (optimum standards) 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) General aviation services;
- (m) Hangars;
- (n) Flight catering services;
- (o) Vehicle parking;
- (p) Police Aid Post, Police Station and Customs Building;
- (q) Other activities related to passenger services at the Airport;
- (r) Maintenance Repair and Overhaul Facility (whenever developed);
- (s) In addition, any facility required as per ICAO documents and annexes, Applicable Laws and the Authority.



SCHEDULE D
SPECIFICATIONS AND STANDARDS
(See Clause 2.1)

Airport

The Concessionaire shall comply with the Specifications and Standards set forth in Annex I of this Schedule D for construction of the Airport.



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, as amended and modified from time to time, and for the time being specified in the following:

- (a) Section 4, Series B (Part I), Civil Aviation Requirements (CAR), Aerodrome Standards and Air Traffic Services (November 2009);
- (b) DGCA CAR Section 4 – Aerodrome Standards and Air Traffic Services; Series ‘F’ Part I regarding grant of an Aerodrome Licence;
- (c) DGCA CAR 145 - Approval of Maintenance Organisations;
- (d) ICAO – International Standards and Recommended Practices, Aerodromes, Annex 14 to the Convention on International Civil Aviation: Volume 1 Aerodrome Design and Operations – Sixth Edition, 2013;
- (e) ICAO Aerodrome Design Manual (Doc 9157);
- (f) ICAO Airport Services Manual (Doc 9137);
- (g) ICAO Airport Planning Manual (Doc 9184-AN/902);
- (h) Any other ICAO Manual and Standards as applicable;
- (i) US National Fire Protection Association (NFPA) standards on Airport Terminal Buildings, Fuelling Ramp drainage and loading Walkways;
- (j) International Air Transport Association (IATA) Airport Development Reference Manual, 10th Edition, March 2014;
- (k) The National Building Code;
- (l) Relevant Indian Standard Codes published by the Bureau of Indian Standards;
- (m) Energy Conservation Building Code, 2007 issued by the Bureau of Energy Efficiency as revised from time to time;
- (n) 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;
- (o) Applicable Laws;
- (p) In respect of quality standards, with regard to any facility at the Airport, the benchmarking will be the prevailing quality standards as observed in the top five international airports in the South East Asian region (as ranked by ACI or analogous rating) of a similar scale and size;
- (q) Any other applicable manuals, standards, specifications, guidelines not listed above.



SCHEDULE E
APPLICABLE PERMITS
(See Clause 4.1.3)

PART I

1 Applicable Permits prior to Appointed Date

The Concessionaire shall obtain, as required under Applicable Laws, the 'In principle' approval of DGCA for construction of the Airport, on or before the Appointed Date.

PART II

2 Applicable Permits prior to Phase I COD

The Concessionaire shall obtain, as required under Applicable Laws, the following Applicable Permits prior to the commencement of the relevant activity:

- (a) Approval of BCAS and DGCA;
- (b) DGCA licence for operating the Airport;
- (c) Permission of the State Government for extraction of boulders from quarry;
- (d) Permission of the State Pollution Control Board for installation of crushers;
- (e) Licence for use of explosives;
- (f) License for the storage, usage, transportation of various categories of petroleum;
- (g) Permission of the State Government for drawing water from river/reservoir;
- (h) Licence from Inspector of factories or other competent authority for setting up Batching Plant;
- (i) Clearance of the State Pollution Control Board for setting up Batching Plant;
- (j) Clearance of the State Pollution Control Board for Asphalt Plant;
- (k) Clearance of the State Pollution Control board for installation of diesel generator sets;
- (l) Clearances required for construction, operation and maintenance of the Terminal building, cargo complex, aircraft fuelling and other structures such as fire, BCAS, petroleum, etc.
- (m) Permission of the State Government for cutting of trees; and
- (n) Any other permits or clearances required under Applicable Laws.



SCHEDULE F
PERFORMANCE SECURITY
(See Clause 9.1)

[To be executed on the stamp paper of appropriate value]

City and Industrial Development Corporation of Maharashtra Limited,
Nirmal, 2nd Floor, Nariman Point,
Mumbai – 400 021, Maharashtra

WHEREAS:

- A. **Navi Mumbai International Airport Private Limited (“Concessionaire”)** and the **City and Industrial Development Corporation of Maharashtra Limited (“Authority”)** have entered into a Concession Agreement dated January 8, 2018 (“**Agreement**”), whereby the Authority has authorised the Concessionaire to undertake the construction, operation, maintenance and management of the Navi Mumbai International Airport at Navi Mumbai, in the State of Maharashtra on DBFOT basis, subject to and in accordance with the provisions thereof.
- B. The Agreement requires the Concessionaire to furnish a Performance Security to the Authority in a sum of Rs. [_____] /- (Rupees [_____] (“**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, for a period of 7 (seven) years from the COD for the Phase [] of the Project.
- C. We, [_____] through our Branch at [_____] (“**Bank**”) have agreed to furnish this Bank Guarantee by way of Performance Security in terms of the 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 or otherwise, 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 the Joint Managing Director, that there is an amount due and outstanding from the Concessionaire, or 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 under the Agreement and its decision in this regard shall be final and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.
3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/ or the



Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.

4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. The Authority has 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 liabilities and obligations 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 for a period of 7 (seven) years from the COD for the Phase [] of the Project and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no later than 3 (three) 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 7 (seven) years from the COD for the Phase [] of the Project, with a claim period of 3 (three) months thereafter. Upon request made by the Concessionaire for release of the Performance Security alongwith the particulars required hereunder, duly certified by a statutory auditor of the Concessionaire, the Authority shall release the Performance Security forthwith after the period of 3 (three) months from the date of expiry of this Guarantee.
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 through post and in proving such notice, when given by post, 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.



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:

- (a) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- (b) 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
PHASE COMPLETION SCHEDULE
(See Clause 12.5.2)

1. Phase Completion Schedule

- 1.1 During the Construction Period, the Concessionaire shall comply with the requirements set forth in this Schedule G for each of the Phase Milestones.
- 1.2 The Phase Milestones and Scheduled Completion Date, in respect of each Phase, shall be submitted, determined and approved by the Authority atleast 30 (thirty) days prior to the commencement of the Construction Works for each of such Phase.
- 1.3 The Concessionaire shall breakdown the whole of the Construction Works to be performed during the Construction Period, in measurable time unit (days/ weeks/ months/ year) (“**Phase Completion Schedule**”), and link it with major activities to be completed during the Construction Period. These major activities may be sub-divided in various tasks and the time period shall be defined to complete each tasks.
- 1.4 The breakdown of the Construction Works with time period shall be presented in the form of a bar chart or any suitable diagram, which clearly defines the linkages and interdependency between the tasks and activities.
- 1.5 The Concessionaire shall, as a part of the Development Plan, submit the Phase Completion Schedule to the Authority, in respect of each of the Phases.

2. Phase Milestone

The Concessionaire shall identify major milestones for each Phase of the Project to be adhered to, in terms of physical and financial progress of the Construction Works (“**Phase Milestone**”), to be completed on or before the Scheduled Completion Date for each Phase. However, the Concessionaire shall comply with the conditions set out in Clause 12.5.2 of the Agreement, while finalising the Phase Milestone Schedule for Phase I. The Phase Milestones shall be reviewed and approved by the Independent Engineer. The Concessionaire shall provide Phase Completion Schedule, in respect of each Phase, to the Authority.

3. Scheduled Completion Date

- 3.1 The Scheduled Completion Date of Phase I shall occur on the 1245th (one thousand two hundred forty fifth) day from the Appointed Date.
- 3.2 On or before the Scheduled Completion Date of Phase I, the Concessionaire shall have completed the Phase I of the Airport in accordance with this Agreement.

4. Extension of period

Upon extension of any or all of the Phase Milestones or the Scheduled Completion Date, as the case may be, under and in accordance with the provisions of this Agreement, the Phase Completion Schedule shall be deemed to have been amended accordingly.



SCHEDULE H
TESTS
(See Clause 14.1.2)

1 Schedule for Tests

- 1.1. The Concessionaire shall, no later than 90 (ninety) days prior to the likely completion of the relevant Phase of the Airport, notify the Independent Engineer and the Authority of its intent to subject the relevant Phase of 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 relevant Phase of the Airport to the 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 Concessionaire shall thereupon conduct the Tests in the presence of the Independent Engineer in accordance with ARTICLE 14 and this Schedule H.

2 Tests

In pursuance of the provisions of Clause 14.1.2 of this Agreement, the Concessionaire shall conduct, in the presence of the Independent Engineer, the following Tests:

2.1 Visual and Physical Test:

- 2.1.1 The Concessionaire 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.
- 2.1.2 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.

2.2 Tests for Equipment:

The Concessionaire shall conduct 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.

2.3 Test for operation readiness:

Subject to the Concessionaire handing over the ATC Facility to the Designated GOI Agency, at least 120 (one hundred and twenty) days prior to COD and the Designated GOI Agency 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 Concessionaire shall conduct trial run 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.



2.4 Environmental Audit:

The Concessionaire shall carry out a check to determine conformity of the Airport with the environmental requirements, set forth in Applicable Laws and Applicable Permits.

2.5 Other Mandatory Tests:

The Concessionaire shall procure and ensure that all statutory tests required to be undertaken in accordance with the 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 H shall be conducted by the Concessionaire or such other agency or person as it may specify in consultation with the Authority, in presence of the Independent Engineer and/or 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 and Applicable Permits.

5 Completion/ Provisional Report

Upon successful completion of the Tests, the Independent Engineer shall submit its report to the Authority, with respect to the Completion or the Provisional Completion, 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 H, the tests during the performance of the Construction Works shall be conducted in accordance with the provisions of Clause 13.3.1.



SCHEDULE I
SERVICE QUALITY REQUIREMENTS
(See Clause 22.1.1)

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 I.

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 I

The Concessionaire shall display a copy of this Schedule I at the Terminal Building along with the Complaint Register, stipulated in ARTICLE 41.



Annex I
(Schedule I)
SERVICE QUALITY REQUIREMENTS

The Concessionaire shall at all times procure and ensure that the services provided at the Airport conform to the Key Performance Indicators (“Service Quality Requirements”), specified in this Annex I of Schedule I.

1. Objective Quality of Service Parameters and Benchmarks

Performance Indicator	Performance Measure	Minimum Performance Standard			Critical (Yes/ No)
Transfer Process	Minimum connect times for 80% of the transfer passengers	Domestic/International: upto 75 minutes International/International: upto 60 minutes Domestic/Domestic: upto 60 minutes			No
Terminal Services	Handling of complaints	100% of complaints responded to within 2 working days			No
	Response to phone calls	90% of calls answered within 60 seconds			No
	Availability of Flight Information	98% availability			No
	Automated services	98% availability			No
	Lifts, escalators and travellators etc.	98% availability			No
	Repair completion time	95% of high priority complaints within 4 hours, 95% of others within 24 hours			No
	Baggage trolleys	100% availability			No
	Cleanliness	Achieve a satisfactory rating for 95% of all inspections			Yes
	Availability of wheel chairs	100% of time within 5 minutes			No
	Facilities for Disabled Passenger	100% of time within 5 minutes			No
Check-in	Maximum queuing time	<i>Service</i>	<i>Class</i>	<i>Parameter</i>	<i>Critical (Yes/ No)</i>
		Traditional (Standard) boarding pass	Business Class	5 minutes	Yes
			Economy Class	20 minutes	Yes
		Self-serving Boarding pass	Business Class	3 minutes	No
			Economy Class	5 minutes	No
		Self-service baggage	Business Class	2 minutes	No



Performance Indicator	Performance Measure	Minimum Performance Standard			Critical (Yes/ No)
		drop (As and when operational)	Economy Class	5 minutes	
					No
Security check	Waiting time in queue	95% of Peak Hours passengers wait less than 5 minutes with an average dwell time at the security check point of 45 seconds per passenger			Yes
Immigration	Waiting time in queue	95% of passengers wait less than 10 minutes with an average dwell time at the immigration counter of 120 seconds per passenger			Yes
Baggage delivery	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			Yes
Passenger arrival process	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			Yes
Passenger boarding bridges	% of aircraft movements served to meet airline request	International – 90% of annual passengers Domestic – 90% of annual passengers travelling on A/C B737/A320 or larger unless not required by Airlines			Yes
Parking Bays	% time available	99%			Yes
Runway system	Delays to arriving/departing aircraft	Average annual delay per aircraft: 4 minutes or better based on provision of International Standard ATC procedures and equipment as per CNS/ATM Agreement			Yes
Vehicle Parking	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			No
	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			No
Taxis	Maximum waiting time	95% of passengers wait less than 5 minutes			No
Gate Lounges	Seating availability	80% of aircraft capacity			No
Land side	Travel time on	95% of vehicles to have travel time less			Yes



Performance Indicator	Performance Measure	Minimum Performance Standard	Critical (Yes/ No)
access	terminal frontage road	than 8 (eight) minutes for the distance between the entry barrier and the exit barrier of the terminal frontage road upto 1,000 (one thousand) meters. If the such distance of the terminal frontage road length exceeds 1,000 (one thousand) meters, then the 8 (eight) minutes should be increased by 1 (one) second for every 4 meter increase in the distance of 1,000 (one thousand) meters rounded upto the nearest minute	

2. 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 atleast 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 Monthly Statement being submitted as per the provisions of ARTICLE 20 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
 - (i) Ease of finding way through the Airport/ sign posting
 - (ii) Flight Information Screens
 - (iii) Walking distances
- b. Connectivity Items
 - (i) Ease of making connections with other flights
 - (ii) Ground transportation to / from airports
- c. Service Facilities
 - (i) Availability of baggage carts
 - (ii) Restaurant / eating facilities
 - (iii) Shopping facilities
 - (iv) Business facilities
 - (v) Washrooms
 - (vi) Parking facilities
- d. Value for money
 - (i) Restaurant/ eating facilities
 - (ii) Shopping facilities
 - (iii) Parking facilities



SCHEDULE J
SAFETY GUIDELINES

(See Clause 17.3.1)

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.

2 System integrity

In the design of power supply, lighting, signalling, communication and security equipment, 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 the 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. During the Construction Period, 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 such emergency through periodic simulated exercises, as laid down in a manual for management of disasters (“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 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 on Airport Terminal Buildings, Fuelling 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 fire-fighting 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 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 K
MONTHLY STATEMENTS
(See Clause 27.9)

Airport: [Name of Airport]

Month: []

S. No.	Particulars	For the month of current year	For the corresponding month of preceding year	Percentage Change (in %)
Scheduled Aircraft Movements (in nos.)				
1.				
2.				
	Total Scheduled Aircraft Movements			
Non-Scheduled Aircraft Movements (in nos.)				
	Total Non-Scheduled Aircraft Movements			
Passengers (in nos.)				
3.	Domestic			
4.	International			
	Total Passengers			
Transfer Passenger (in nos.)				
5.	Domestic			
6.	International			
	Total Transfer Passengers			
Cargo (in MT)				
7.	Export			
8.	Import			
9.	Domestic Inbound			
10.	Domestic Outbound			
11.	Transshipment			
	Total Cargo			

Remarks, if any:



Airport: [Name of Airport]

Month: []

Type and purpose of Fee	For corresponding month of previous year		For preceding month		For the month reported upon	
	No. of Users	Fee collected (in Rs. Crore)	No. of Users	Fee collected (in Rs. Crore)	No. of Users	Fee collected (in Rs. Crore)
A. Landing						
B. Parking						
C. Housing						
D. User Development Fee						
E. Cargo Facilities segregated under key cargo segments						
F. Ground Handling						
G. Other Aeronautical Revenues						
H. Non-Aeronautical Revenues segregated under key segments						
I. Details of free services provided						
Total						

Remarks, if any:



Airport: [Name of Airport]

Month: [_____]

S. No.	Type and purpose of Operational Expenditure	For corresponding month of previous year (in Rs. Crore)	For preceding month (in Rs. Crore)	For the current month (in Rs. Crore)
1.	Payroll Costs			
2.	Administrative and General Costs			
3.	Utilities and outsourcing costs			
4.	Repairs and Maintenance			
5.	Other Expenses			
Total				

Remarks, if any:



**SCHEDULE L
USER CHARTER**
(See Clause 22.10)

[Name of Airport]

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

- (a) Introduction
- (b) Our standards for Passenger Service
- (c) Availability of Information
- (d) Passengers who require Assistance
- (e) Buying a Ticket
- (f) Lost Property
- (g) Listening to your views
- (h) Our promised response times

2.1 Introduction

Customers' Satisfaction is our motto! It is the intention of the management of the Airport 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 undertake all efforts to make your arrival within the Airport area smooth and comfortable. Our traffic plans will be oriented in such a manner that will enable easy entry into and exit from the Airport area. To make your approach comfortable, we will tow away the cars parked unauthorised 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 the 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 a minimum.

2.2.6 Facilities

You are entitled to the free facilities like toilets, clean drinking water, liquid soap, paper glass and child care room. 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 40% (forty percent) 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 Taxies

We will ensure that taxies are available when you arrive. Maximum waiting time for at least 95% (ninety five percent) 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 regarding the arrival and departure timings 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 understood 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 their notice.

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.

2.4.4 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 Users 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. [_____ *Details to be inserted at the time of issuance* _____].

2.7 Listening to your views

Customer is always right. Customer satisfaction is our motto. Continuous improvement is our aim.

Periodic analysis of 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 M
SELECTION OF INDEPENDENT ENGINEER

(See Clause 23.1)

1 Selection of Independent Engineer

- 1.1 The process for the selection of an engineer for similar works within the Authority shall be applicable for the selection of an Independent Engineer under the Concession Agreement. Provided that the entity to be selected as an Independent Engineer shall be an experienced firm and be capable of discharging the functions and duties as envisaged under the Concession Agreement. Provided further 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 4 of this Schedule M.
- 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 M.
- 1.4 The Terms of Reference for the Independent Engineer shall substantially conform to Schedule N.

2 Fee and expenses

- 2.1 In determining the nature and quantum of duties and services to be performed by the Independent Engineer during the Development Period, Construction Period and Operation Period, the Authority shall endeavour that payments to the Independent Engineer on account of fee and expenses shall be determined on the basis of the competitive bidding process.
- 2.2 The remuneration, cost and expenses of the Independent Engineer shall be paid by the Authority, and all 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.
- 2.3 Any amounts paid to the Independent Engineer shall be a pass-through for the determination of the Aeronautical Charges by AERA.

3 Selection tenure

On or prior to the achievement of the Phase 1 COD, and every 3 (three) years thereafter, the Authority shall engage another firm, who shall act as an Independent Engineer, in accordance with the criteria set forth in this Schedule M.

4 Appointment of government entity as Independent Engineer

Notwithstanding anything to the contrary contained in this Schedule, the Authority may at its discretion appoint a government-owned entity as the Independent Engineer, provided that such entity shall be a corporate body, having as one of its primary function the provision of consulting, advising and supervising 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 N
TERMS OF REFERENCE FOR INDEPENDENT ENGINEER
(See Clause 23.2.1)

1 Scope

- 1.1 These Terms of Reference for the Independent Engineer (“**TOR**”) are being specified pursuant to the Concession Agreement dated January 8, 2018 (“**Agreement**”), which has been entered into between the Authority and Navi Mumbai International Airport Private Limited (“**Concessionaire**”) for the Airport in city of Navi Mumbai on 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 development, construction, operation and maintenance of the Project.

2 Definitions and Interpretation

- 2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.
- 2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.
- 2.3 The rules of interpretation stated in 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 Master Plan, designs, drawings, and documents as set forth in Paragraph 4;
 - (b) review, inspection and monitoring of Construction Works as set forth in Paragraph 5;
 - (c) reviewing and witnessing the Tests on completion of construction and assisting the Authority in issuing Completion 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 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 Master Plan, designs and drawings to be furnished by the Concessionaire along with the 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 Master Plan, Development Plan and Drawings. In particular, such comments shall specify the conformity or otherwise of Master Plan, Development Plan and such Drawings with the Scope of the Project and Specifications and Standards.

4.2 The brief scope of Independent Engineer at this stage includes, but not limited to, the following:

4.2.1 Review of all design, drawings, specifications and procurement documents:

- (a) design basis;
- (b) design shall comply to the approved Master Plan;
- (c) comments on the design, drawings, quantities and cost shall be submitted to Authority;
- (d) all design and specifications shall be reviewed as per the development standards and requirements;
- (e) to verify the list of items and quantities of all items in the bill of quantities of various procurement documents submitted by the Concessionaire and propose modification to the same, if necessary, along with financial implication including any deviations from the Master Plan.

4.2.2 Review of award of works and commercial contracts by the Concessionaire:

- (a) contract document shall be reviewed for technical (design, construction, completion and commissioning) and commercial conditions;
- (b) review and comment on capability of contractors;
- (c) review the procedure of tendering and award of contract adopted by the Concessionaire.

4.3 The Independent Engineer shall review any modified drawings or supporting documents sent to it by the Authority and furnish its comments within 7 (seven) days of receiving such drawings or documents to the Authority.

4.4 The Independent Engineer shall review the drawings in accordance with Schedule J and furnish its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receiving such Drawings.



- 4.5 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 Authority, which is prepared by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.
- 4.6 Upon reference by the Authority, the Independent Engineer shall review and comment on the EPC Contract or any other contract for construction of the relevant Phase of 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 Master Plan, Development Plan, drawings and documents 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 progress reports furnished by the Concessionaire with respect to the following and send its comments thereon to the Authority within 7 (seven) days of receipt of such report:
- (a) compliance with approved Master Plan, Development Plan, drawings, Standards and Specifications;
 - (b) ensure that the reports prepared by the Concessionaire has been in line with all the requirements of Master Plan, Development Plan and Agreement;
 - (c) review and assessment of quantities of works and time lines for completion of the same;
 - (d) review and verify all the development works mentioned in the report physically on the ground with respect to the requirements as per the Standards and Specifications;
 - (e) review and provide its comments on quality of the works and identify any work or part of work requires to be rectified before completion of the work; and
 - (f) review and adopt a project controls perspective, adequacy of resources that integrates cost and schedule, projecting potential trends (both negative and positive) and claims which may affect the approved construction cost.
- 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 20th (twentieth) day of each month in any case, and make out a report of such inspection (“**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 (“**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 percent) 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 percent) 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, 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 Phase 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, through the Authority, require the Concessionaire to indicate within 15 (fifteen) days the steps proposed to be taken to expedite the progress, and the period within which COD shall be achieved. Upon receipt of such a report from the Authority, the Independent Engineer shall review the same and send its comments to the Authority 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, the Authority 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 recommend the extension of dates set forth in the Phase Completion Schedule for Phase I and also for subsequent Phases, to which the Concessionaire is reasonably entitled, and shall notify the Authority of the same.

- 5.13 The Independent Engineer shall witness all the Tests being undertaken by the Concessionaire and based on the outcome of the Tests specified in Schedule H submit a report on Completion or Provisional Completion, 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 H.
- 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.

6 Operation Period

- 6.1 In respect of the drawings, documents and reports 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 monthly and 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 and quarterly status report from the Concessionaire, but before the 20th (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 I, 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 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.
- 6.10 In the event that the Concessionaire notifies the Authority and 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.
- 6.11 The Independent Engineer shall, at least once every month, conduct an audit of the systems installed by the Concessionaire, to check its accuracy.
- 6.12 The Independent Engineer shall at the end of the Concession Period (including, extension, if any) provide assistance on transfer of the Project Assets from the Concessionaire to the Authority and assist the Authority in undertaking all necessary activities required for issuance of Vesting Certificate to the Concessionaire in accordance with the terms of the Agreement.

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 35.1 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 35.2, 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 36, 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

- 11.1 The Independent Engineer shall notify its programme of inspection to the Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.
- 11.2 The Independent Engineer shall retain at least 1 (one) copy each of Master Plan, all drawings and documents received by it, including 'as-built' Drawings, and keep them in its safe custody.
- 11.3 Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list the Master Plan, 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. 2 (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.
- 11.4 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 O
ESCROW AGREEMENT
(See Clause 28.1)

THIS ESCROW AGREEMENT (“**Agreement**”) is entered into at [] on this the [] day of [], 20[]

BY AND AMONGST:

NAVI MUMBAI INTERNATIONAL AIRPORT PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956, having corporate identification number U45200MH2007PTC169174 and its registered office at Office of the Airport Director, Terminal I-B, CSI Airport, Santacruz, Mumbai – 400 099, Maharashtra (hereinafter referred to as the “**Concessionaire**”, which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);

AND

[] (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 assigns);

AND

[] (insert name and particulars of the Escrow Bank), having its registered office at [] and amongst other places, a branch office at [] (hereinafter referred to as the “**Escrow Bank**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns);

AND

CITY AND INDUSTRIAL DEVELOPMENT CORPORATION OF MAHARASHTRA LIMITED, a company incorporated under the Companies Act, 1956, having corporate identification number U99999MH1970SGC014574 and its registered office at Nimal, 2nd Floor, Nariman Point, Mumbai – 400 021, Maharashtra, represented by its Vice Chairman & Managing Director (hereinafter referred to as the “**Authority**”, which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns).

WHEREAS:

- A. The Authority has entered into a Concession Agreement dated January 8, 2018 with the Concessionaire (“**Concession Agreement**”) for the Airport at Navi Mumbai in the State of Maharashtra, in accordance with the terms and conditions as set forth in the Concession Agreement, and a copy of which is annexed hereto and marked as Annex A to form part of this Agreement.
- B. The 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;

“**Concessionaire**” shall mean the person referred to as Concessionaire in the foregoing Recitals;

“**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 Bank**” shall mean the bank referred to as the escrow bank in the foregoing Recitals;

“**Escrow Default**” has the meaning ascribed thereto in Clause 6.1.1;

“**Indemnified Party**” has the meaning ascribed thereto in Clause 9.2;

“**Indemnifying Party**” has the meaning ascribed thereto in Clause 9.2;

“**Lenders’ Representative**” shall mean 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 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.
- 1.2.3 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. 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, other lenders, shareholders, insurance companies or any other person or otherwise;
 - (b) all Fee and all other revenues, from or in respect of the Airport, Project, Project Facilities and/or Project Assets, including the proceeds of any rentals, deposits, capital receipts, insurance claims, etc.; and
 - (c) all payments by the Authority, after deduction of any outstanding Premium;

Provided that the Senior Lenders may make direct disbursements to the EPC Contractor, in



accordance with the express provisions contained in this regard 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) all Fee collected by the Authority in exercise of its rights under the Concession Agreement;
- (b) all payments by the Authority, after deduction of any outstanding Concession Fee and Premium; 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 and Premium 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 there from 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

- 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 that 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) statutory payments, all Taxes due and payable by the Concessionaire for and in respect of the Airport;



- (b) all payments relating to development of the Airport, subject to and in accordance with the conditions, if any, as set forth in the Financing Agreements;
- (c) O&M Expenses, 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, or any Designated GOI Agency, in accordance with the provisions of the Concession Agreement, and certified by the Authority as due and payable;
- (e) Concession Fees and Premium due and payable to the Authority;
- (f) monthly proportionate provision of Debt Service due in an Accounting Year;
- (g) annual instalment of the Soft Loan in accordance with Clause 12.9 of the Concession Agreement;
- (h) all payments as may be due and payable pursuant to the Concession Agreement and/or the Damages certified by the Authority as due and payable to it by the Concessionaire under the Concession Agreement;
- (i) monthly proportionate provision of debt service payments due in an Accounting Year, in respect of Subordinated Debt;
- (j) any reserve requirements set forth in the Financing Agreements; and
- (k) 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) payroll dues and statutory payments, all Taxes due and payable by the Concessionaire for and in respect of the Airport;
- (b) 90% (ninety percent) of Debt Due excluding Subordinated Debt and Insurance Cover;
- (c) outstanding Concession Fee and Premium;
- (d) outstanding Soft Loan and all other amounts which are outstanding to be paid by the Concessionaire to the Authority, as on the date of the Termination of the Concession Agreement;



- (e) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- (f) retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in ARTICLE 36 of the Concession Agreement;
- (g) outstanding Debt Service including the balance of Debt Due;
- (h) outstanding Subordinated Debt;
- (i) incurred or accrued O&M Expenses;
- (j) any other payments required to be made under the Concession Agreement; and
- (k) balance, if any, in accordance with the instructions of the Concessionaire:

Provided that the disbursements specified in Sub-clause (k) 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 33 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. 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 Escrow Default

6.1.1 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 days.

6.1.2 Upon occurrence of an Escrow Default, the consequences thereof shall be dealt in accordance with the provisions of the Concession Agreement.

7. TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

7.1.1 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 remains to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

7.1.2 Without prejudice to the provisions of Clause 7.1.1 above, simultaneous with the termination of the Escrow Agreement as per Clause 7.1.1 above, the Concessionaire hereby agrees to execute a new Escrow Agreement in the same format, subject to the following modifications:

- (a) the Lenders' Representative shall be replaced by the Authority or any of its nominees as a Party to the Escrow Agreement;
- (b) the Authority or any of its nominees, being a Party to the Escrow Agreement as per (a) above, shall perform and undertake all such functions, as are contained in the name of the Lenders' Representative;
- (c) all the references to the Senior Lenders and Financing Agreements and other related terms, shall be modified as per the instructions of the Authority;
- (d) any such Escrow Agreement shall be terminated only after the Termination of the Concession Agreement, and shall remain valid for a period of at least the tenure for which the any amounts are to be retained in the Escrow Account as per Clause 36.2; and
- (e) such other changes and modifications, as may be instructed by the Authority at such time.

7.1.3 Non-execution of the Escrow Agreement as per Clause 7.1.2 above within a maximum period



of 24 hours of the termination of the Escrow Agreement as per Clause 7.1.1 above, shall be deemed to be the Concessionaire's Default under the Concession Agreement, with consequent remedies available to the Authority including the right of Termination of the Concession Agreement.

7.2 Substitution of Escrow Bank

7.2.1 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.

7.2.2 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 indemnity under Clause 9.1 or in respect of which it is entitled to reimbursement ("Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder ("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, by appointing a Board of Arbitrators comprising of 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 the Rules, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.
- 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 have, may acquire in the future or which may be attributed to it under any jurisdiction; and
- (d) consents, 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 considered 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 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 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 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, NAVI MUMBAI 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 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 SENIOR LENDERS by the LENDERS' REPRESENTATIVE, []:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED, SEALED AND DELIVERED For and on behalf of ESCROW BANK, [] by:

SIGNED, SEALED AND DELIVERED For and on behalf of THE AUTHORITY, CITY AND INDUSTRIAL DEVELOPMENT CORPORATION OF MAHARASHTRA LIMITED by:

(Signature)
(Name)
(Designation)

(Signature)
(Name)
(Designation)



(Address)

(Fax No.)

(e-mail address)

In the presence of:

1.

(Address)

(Fax No.)

(e-mail address)

2.



SCHEDULE P
PANEL OF CHARTERED ACCOUNTANTS
(See Clause 30.2.1)

1 Panel of Chartered Accountants

Pursuant to the provisions of Clause 30.2.1 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 (“**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 P.

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, 1956, 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 Crore) 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. (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 P.



SCHEDULE Q
VESTING CERTIFICATE
(See Clause 35.4)

1. The City and Industrial Development Corporation of Maharashtra Limited, represented by its Vice Chairman & Managing Director (“**Authority**”) refers to the Concession Agreement dated January 8, 2018 (“**Agreement**”) entered into between the Authority and Navi Mumbai International Airport Private Limited (“**Concessionaire**”) for the Airport at **Navi Mumbai** in the state of **Maharashtra**.
2. The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Clause 35.1 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.

Signed this [_____] day of [_____] 20[____] at [_____]

AGREED, ACCEPTED AND SIGNED
For and on behalf of
CONCESSIONAIRE by:

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

In the presence of:
1.

SIGNED, SEALED AND DELIVERED
For and on behalf of
THE AUTHORITY by:

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

2.



SCHEDULE R
SUBSTITUTION AGREEMENT
(See Clause 37.3.1)

THIS SUBSTITUTION AGREEMENT (“**Agreement**”) is entered into at [] on this the [] day of [], 20[]:

BY AND AMONGST

CITY AND INDUSTRIAL DEVELOPMENT CORPORATION OF MAHARASHTRA LIMITED, a company incorporated under the Companies Act, 1956, having corporate identification number U99999MH1970SGC014574 and its registered office at Nimal, 2nd Floor, Nariman Point, Mumbai – 400 021, Maharashtra, represented by its Vice Chairman & Managing Director (hereinafter referred to as the “**Authority**”, which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns);

AND

NAVI MUMBAI INTERNATIONAL AIRPORT PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956, having corporate identification number U45200MH2007PTC169174 and its registered office at Office of the Airport Director, Terminal 1-B, CSI Airport, Santacruz, Mumbai – 400 099, Maharashtra (hereinafter referred to as the “**Concessionaire**”, which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);

AND

[] (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 assigns).

WHEREAS:

- A. The Authority has entered into a Concession Agreement dated January 8, 2018, with the Concessionaire (“**Concession Agreement**”) for the Airport at Navi Mumbai in the State of Maharashtra in accordance with the terms and conditions set forth in the Concession Agreement, and a copy of which is annexed hereto and marked as Annex A to form part of this Agreement.
- B. The Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- C. The Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concessionaire 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 as set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

“**Agreement**” means this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

“**Concessionaire**” means the person referred to as Concessionaire in the foregoing Recitals;

“**Concession Agreement**” has the meaning ascribed to it in Recital A;

“**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;

“**Indemnified Party**” has the meaning ascribed to it in Clause 7.2 hereunder;

“**Indemnifying Party**” has the meaning ascribed to it in Clause 7.2 hereunder;

“**Lenders’ Representative**” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

“**Nominated Company**” means a company, incorporated under the provisions of the Companies Act, 1956, 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**” has 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 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.

- 1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2 ASSIGNMENT

2.1 Assignment

The Concessionaire hereby agrees to assign the rights, title and interest in the Concession to, and in favour of, the Lenders' Representative, 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.

Provided however that, any such assignment shall not be binding or enforceable by the Lenders' Representative, if the Concessionaire's Default has resulted due to Concessionaire not achieving the Phase Milestone upto 40% of Phase I in accordance with Clause 12.5.2 due to any cause or reason attributable to it and the same has not been cured in accordance with the terms thereof.

3 SUBSTITUTION OF THE CONCESSIONAIRE

3.1 Rights of substitution

- 3.1.1 Pursuant to the rights, title and interest assigned in accordance with Clause 2.1, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Nominated Company duly approved by the Authority under and in accordance with the provisions of this Agreement and the Concession Agreement.

- 3.1.2 The Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. The Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Airport as the Concessionaire, either individually or collectively.

- 3.1.3 Notwithstanding anything contrary contained elsewhere in this Agreement or the Concession Agreement, the Parties hereby agree that if the Senior Lenders, acting through the Lenders' Representative, are not able to identify or substitute the Concessionaire with any Nominated Company, in accordance with the terms of this Agreement, then, the Authority shall have a right to substitute the Concessionaire, in such a manner that the Authority is a Nominated Company for the purposes of this Agreement, and any reference to the Nominated Company shall mean the Authority and all other terms and conditions of the Substitution Agreement shall be construed accordingly.

3.2 Substitution upon occurrence of Financial Default

- 3.2.1 Subject to the provisions of Clause 2.1 above, upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire ("**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 3.2, 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 33 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 Suspension shall be revoked upon substitution 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. 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 270 (two hundred and seventy) days from the date of Suspension hereunder.

3.3 Substitution upon occurrence of Concessionaire's Default

3.3.1 Subject to the provisions of Clause 2.1 above, upon occurrence of a Concessionaire's 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, as 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 as relevant the Concession to the Nominated Company, on the same terms and conditions, for the residual Construction Period or the 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 74% (seventy four percent) 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 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 34 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 ("Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder ("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 shall 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, through a Board of Arbitrators comprising of one nominee each of the Authority, Concessionaire and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.
- 8.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The 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 constitutes commercial acts done and performed for commercial purposes;
- (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 or 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 considered 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 SIGNED, SEALED AND DELIVERED has been affixed pursuant to the resolution passed by For and on behalf of the Board of Directors of the Concessionaire, NAVI THE AUTHORITY, CITY AND INDUSTRIAL MUMBAI INTERNATIONAL AIRPORT DEVELOPMENT CORPORATION OF PRIVATE LIMITED, at its meeting held on the MAHARASHTRA LIMITED, by:

..... 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)	(Signature)
(Name)	(Name)
(Designation)	(Designation)
(Address)	(Address)
(Fax No.)	(Fax No.)
(e-mail address)	(e-mail address)

SIGNED, SEALED AND DELIVERED

For and on behalf of
SENIOR LENDERS by the Lenders' Representative,
[]:
(Signature)



(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)
In the presence of:

- 1.
- 2.



SCHEDULE S
SHAREHOLDERS' AGREEMENT
(See Clause 5.4.1)

THIS SHAREHOLDERS AGREEMENT ("Agreement") is made at [] on this the [] day of [], 20[],

BY AND AMONGST:

CITY AND INDUSTRIAL DEVELOPMENT CORPORATION OF MAHARASHTRA LIMITED, a company incorporated under the Companies Act, 1956, having corporate identification number U99999MH1970SGC014574 and its registered office at Nirmal, 2nd Floor, Nariman Point, Mumbai – 400 021, Maharashtra, represented by its Vice Chairman & Managing Director (hereinafter referred to as the "**Authority**", which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns);

And

MUMBAI INTERNATIONAL AIRPORT PRIVATE LIMITED, a company incorporated under the Companies Act, 1956, having corporate identification number U45200MH2006PTC160164, and its registered office at Office of the Airport Director, Terminal-1B, CSI Airport, Mumbai – 400 099, Maharashtra (hereinafter referred to as the "**Promoter**", which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns);

And

NAVI MUMBAI INTERNATIONAL AIRPORT PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956, having corporate identification number U45200MH2007PTC169174 and its registered office at Office of the Airport Director, Terminal 1-B, CSI Airport, Santacruz, Mumbai – 400 099, Maharashtra (hereinafter referred to as the "**Concessionaire**", which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);

The Promoter, the Authority and the Concessionaire are hereinafter collectively referred to as the "**Parties**" and individually as "**Party**". The Promoter and the Authority are collectively referred to as the "**Shareholders**".

WHEREAS:

- A. The Government of India ("**GOI**"), vide its letter no. AV.24011/1/95-VB (Vol.VI) dated July 6, 2007 ("**GOI Approval**") granted its approval for the establishment of an international airport for public use at Navi Mumbai in the State of Maharashtra 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 Maharashtra ("**GOM**") vide its Government Resolution No. CID-3307/1541/Pra. Kra-144/07/Na Vi-10 dated July 30, 2008 ("**GOM 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. In view of the GOI Approval, GOM Approval and other Applicable Permits as above, the



Authority, while prescribing the technical and commercial terms and conditions for development, operation and maintenance of the Airport on DBFOT basis, invited applications by its Request for Qualification No. CIDCO/T&C/NMIA/01/2013-14 dated February 5, 2014, as amended from time to time (collectively, “Request for Qualification” or “RFQ”).

- D. Pursuant to the RFQ and based upon the fulfilment of the technical and financial criteria set out in the RFQ and receipt of the security clearance from the Ministry of Home Affairs, GOI, applicants were pre-qualified to participate in the next stage of the bidding for the Project.
- E. The Authority called upon such pre-qualified bidders to provide their commercial bid in accordance with the terms and conditions prescribed in the Request for Proposal issued by letter No. CIDCO/T&C/NMIA/01/2013-14 dated May 4, 2016 (“Request for Proposal” or “RFP”).
- F. After evaluation of the bids received from the pre-qualified bidders, the Authority accepted the Bid of the bidder Mumbai International Airport Private Limited (“Preferred Bidder”), and issued its Letter of Award No. CIDCO/MD/NMIA/051 dated October 25, 2017 (“LOA”) to the Preferred Bidder, requiring the Preferred Bidder, *inter alia*, to execute this Concession Agreement as per the terms of the RFP, through a special purpose vehicle.
- G. The Preferred Bidder has promoted and incorporated a special purpose vehicle as the Concessionaire as a private limited company under the Companies Act, 1956, 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 Preferred Bidder under the LOA, including the obligation to enter into this Concession Agreement for undertaking the implementation, operation and maintenance of the Project.
- H. As part of the RFP, it was contemplated that the Authority would hold non-transferable Authority’s Share (*as defined hereinafter*), on terms and conditions as set out in this Shareholders’ Agreement.
- I. The Authority and the Promoter 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 has the following meaning:

“**Agreement**” shall mean this Shareholder’s agreement;

“**Affected Party**” has the meaning ascribed to the term in Clause 11.3 hereunder;

“**Alternate Director**” has the meaning ascribed to the term in Clause 5.7.1 hereunder;



“**Authority’s Share**” means the 26% (twenty six percent) Equity Shares out of the total fully paid up Equity Shares of the Concessionaire, of a par value of Rs. 10/- (Rupees Ten) each, issued to the Authority and/ or its nominee;

“**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 including any re-enactment or amendment thereof, for the repealed provisions of Companies Act, 1956, and otherwise Companies Act, 1956;

“**Concession Agreement**” shall mean the Concession Agreement entered into between the Authority and the Concessionaire with respect to the Project;

“**Consequential Loss**” has the meaning ascribed to the term in Clause 11.14 hereunder;

“**Deed of Adherence**” has the meaning ascribed to the term in Clause 3.3.1 hereunder;

“**Defaulting Party**” has the meaning ascribed to the term in Clause 8.2.1 hereunder;

“**Director**” means a director on the Board of Directors of the Concessionaire;

“**Effective Date**” has the meaning ascribed to the term in Clause 2 hereunder;

“**Equity Shares**” means the fully paid up equity share of a par value of Rs. 10/- (Rupees Ten) each of the Concessionaire carrying equal voting rights;

“**GOM**” has the meaning ascribed to it in Recital B.

“**Government Resolutions**” means the Government resolution nos.: CID-1812/File No. 274/UD-10 dated March 1, 2014, read with CID-1812/File No. 274/UD-10 dated May 28, 2014, issued by the Urban Development Department, GOM, and resolution nos.: LQN-05/2014/File No. 39/A-2 dated June 16, 2014 and RPA 2014/File No. 52/R-3 dated June 25, 2014, issued by Revenue and Forest Department of the GOM in respect of the Project Affected Persons;

“**LOA**” has the meaning ascribed to it in Recital F;

“**Managing Director**” means the whole time managing director of the Concessionaire;

“**Original Director**” has the meaning ascribed to the term in Clause 5.7.1 hereunder;

“**Pro Rata Shares**” means, with respect to any Shareholder, the proportion that the number of Equity Shares held by such Shareholder, bears to the aggregate number of Equity Shares held by all the Shareholders;

“**Project**” has the meaning ascribed to it in Recital A.



“**Promoter**” has the meaning ascribed to it in the array of the Parties of this Agreement;

“**Promoter’s Agreement**” has the meaning ascribed to the term in Clause 4.2.4 hereunder;

“**Proprietary Information**” has the meaning ascribed to the term under Clause 9.1 hereunder;

“**Reserved Matters**” means the matter(s) pertaining to any of the item below:

- (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/ buy-back, the Concessionaire’s own shares or specified securities;
- (e) to issue sweat equity shares;
- (f) to issue further shares, with or without pre-emptive rights to non-members or to convert loans or debentures into shares;
- (g) to alter (increase or decrease) the share capital of the Concessionaire;
- (h) to transfer Equity Shares to persons other than the Shareholders;
- (i) to remove the registered office of the Concessionaire outside the limits of the State where it is located;
- (j) to commence any new lines of business;
- (k) to keep registers and returns at any other place than within city, town or village in which the registered office is situated;
- (l) [Deleted];
- (m) 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 a Chairman, Managing Director, Whole-time Director, Manager, banker, or trustee for debenture-holders of the Concessionaire;
- (n) to enter into any Related Party Transaction;
- (o) to borrow in excess of the limits approved in the Financial Package as per the terms of the Concession Agreement, and the terms and conditions thereof;
- (p) to create any mortgage and/ or to sell or transfer any part or whole of the undertaking of the Concessionaire or any of the Project Assets;
- (q) to appoint auditors, in variance with the provisions of the Companies Act;
- (r) 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 percent) of the



- Concessionaire's paid-up share capital;
- (s) to apply to a court to wind-up the Concessionaire;
 - (t) to wind-up the Concessionaire voluntarily;
 - (u) to undertake any further development/ capacity augmentation of the Project, after Phase I;
 - (v) for various other matters pertaining to the winding up of the Concessionaire;
 - (w) any other matter which is required by the Companies Act, or any re-enactment or amendment thereof, to be passed by a special resolution of the Shareholders of the Concessionaire;

“Request for Proposal” or “RFP” has the meaning ascribed to it in Recital E;

“Request for Qualification” or “RFQ” has the meaning ascribed to it in Recital C;

“Shareholder(s)” has the meaning ascribed to the term in the array of the Parties 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 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 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**"):

- (a) The Promoter shall have ensured the authorized and paid-up share capital of the Concessionaire is Rs. 50,00,00,000/- (Rupees Fifty Crore) divided into 5,00,00,000 Equity Shares of face value of Rs. 10/- (Rupees Ten) each;
- (b) The Promoter shall have procured that the Concessionaire has issued and allotted the Equity Shares in accordance with Clause 3 of this Agreement;
- (c) The Concessionaire shall have resolved by way of special resolution, in an extraordinary 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; and
- (d) The Concessionaire shall have delivered and the Promoter 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

3.1 Shareholding Structure

- 3.1.1 The Promoter shall have procured that the Concessionaire has issued the subscribed and fully paid-up Equity Shares of the Concessionaire, in compliance with the Applicable Laws, as on the Effective Date, in the following manner:

Shareholder	Percentage of Shareholding in Equity Share capital
Promoter, i.e., Mumbai International Airport Private Limited	74%
Authority and/ or its nominee	26%

- 3.1.2 The Promoter and the Concessionaire hereby agree and undertake to procure the Concessionaire to ensure that the shareholding of the Authority and/ or its nominee in the issued, subscribed and paid-up equity share capital of the Concessionaire, shall not fall below 26% (twenty six percent) at any given point of time during the term of the Concession Agreement.

3.2 Issuance of the Authority's Share

- 3.2.1 The Concessionaire hereby undertakes to issue and allot, and the Promoter hereby agree to cause the Concessionaire to issue and allot to the Authority, simultaneously or prior to the execution of this Agreement, the Authority's Share, for a consideration equal to the par value of such Authority's Share, and deliver the share certificate representing the Authority's Share to the Authority.

- 3.2.2 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 Authority's Share.

- 3.2.3 The Parties agree that the nominee Director of the Authority shall have a right 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. 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.
- 3.2.4 The Parties expressly agree that the Authority's 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.

3.3 Transfer Restrictions

- 3.3.1 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 (a) such Transfer shall not cause the Concessionaire to be in breach of the Concession Agreement; (b) 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 the Annex ("**Deed of Adherence**").
- 3.3.2 The Parties expressly agree that, except as otherwise expressly agreed herein, the Authority shall not be entitled to Transfer the Authority's 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.
- 3.3.3 If the Promoter is a special purpose vehicle established primarily for the purposes of holding Equity Shares in the Concessionaire (such Promoter being an "**Promoter SPV**"), a Transfer of any shareholding in such Promoter SPV shall constitute an indirect Transfer of Equity Shares by the Promoter SPV for the purposes of this Agreement and be subject to the restrictions on Transfer of shares as set forth in this Agreement, including the requirement of the execution of a Deed of Adherence by a third party transferee.
- 3.3.4 The Parties hereby agree as below:
- (a) if the Promoter is a single bidder, then, the Promoter holds at least 51% (fifty one percent) of the subscribed and paid up Equity Shares of the Concessionaire till the 7th (seventh) anniversary of the Phase I COD;
 - (b) [Deleted]
 - (c) at no time during the Concession Period:
 - (i) any scheduled airline, cargo airline and/or their respective Associates, hold more than 26% (twenty six percent) of subscribed and paid up Equity Share of the Concessionaire;
 - (ii) irrespective of any shareholding in the Concessionaire by a scheduled airline, cargo airline and their Associates, any such entity shall not have any right to



appoint any Director on the Board of Directors of Concessionaire or any Key Managerial Personnel in the Concessionaire.

3.4 Project Affected Persons

- 3.4.1 The Promoter and the Concessionaire hereby acknowledge the right of the Authority, to grant and provide the beneficial interest in the Authority's Shares to the Project Affected Persons, in the form and manner as it may deem fit, in compliance of the requirements of the Government Resolutions. In this regard, the Promoter and the Concessionaire acknowledge that the Authority may enter/ has entered into a definite form of arrangement with the Project Affected Persons, pursuant to the Government Resolutions, providing and governing the grant and issuance of the beneficial interest in the Authority's Shares in favour of the Project Affected Persons.
- 3.4.2 The Promoter and the Concessionaire hereby agree to undertake all such actions and perform all such functions, as may be required under the Applicable Laws, as may be requested by the Authority from time to time, to give effect to its obligations under the above referred Government Resolutions.
- 3.4.3 The Authority shall be entitled to exercise all the rights and perform all such functions, as are available to a shareholder under the Applicable Laws, in its capacity as a shareholder in the Concessionaire, as the sole representative of the Project Affected Persons.
- 3.4.4 The Promoter and the Concessionaire shall ensure that the shareholding of the Authority and/ or its nominee in the Concessionaire shall at all times remain equivalent to 26% (twenty six percent) of the Equity Share capital at any time during the Concession Period in accordance with the terms of this Agreement.

3.5 Capitalisation of the Concessionaire

- 3.5.1 The Equity Share capital of the Concessionaire shall be in the proportion specified in Clause 3.1 above, and may be capitalised in one or more tranches, as may be determined by the Board. Subject to the terms of Clause 3 above, the Authority and/ or its nominee's contribution shall not exceed Rs. 430,00,00,000/- (Rupee Four Hundred Thirty Crore) at any time during the Concession Period and such contribution shall be in accordance with clause 12.9 of the Concession Agreement.
- 3.5.2 Notwithstanding anything contrary contained elsewhere, the Promoter hereby agrees and undertakes and cause the Concessionaire to ensure that all capitalization(s) other than as specified in Clause 3.5.1, if any, of the Concessionaire shall be through redeemable preference shares, convertible preference shares, convertible debentures, equity shares without voting rights, hybrid instruments, or any other manner as may be agreed between the Parties from time to time and in accordance with Applicable Laws, but in all such cases, without any recourse to the Authority.
- 3.5.3 The Parties hereby undertake and agree that the Authority shall not be obliged to infuse any additional fund for future capitalization, if any, in the Concessionaire. The Authority shall subscribe to the Authority's Shares in accordance with this Clause 3.5 and shall not be obliged to subscribe to any or all future capitalizations.
- 3.5.4 Subject to the affirmative voting rights of the Authority in respect of the Reserved Matters, any issuance by the Concessionaire of any securities (including, without limitation, any Equity



Shares) of any type or class, shall be offered for subscription to the Shareholders in proportion to their Pro Rata Share.

3.6 Transfer upon Termination of Concession Agreement

The Preferred Bidder and all shareholders of the Concessionaire other than the Authority (or its nominee), transfer their entire shareholding in the Concessionaire, upon the determination or early termination of the Concession Agreement to the Authority, in consideration of the receipt of the Termination Payment, in accordance with the terms of the Concession Agreement.

4 SCOPE AND OBJECTIVE OF THE CONCESSIONAIRE

4.1 Purpose of the Concessionaire

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 every 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 Clause 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 the 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 to 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 in respect of the percentage of 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 5.2, 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 limiting the 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 Promoter may enter into any agreement amongst themselves to regulate their inter-se relationship as Shareholders of the Concessionaire ("**Promoter's Agreement**"), provided that the provisions of such Promoter's 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. It is hereby expressly agreed between the Parties that in the event of a conflict or inconsistency between the Promoter's Agreement and this Agreement, the provisions of this Agreement shall take precedence.
- 4.2.5 The Promoter hereby undertakes to be jointly and severally responsible for all obligations and liabilities relating to the Project along with the Concessionaire, till such time as the Financial Close for the Project are 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 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 the person(s) of its choice for appointment as a Director on the Board of the Concessionaire in proportion to the Authority's Share, and upon such nomination, the Concessionaire shall appoint such person(s) as a non-retiring Director in accordance with the Applicable Laws.
- (b) The Shareholders, other than the Authority, has the right to nominate the remaining Directors, on Pro-Rata Share basis. *Provided that*, if a Shareholder is any scheduled airlines, cargo airlines and/or their respective Associates, then, such Shareholder shall not be entitled to appoint any Director on the Board of the Concessionaire.
- (c) The Chairman, Managing Director and Whole-time Director(s) shall not be liable to retire by rotation and shall hold office as per their terms of appointment.

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 nominee(s) of Authority and the Promoter, as Directors from time to time

5.3 Chairman

The Parties hereby undertake and agree that the Promoter has the right to nominate the Chairman of the Concessionaire, who shall be appointed by the Board and he may be an executive Chairman. The Chairman shall exercise the powers as per the provisions of the Companies Act and shall oversee successful implementation of the Project.

5.4 Managing Director

5.4.1 The Promoter 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 the 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 the 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 (“**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) year 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. 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 any 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. The Board or any of its committee or sub-committee, shall never deal with any of the Reserved Matter, unless approved by the Authority in a General Meeting of the Concessionaire. No Reserved Matter(s) shall be delegated at any time to the Board or any committee and/or sub-committee thereof.

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 the 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 atleast 1 (one) Director nominated by the Authority, unless waived by the Authority in writing for a particular meeting of the Board or any adjournment thereof.

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 sub-committee shall be subject to and be under the supervision of the Board. Notwithstanding anything to the contrary contained herein, the Authority has the right to nominate its nominee to each and every committee and sub-committee constituted by the Board.

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 an affirmative vote of the simple majority of the Directors present at a meeting, at which a quorum of the Board of Directors is present.

5.13.2 The Concessionaire or any of its Directors, officers, agents or representatives shall not undertake any Reserved Matter without the prior approval of the Authority on such matter in the General Meeting, 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 the 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 the Applicable Laws, a Director shall not be deemed to be disqualified to serve by reason of his being an officer, director or shareholder of any other body corporate.

5.17 Inspection and information

5.17.1 The Concessionaire shall, with effect from the Phase I COD, furnish to the Shareholders, i.e. the Authority and Promoter, within 7 (seven) days of completion of each month, a statement in the form as set forth in Schedule K of the Concession Agreement along with all other details, as may be reasonably requested by the Authority or Promoter.

5.17.2 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 the Concession 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 (prepared in accordance with accounting standards as per the Applicable Laws), within 90 (ninety) days of the close of the Accounting Year to which they pertain. The Authority and the Promoter have the right, either through itself or through any of its authorised representative, 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 and Promoter.

- 5.17.3 The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority and Promoter, its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.
- 5.17.4 On or before the 31st (thirty-first) day of May each Year, the Concessionaire shall provide to the Authority and Promoter, for the preceding Accounting Year, a statement duly audited by its Statutory Auditor, 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, and (c) such other information as the Authority or Promoters may reasonably require.

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, unless approved by an affirmative vote of authorised 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, unless waived by the Authority in writing for a particular meeting of the shareholders or any adjournment thereof.
- 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 Promoter hereby warrants and represents to and for the benefit of the Authority, the Concessionaire 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 Promoter 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 of valid and legally binding obligations of the Promoter, 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 the 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 Promoter'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 Promoter and the Concessionaire hereby irrevocably undertakes, warrants and represents to and for the benefit of the 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 the Promoter 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 Promoter 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 (“**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 the Promoter, the Authority may, at its discretion, require the Promoter 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 percent) 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 Governing Law

This Agreement and all questions of its interpretation shall be construed in accordance with the laws of India.

10.2 Jurisdiction

Subject to Clause 10.3, the courts in the State shall have exclusive jurisdiction over this Agreement.

10.3 Arbitration

- 10.3.1 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 10.3.2 shall apply.
- 10.3.2 Any Dispute, 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, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.
- 10.3.3 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.
- 10.3.4 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the award in any arbitration proceedings hereunder.



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 Promoter 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.

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 of 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 Promoter 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 SIGNED, SEALED AND DELIVERED been affixed pursuant to the resolution passed by the For and on behalf of the CITY AND Board of Directors of NAVI MUMBAI INDUSTRIAL DEVELOPMENT INTERNATIONAL AIRPORT PRIVATE CORPORATION OF MAHARASHTRA LIMITED, the Concessionaire at its meeting held on LIMITED, the Authority by:

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.)
(e-mail address)

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)



SIGNED, SEALED AND DELIVERED

For and on behalf of

MUMBAI INTERNATIONAL AIRPORT
PRIVATE LIMITED, the Promoter, by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

In the presence of:

1.

2.



Annex
(Schedule-S)
DEED OF ADHERENCE

THIS DEED OF ADHERENCE ("Deed") is executed at [] this [] day of [], 20[]:

By:

A company/ body corporate incorporated under the laws of India, with its registered office at [] ("Transferee")

WHEREAS:

- A. By a Shareholders' Agreement dated January 8, 2018 ("**Shareholders' Agreement**") amongst the Authority, Promoter 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 T
CNS/ATM AGREEMENT
(See Clause 19.2.1)

[To be executed on stamp paper of appropriate value]

[Note: This draft shall be subject to AAI's approval and modifications, if any suggested by it at the time of its execution.]

THIS CNS/ ATM AGREEMENT ("Agreement") is made at [] on this the [] day of [], 20[]:

BY AND BETWEEN

THE AIRPORTS AUTHORITY OF INDIA, established under the Airports Authority of India Act, 1994, having its principal offices at Rajiv Gandhi Bhawan, Safdarjung Airport, New Delhi – 110 003 and represented by its Chairman (hereinafter referred to as the "**AAI**", which expression shall unless repugnant to the context or meaning thereof, include its successors and assigns);

And

NAVI MUMBAI INTERNATIONAL AIRPORT PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956, having corporate identification number U45200MH2007PTC169174 and its registered office at Office of the Airport Director, Terminal 1-B, CSI Airport, Santacruz, Mumbai – 400 099, Maharashtra (hereinafter referred to as the "**Airport Company**", which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes).

AAI and the Airport Company are hereinafter collectively referred to as "**Parties**" and individually as "**Party**".

WHEREAS

- A. The City and Industrial Development Corporation of Maharashtra Limited, a company incorporated under the Companies Act, 1956, having corporate identification number U99999MH1970SGC014574 and its registered office at Nirmal, 2nd Floor, Nariman Point, Mumbai – 400 021, Maharashtra, represented by its Vice Chairman & Managing Director, has entered into a Concession Agreement dated January 8, 2018 with the Airport Company ("**Concession Agreement**") for designing, developing, financing, constructing, completing and operating the Airport (*as defined below*), for flight operations, in accordance with the terms and conditions as set forth in the Concession Agreement.
- B. Pursuant to the Airports Authority of India Act, 1994 ("**AAI Act**"), AAI is responsible for providing the air traffic services within Indian airspace and at all civil airports in India, and accordingly, CNS/ ATM Services at the Airport has been categorised as a Reserved Service in the Concession Agreement and are required to be provided by AAI.
- C. In accordance with the AAI Act and the Concession Agreement 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, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

“**AAI Act**” means to have the meaning ascribed to it in Recital B above;

“**AAI Commissioning Services**” means the services to be provided by AAI at the Airport in accordance with Clause 4.3;

“**AAI Equipment**” means all equipment, other than the Airport Company’s Facility/ Equipment, required by AAI to enable AAI to perform 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 AAI Pre-Commissioning Services, AAI Commissioning Services and AAI Operative Services;

“**Affected Party**” shall have the meaning given to it in Clause 9.1;

“**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% (fifty one percent) 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 to be developed in the Phases at Navi Mumbai in the State of Maharashtra and includes all its buildings, equipment, facilities and systems;

“**Airport Company’s Commissioning Obligations**” means those obligations to be met by the Airport Company in accordance with Clause 4.2;



“**Airport Company’s Equipment**” means the items set out in Part I of Schedule 1;

“**Airport Company’s Obligations**” means the Airport Company’s Pre-Commissioning Obligations, Airport Company’s Commissioning Obligations and Airport Company’s Operative Obligations;

“**Airport Company’s Operative Obligations**” means those obligations to be met by the Airport Company in accordance with Clause 5.3;

“**Airport Company’s Pre-Commissioning Obligations**” means those obligations to be met by the Airport Company in accordance with Clause 3.1;

“**Airport Opening Date**” means the date upon which the commencement of commercial operation of the Phase I occurs;

“**Airport Opening Target Date**” means the date falling 1245th day immediately after the Appointed Date (*as defined in the Concession Agreement*) or a date as revised from time to time in accordance with the terms of the Concession Agreement;

“**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 Airport.

“**CNS/ ATM Services**” means Communication, Navigation and Surveillance and Air Traffic Management Services to be provided by AAI at the Airport and is more particularly described in Schedule 3;

“**Concession Agreement**” has the meaning as set forth in Recital A;

“**Debt Due**” means to have the meaning ascribed to it in the Concession Agreement;

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

“**Effective Date**” has 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 by the Airport Company and the EPC Contractors under which the EPC Contractors will design, procure, construct and complete the Airport including Phase I;

“**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 the 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 and 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 Phase I) 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 the Airport Company to have immediate access, subject only to giving the notices of drawdown required thereby, to funding required by the Airport Company;

“**Financing Agreements**” means to have the meaning ascribed to it in the Concession Agreement;

“**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 the 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;

“**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 the Airport Company for reporting incidents and emergencies;

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

“**Master Plan**” means the Master Plan prepared by the Airport Company as per the terms of the Concession Agreement and 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 the Airport Company for the communication of information regarding the day-to-day discharge of provision relating to the AAI Services and the Airport Company’s Obligations;

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

“**Phase I**” means the design, financing, construction, completion and commissioning of the Phase I of the Airport as provided for in the Concession Agreement;

“**Phase I Commissioning Date**” means the date on which the Phase I Commissioning Period shall commence, as notified to AAI by the Airport Company pursuant to Clause 4.1;



“Phase I Commissioning Period” means the period of 3 (three) months commencing on the Phase I Commissioning Date;

“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 current orders of AAI;

“Scheduled Commissioning Date” shall have the meaning given to it in Clause 4.1;

“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;

“Senior Lenders” means the banks, financial institutions, non-banking financial companies and similar bodies to whom Debt Due is owed under the Financing Agreements for financing (which shall for these purposes include any re-financing) the Phase I and/or any Expansion, *provided that* Schedule 5 shall not apply to the Lenders of the Expansion Phase;

“Site” means the land in which the Airport Company over which the Airport is to be constructed in accordance with the terms of the Concession Agreement;

“Terminal Navigational 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 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;
- 1.2.4 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;
- 1.2.5 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); and

- 1.2.6 The words “written” and “in writing” include a facsimile transmission and any means of reproducing works in a tangible and permanently visible form.

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 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:

- (a) the receipt by AAI of irrevocable notice from the Airport Company that the Concession Agreement shall have been executed and delivered by all the parties thereto and all the conditions precedent set out there in shall have been satisfied or waived which notice shall be final and binding on the Parties;
- (b) the receipt by AAI of irrevocable notice from the 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;
- (c) the receipt by AAI of irrevocable notice from the 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 the 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 [] ([]) months after the date of this Agreement, the Airport Company and AAI shall, subject to Clause 2.2.2 have the right to terminate this Agreement by giving 21 (twenty one) 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 3 (three) 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 (“Effective Date”).

3. SCOPE OF SERVICES – PRE-COMMISSIONING PHASE

3.1 Airport Company’s Pre-Commissioning Obligations

Following the Financial Close, the Airport Company shall:

- (a) design and construct, at its own cost by no later than 180 (one hundred eighty) days prior to the Phase I Commissioning Date, the Facility except the provision of air conditioning which shall be provided 90 (ninety) days prior to the Phase I Commissioning Date;
- (b) design, acquire and install, at its own cost, the Airport Company’s Equipment, which shall be owned by the 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 the Airport’s Company Equipment, which shall be the responsibility of the Airport Company. If required by the Airport Company, the Airport Company shall co-ordinate with AAI the calibration flights to enable the Airport Company to calibrate the Airport Company’s Equipment;
- (c) install at its own cost, the provision for water, power and air-conditioning, telephone, crash alarm and other service media as are necessary and to be mutually agreed, to operate the Facility;
- (d) ensure that the Airport Company’s Equipment is installed, tested and commissioned, at its own cost, by the Phase I Commissioning Date or in the case of any additional the Airport Company’s Equipment required for any Expansion of the Airport, by the future Commissioning Date;
- (e) identify to AAI the interfaces between the AAI Equipment and the Airport Company’s Equipment; and
- (f) 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;
- (g) the 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:

- (a) 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;
- (b) ensure that the AAI Equipment is installed, tested and commissioned by the Phase I



Commissioning Date or Future Commissioning Date. In case the 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 the Airport Company;

- (c) coordinate and ensure compatibility between AAI and the Airport Company's Equipment and interfaces. In respect of requirement of interfaces by either Party, the costs for the said interface(s), shall be borne by the Airport Company;
- (d) at the Airport Company's cost, participate in any benchmark testing conducted by the EPC Contractors in respect of any the Airport Company's Equipment, if required by the Airport Company;
- (e) prepare maps, charts, survey, IAL procedure, make site visits and associated works at the Airport Company's cost.

3.3 Co-ordination

AAI and the 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:

- (a) 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 [Belapur, Navi Mumbai] on a quarterly basis or on a more regular basis if required to be called-for by any member of JCC-CNS/ATM;
- (b) the JCC shall be chaired by the Airport Company;
- (c) the JCC-CNS/ATM shall comprise of 4 (four) members with each Party nominating and appointing 2 (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;
- (d) 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 the Airport Company and the Chairman of AAI. If the aforesaid Senior Executives are unable to resolve the matter within 15 (fifteen) 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:

- (a) 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;



- (b) be fully responsible for the safety at its work site and care of the works in accordance with Good Industry Practice;
- (c) 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;
- (d) 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
- (e) suspend work at the Facility and/or the Office Accommodation upon an order by the 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 Phase I Commissioning Period and Future Commissioning Period

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

4.2 Airport Company’s Commissioning Obligations

- 4.2.1 At least 30 (thirty) days prior to the Phase I Commissioning Date or Future Commissioning Date, as the case may be, the Airport Company shall confirm in writing to the AAI that:
 - (a) the runway, taxiway, apron and approach in respect of the Phase I shall be constructed by the Phase I 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;
 - (b) the strips, shoulders, stop way and RESA for runway and strips & shoulders for taxiways for the Phase I shall be constructed by the Phase I 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;
 - (c) from the Phase I 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;

- (d) from the Phase I 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);
- (e) from the Phase I Commissioning Date, the Airport Company shall provide adequate space in the fire watch tower to enable AAI's Personnel to establish an alternative facility for the provision of CNS/ATM Services in case of any contingency situation;
- (f) 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 Phase I Commissioning Period or Future Commissioning Period, as the case may be, the Airport Company shall:

- (a) within 14 (fourteen) days of the commencement of the Phase I Commissioning Period or Future Commissioning Period, as the case may be, confirm in writing to AAI that the Airport Company's Equipment has been supplied and installed. The Airport Company shall also confirm in writing to the AAI that by the Airport Opening Date such equipment required for the Phase I has been tested and approved for operations;
- (b) 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;
- (c) provide AAI with a continuous supply of electrical power and water sufficient to enable it to perform the AAI Commissioning Services;
- (d) 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 the 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;
- (e) provide AAI and/or its Personnel with such information as they may reasonably require for the performance of the AAI Commissioning Services;
- (f) provide AAI with transports and accommodation (office, residential and buildings for navigational aids/ Radar) to enable AAI to perform its obligations; and
- (g) provide AAI with direct telephone with STD facility in ATC.

4.3 AAI Commissioning Services

4.3.1 During the Phase I Commissioning Period and any Future Commissioning Period, and during the Airport operation trials as determined by the Airport Company AAI shall;



- (a) within 14 (fourteen) days of receipt of the notice received from the Airport Company in accordance with Clause 4.2.1 confirm in writing to the 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;
- (b) test and commission all AAI Equipment such that it is fully operational;
- (c) 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 Airport Company's Equipment to the extent required. Any costs of such integration with the Airport Company's Equipment shall be borne by the Airport Company;
- (d) carry out such calibration flights as are necessary to commission the AAI Equipment and, to the extent practicable, shall coordinate those flights with the Airport Company to enable the Airport Company to calibrate the Airport Company's Equipment at the same time. AAI shall not be liable for the cost incurred by the Airport Company to calibrate the Airport Company's Equipment. The cost incurred by AAI to calibrate the Airport Company's Equipment shall be recovered from the Airport Company;
- (e) where appropriate, assist the Airport Company and DGCA in the performance of any checks and procedures which are required to be performed to commission the Airport;
- (f) 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);
- (g) mutually agree with the 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
- (h) provide the 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 Airport Company's 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 Phase I Commissioning Period or Future Commissioning Period, as the case may be, AAI shall confirm to the Airport Company in writing that the AAI Equipment is fully operational and integrated with the Airport Company's 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):

- (a) 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 the Airport Company;
- (b) maintain the AAI Equipment including carrying out periodic flight calibration of the AAI Equipment and other tests;
- (c) 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);
- (d) procure such equipment as may be required from time to time to enable AAI to provide the relevant CNS/ATM Services at the Airport;
- (e) relocate at the Airport Company cost, AAI Equipment for the Airport Company's operative convenience for reasons of modification/ expansion/ upgradation required by the Airport Company at the Airport, provided such relocation does not affect the Airport Company obligations and or smooth operation of the Airport;
- (f) review from time to time such procedures as are necessary for safe, expeditious and orderly flow of air traffic;
- (g) provide to the 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;
- (h) provide and keep record of such information and issue notices to the Airport Company and airmen as is required under the Operating Reporting Procedure and the Incident Reporting Procedure including breakdown of CNS/ATM Service;
- (i) provide at the 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 AAI requires, it may, subject to receiving the prior consent of the 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. AAI shall not be held liable for any disruption in the normal operation of the Airport arising on account of actions directly attributable to the 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 Airport Company's Operative Obligations

Following the Airport Opening Date, the Airport Company shall:



- (a) ensure that the runway, taxiway, apron and approach for the Phase I 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;
- (b) ensure that the strips, shoulders, stop way and RESA for runway and strips and shoulders for taxiways for the Phase I 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;
- (c) 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;
- (d) 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;
- (e) 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);
- (f) ensure that appropriate arrangements are in place at the Airport to prevent bird/animal nuisance in and around the operational area;
- (g) 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;



- (h) 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;
- (i) 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;
- (j) provide AAI at the Airport Company's cost:
 - (i) with a continuous supply of electrical power and water sufficient to enable it to perform the AAI Operative Services;
 - (ii) transport facility sufficient to enable it to perform AAI operating services. Number of transports to be provided will be decided by the Airport Company & AAI mutually;
 - (iii) EPABX extensions, auto telephone with STD facility, Fax, hotline, cell phone in ATC;
- (k) 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 the 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;
- (l) provides AAI and/or its Personnel with such information as they reasonably require for the performance of the AAI Operative Services;
- (m) 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;
- (n) 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);
- (o) 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 of the Airport Company's Equipment to AAI as soon as they become aware of such failure or defect;
- (p) notify AAI of any proposed closure or withdrawal of any infrastructure or facilities provided by the 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;
- (q) on the instruction of AAI, remove, at the 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;
- (r) At the Airport Company's cost, relocate AAI Equipment for the reasons of AAI



alteration or modification at the Airport;

- (s) in case of an upgrade or Expansion, the Airport Company bears the total costs for AAI Equipment which is over and above ICAO recommendations and which is requested by the Airport Company;
- (t) 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 the 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 Airport Company's Costs

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

7. REVENUES AND CHARGES

7.1 Route Navigation Facilities Charges

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

7.2 Terminal Navigation Landing Charges

Terminal Navigation Landing Charges ("TNLC") payable by airlines shall be paid directly by the airlines to AAI and the 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 Clause 5.1 shall be on cost recovery basis. The Airport Company shall deposit in advance the quarterly, estimated cost of CNS/ATM



services by 15th 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 Airport Company. In addition, the Airport Company shall give a Bank Guarantee, equivalent to 6 (six) months cost of CNS/ATM Services to AAI. This Bank Guarantee shall be initially for a period 3 (three) 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 the 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 the 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 the Airport Company's cost, in any quality improvement measures initiated by the Airport Company at any time, if required, and shall assist the Airport Company in achieving and maintaining the service level standards required by the 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 or earlier part commissioning, 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 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



notwithstanding any remedy otherwise available at law or in equity.

9. FORCE MAJEURE

9.1 Force Majeure

This Clause 9 shall apply if the performance by any Party (“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. TERM AND TERMINATION

10.1 Term of the Agreement

This Agreement shall be valid and effective from the Effective Date and shall expire at the earliest of the following events:

- (a) Termination of the Concession Agreement by efflux of time; or
- (b) Termination of the Concession Agreement due to Airport Company’s Default; or
- (c) Termination of the Concession Agreement due to Authority’s Default; or
- (d) Termination in accordance with Clause 10.2 or 10.3 of this Agreement; or
- (e) Termination of this Agreement by mutual consent of the Parties.

10.2 Airport Company’s Termination Events

AAI shall be entitled to issue a notice of termination to the Airport Company, if:



- (a) the Airport Company fails to pay when due and payable any amount payable to it under this Agreement and such failure is not remedied within 20 (twenty) days of receipt of a notice from AAI specifying the default and requiring it to be remedied;
- (b) an order being made or a resolution being passed for the liquidation, bankruptcy or dissolution of the Airport Company, which is not, if capable of being so, discharged or, as the case may be, revoked within 90 (ninety) days thereafter;
- (c) the 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 (seven) 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 (a), (b) and/or (c) above are the result and/or consequence of Force Majeure.
- (d) under the Concession Agreement, it is directed by the GOI therein to terminate this Agreement;
- (e) the Concession Agreement if terminated;

and further provided in each case that timely remedial action by the Airport Company has not been prevented by GOI, the Government of (Name of State) or AAI.

10.3 AAI Termination Events

The Airport Company shall be entitled to issue a notice of termination to AAI, if the Applicable Law permits the Airport Company to perform the CNS/ATM Services, subject to suitable amendments to the Concession Agreement.

10.4 Effect of a Termination Notice

If a notice of termination is served by AAI or the Airport Company pursuant to this Clause 10, then, at any time after the expiry of a period of 90 (ninety) 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.

10.5 Consequences of Termination

10.5.1 If this Agreement terminates pursuant to this Clause 10.3 by the 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.

10.5.2 It shall thereafter be the sole discretion of the 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 the Airport Company to achieve the aforesaid purpose.

10.5.3 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 the 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 the Airport Company

Notwithstanding anything herein to the contrary, but subject to Clause 14.6, the 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 the Airport Company may, without such prior written consent, but upon prior written notice to AAI:

- (a) transfer all or substantially all of its rights and obligations hereunder to its Affiliate;
- (b) transfer all or any part of its rights and obligations herein to a purchaser of ownership interests in the Airport Company in accordance with the terms of the Concession Agreement;
- (c) transfer to Senior Lenders, the Airport Company's rights under this Agreement as collateral security for amounts payable under any Financing Agreements under which the Airport Company has borrowed money; or
- (d) transfer all or substantially all of its rights and obligations herein to GOI pursuant to the terms of the Concession Agreement.

12. DISPUTE RESOLUTION

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 Clause 12.1 within 60 (sixty) 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 Arbitration and Conciliation Act 1996 ("Arbitration Act") and/or any statutory modification thereof and in accordance with the



UNCITRAL Rules (“**Arbitration Rules**”) by 3 (three) arbitrators appointed in accordance with the Arbitration 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 Arbitration 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 Obtaining of Insurance

AAI shall effect and maintain on cost recovery basis, work deposit basis from the 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 Practices, the Airport Company and the Senior Lenders shall be names co-insured under AAI’s insurance policies under this Agreement.

13.2 Policies

With 30 (thirty) days of receiving any insurance policy certificates in respect of insurances required to be obtained and maintained under Clause 13.1, AAI shall inform the Airport Company that such insurances have been obtained and shall furnish to the Airport Company, if requested by the Senior 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 45 (forty-five) days’ notice of such cancellation, modification or non-renewal has been provided by AAI to the 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, the 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. MISCELLANEOUS PROVISIONS

14.1 Notices

14.1.1 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.

14.1.2 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:

To, Airport Company:

Address: Terminal 1, 1st Floor, CSI Airport, Santacruz (E), Mumbai – 400 099
Fax No.: +91-22-66851618
Attention: Managing Director
E-mail: sanjayreddy@gvk.com

To, AAI:

Address: Rajiv Gandhi Bhavan Safdarjung Airport New Delhi – 110 003, India
Fax No.: +91-11-24641088
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 5 (five) business days' notice.

14.1.3 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 14.1.2 or within 10 (ten) 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 Gazette holidays.

14.2 Severability

The invalidity or unenforceability, in whole or in part, of any of the foregoing clauses 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.



14.3 Entire Agreement

This Agreement, including the Schedules hereto, contains the entire agreement between AAI and the 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.

14.4 Amendment

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

14.5 Additional Documents and Actions

14.5.1 The Airport Company shall take all necessary steps to obtain an airport licence from DGCA for an initial period of 2 (two) years to enable it to commence commercial operations, and thereafter, for its renewal for a further period of 2 (two) years prior to the expiry of the Airport licence issued for immediately preceding 2 (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 the 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.

14.5.2 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.

14.6 Direct Agreement

AAI shall, upon a request from the Senior Lenders enter into a direct agreement with the Senior 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 Senior Lenders the right to cure a default on the part of the Airport Company, and/or to allow such Senior Lenders under certain circumstances to substitute themselves or appoint a third party substitute to carry out the obligations and enjoy the benefits of the Airport Company under this Agreement.

14.7 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 2 (two) percentage points above the Reserve Bank of India Prime Lending Fee in effect from time to time.

14.8 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.



14.9 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.

14.10 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.

14.11 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.

14.12 Computation of Time

Times referred to in this Agreement are times in Indian Standard Time. 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.

14.13 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.

14.14 Governing Law and Jurisdiction

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

14.15 Covenants by AAI

AAI unconditionally and irrevocably:

- (a) 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;
- (b) 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, SEALED AND DELIVERED
For and on behalf of AIRPORTS
AUTHORITY OF INDIA by:

(Signature)
(Name)
(Designation)

THE COMMON SEAL OF AIRPORT COMPANY
has been affixed pursuant to the resolution passed by
the Board of Directors of NAVI MUMBAI
INTERNATIONAL AIRPORT PRIVATE
LIMITED, the Airport Company 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)

In the presence of: 1. _____ 2. _____

SCHEDULE 1

Part 1: Airport Company's 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 the Site of the Airport;
21. Navigation aids/ Radar;
22. Office and residential accommodation for AAI Personnel and its agents;
23. Buildings for navigational aids/ radar installations;
24. EPABX extension, auto telephone with STD facility, Fax, hotline and cell phone in ATC;



25. Signal area as per ICAO specification;
26. 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;
4. ILS(Cat-1) & LP DME;
5. GPS Clock System.

SCHEDULE 2

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

1. *Control Tower:* The 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, Navigational-Aids and Radar building.
2. *Offices:* The Airport Company shall make available an area of specified square meters.
3. *Car Parking:* The Airport Company shall make available 25 (twenty five) car parking spaces at the Airport.
4. *Standby Supply:* The 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*.

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

SCHEDULE 3

CNS/ ATM Services

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

1. Aerodrome Control Service including surface movement control/ apron control service;
2. Approach Control/ Approach Radar Control Service (if planned);
3. Area Control/ Area Radar Control Service;
4. 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 4 **Definition of Force Majeure**

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

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

A. Acts, events or circumstances of the following types:

- (i) strikes, lock-outs or other industrial action or labour disputes involving any party or its contractors, or their respective sub-contractors, servants or agents, in any such case employed on the execution of work within India or the supply of goods or services within India;
- (ii) lightning, earthquake, tempest, cyclone, hurricane, whirlwind, storm, flood, washout, land slide, soil erosion, subsidence, drought or lack of water, and other unusual or extreme adverse weather or environmental conditions or actions of the elements, meteorites or objects falling from aircraft or other aerial devices, the occurrence of pressure waves caused by aircraft or other aerial devices travelling at supersonic speeds, fire or explosion, chemical or radioactive contamination or 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.

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 5
Form of AAI Direct Agreement

[On the letterhead of the Airport Company]

[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 (“**CNS/ATM Agreement**”) dated [_____] between the Airports Authority of India (“**AAI**”) and ourselves (“**Airport Company**”).

As contemplated in the CNS/ATM Agreement, the Airport 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 Airport Company for the development of a greenfield airport at Navi Mumbai, in the State of Maharashtra.

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

The Senior Lenders together with the Security Trustee are herein called the “**Secured Parties**”.

The Airport Company requests that, by signing and returning the enclosed copy of this acknowledgment and consent (“**Agreement**”), AAI confirm and agree, for the benefit of the Secured Parties, the following:



- (a) AAI:
- (i) acknowledges receipt of a copy of the Deed;
 - (ii) consents to the assignment (and to the extent not capable of assignment under the Deed, the charge) under the Deed for the benefit of the Secured Parties of all of the Airport 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 Security Trustee has elected to exercise its rights pursuant to the security interests granted by the Airport Company to have itself or its designee substituted for the Airport Company under the CNS/ATM Agreement, then, such Security Trustee or its designee shall be substituted for the Airport Company; and
 - (ii) If the Security 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 Airport Company (whether by foreclosure or otherwise), the purchaser shall, at the request of the Security Trustee and with the prior written consent of AAI, which consent shall not be unreasonably withheld, be substituted for the Airport Company under the CNS/ATM Agreement, and in either case, the substituted party will succeed to all rights, title and interest of the Airport 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 Airport Company under the CNS/ATM Agreement.
- (c) AAI agrees that it will pay money due to the Airport Company under the CNS/ATM Agreement exclusively for deposit directly and in immediately available funds to such account in [] (Name of the place of Site) as the Security Trustee may from time to time direct (and the Airport Company hereby authorises and directs AAI to make such payments as aforesaid). In the event of exercise by the Security Trustee or its designee of its rights pursuant to the security interests granted by the Airport Company, AAI will comply with any and all written instructions received from the Security Trustee to pay money due from AAI under the CNS/ATM Agreement directly to or to the order of the Security 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 Airport Company.
- (d) AAI agrees that it will recognise the Security Trustee as the true and lawful attorney of the Airport Company pursuant to the Deed.
- (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 Security Trustee.



- (f) AAI agrees that the Security 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 10.2 of the CNS/ATM Agreement and shall provide to the Security Trustee (simultaneously with the issue of such notice to the Airport 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 14.14 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 Due owed to the Senior 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 Security Trustee;
 By [],
 Name:
 Title:



SCHEDULE U
MEMORANDUM OF UNDERSTANDING
(See Clause 4.1.2(c)(v) and Clause 4.1.3(h))

[To be executed on stamp paper of appropriate value]

[Note: This draft has been sent to GOI for its approval and thus, this draft shall be subject to GOI's approval and modifications, if any suggested by it.]

THIS MEMORANDUM OF UNDERSTANDING ("MoU") is made at [] on the [] day of [], 20[]

THE PRESIDENT OF INDIA, acting through the Secretary, Ministry of Civil Aviation of Government of India (hereinafter referred to as "GOI" which expression shall be deemed to include his successors and assigns);

AND

NAVI MUMBAI INTERNATIONAL AIRPORT PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956, having corporate identification number U45200MH2007PTC169174 and its registered office at Office of the Airport Director, Terminal 1-B, CSI Airport, Santacruz, Mumbai – 400 099, Maharashtra (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, GOI 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. AV.24011/1/95-VB (Vol.VI) dated July 6, 2007 ("GOI Approval") granted its approval for the establishment of the Airport (*as defined in the Concession Agreement*) for public use at Navi Mumbai in the State of Maharashtra through Public Private Partnership ("PPP"), subject to the terms and conditions stipulated therein.
- B. Based on the GOI Approval, the Government of Maharashtra ("GOM") vide its Government Resolution No. CID-3307/1541/Pra. Kra-144/07/Na Vi-10 dated July 30, 2008 ("GOM Approval"), approved the implementation of the Project (*as defined below*), and appointed the Authority (*as defined below*) as a Nodal Agency for the same.
- C. Based upon the representations and submissions made by the Authority, the Applicable Permits that are required prior to the undertaking of the implementation of the Project, were granted to the Authority from the concerned Government Instrumentalities.
- D. Upon the incorporation of the Concessionaire, the Authority and the Concessionaire entered into a Concession Agreement dated January 8, 2018 ("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. GOI acknowledges that implementation of the Project requires continued support and grant of certain rights by the GOI to the Concessionaire in accordance with the Applicable Laws and



also 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 for the smooth functioning and viability of the Project, in addition to the obligations of the Authority under the Concession Agreement, the GOI 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 MoU, except to the extent that the context requires otherwise and unless otherwise defined as below or otherwise elsewhere specifically in this MoU, 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:

“Animal Quarantine Services” shall mean the quarantine services (forming part of the Reserved Services) as set out in Annex 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” has the meaning ascribed to the term in Clause 7.3.3 hereunder;

“Authority” shall mean the City and Industrial Development Corporation of Maharashtra Limited, a company incorporated under the Companies Act, 1956, having corporate identification number U99999MH1970SGC014574 and its registered office at Nirmal, 2nd Floor, Nariman Point, Mumbai – 400 021, Maharashtra and represented by its Vice Chairman & Managing Director;

“Authority Representative” shall mean the authorized representative of the Authority;

“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 Annex 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” has the meaning ascribed to it in Recital D above;

“Concessionaire” has 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 Annex 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” shall mean the Directorate General of Civil Aviation or any substitute thereof;

“Effective Date” shall mean the date of signing of this MOU by the last Party herein and such date shall not be later than the Appointed Date as provided in the Concession Agreement;

“GOI” has the same meaning ascribed to the term in the Recital A of this MoU;

“GOI Approval” has the same meaning ascribed to the term in the Recital A of this MoU;

“GOI Support” has the meaning ascribed to the term in Clause 2 of this MoU;

“GOM” has the same meaning ascribed to the term in the Recital B of this MoU;

“GOM Approval” has the same meaning ascribed to the term in the Recital B of this MoU;

“Health Services” shall mean the mandatory health services (forming part of the Reserved Services) as set out in Annex 4 attached hereto;

“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 the Applicable Law as set out in Annex 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” has the meaning ascribed to the term in Clause 4.1.1 hereunder;

“Meteorological Services” shall mean the meteorological services (forming part of the Reserved Services), as set out in Annex 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 Annex 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” has the meaning ascribed to the term in the Concession Agreement;

“PPP” has the meaning ascribed to the term in Recital A above;

“Reserved Services” has the meaning ascribed to the term in Clause 2.3;

“Security Services” shall mean the security services (forming part of the Reserved Services), as set out in Annex 8 attached hereto;

“Security Services Representative” shall mean the authorized representative of the department/agency providing the Security Services, nominated by the GOI, from time to time, on the Joint Co-ordination Committee;

“Shared Till Approval” has the meaning ascribed to the term in Clause 2.2.1 hereunder; and

“Term” has the meaning ascribed to the term in Clause 5.1.

1.2 Rules of Interpretation

1.2.1 The words and expressions beginning with capital letters and defined in this MoU has the meaning ascribed thereto herein, and the words and expressions used in this MoU 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 MoU.

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 MoU.

2. GOI SUPPORT

With effect from the Effective Date, GOI hereby undertakes to provide the following support in relation to the Project (“GOI Support”):

2.1 Applicable Permits

2.1.1 GOI shall, upon written request from the Concessionaire and subject to the Concessionaire complying with Applicable Laws, endeavour to 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 in connection with the Project within 45 (forty five) days from the date of receipt of such written request from the Concessionaire, subject to the Concessionaire fulfilling all the criteria specified for the purpose of obtaining the Applicable Permits.



- 2.1.2 The Concessionaire hereby undertakes that in order to expedite the grant of Applicable Permits, 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;
 - (b) follow-up the aforesaid applications with the concerned authorities; and
 - (c) respond in a timely manner to all requests for further information and clarifications.

2.2 Principles for Determination and Revision of Fees

- 2.2.1 The Ministry of Civil Aviation, GOI has, vide its letter no. F. No. AV.24011/1/95-VB dated December 8, 2014 (“**Shared-Till Approval**”), approved the 30% (thirty percent) shared-till framework for the determination and regulation of the Aeronautical Charges for the Airport.
- 2.2.2 The Aeronautical Charges shall be regulated and set/ re-set, in accordance with the Shared-Till Approval, the terms of the Concession Agreement and the Applicable Laws. Provided however, the Premium paid/ payable by the Concessionaire to the Authority, under and pursuant to the terms of the Concession 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.
- 2.2.3 The Concession Fees shall be considered as a part of the operating expense for the purpose of the determination of the Aeronautical Charges.
- 2.2.4 Any payments made by the Concessionaire to or on behalf of any Government Instrumentality for providing sovereign services within the Airport shall be considered as pass through for the purpose of the determination of the Aeronautical Charges.
- 2.2.5 Notwithstanding anything contrary contained elsewhere, the Concessionaire shall be entitled to levy, collect and appropriate the Aeronautical Charges with effect from the Phase I COD as per Clause 15.1.1 of the Concession Agreement from the Users of the Airport, at the initial/ ad-hoc rates of the tariff 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 and extant AERA guidelines. Appropriate adjustments in the allowable revenues in the tariff order for the first control period shall be made, based on the multi-year tariff proposal filed by the Concessionaire with AERA, in accordance with the AERA Act and extant AERA guidelines.
- 2.2.6 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 control period (currently 5 (five) years) commencing from Phase I COD as per Clause 15.1.1 of the Concession Agreement, shall be carried forward and adjusted, while determining the allowable Aeronautical Revenues in the second tariff control period, as per the regulations and guidelines issued by AERA from time to time, provided that such carry-forward or adjustment, shall be available only with respect to under-recovery or over-recovery of Aeronautical Revenues determined by AERA as per the AERA Act and extant AERA Guidelines.
- 2.2.7 The construction cost incurred for provision of housing for the personnel providing ^{Reserved}



Services as per the terms of the Concession Agreement, shall be treated as a pass-through for the purpose of determining Aeronautical Charges.

- 2.2.8 The pre-operative expenses paid by the Concessionaire, as per Clause 25.2 of the Concession Agreement, shall be capitalised over Project Assets which will form part of the regulated asset base for the purposes of the determination of the Aeronautical Charges.
- 2.2.9 Soft Loan, pertaining to Pre-development Works inside and outside the Site to the extent it is part of the mandated cost under the Concession Agreement, would be included in regulated asset base at 0% cost of capital for determination of the Aeronautical Charges.
- 2.2.10 Incremental costs, if any, borne by Concessionaire for Land Development Works over and above the Soft Loan, to the extent permissible under the terms of the Concession Agreement, would be included in the regulated asset base by AERA for determination of the Aeronautical Charges.

2.3 Reserved Services

- 2.3.1 The GOI shall, throughout the Term, provide, or cause to be provided, at the Airport, the following services (“Reserved Services”):
 - (a) CNS/ATM Services;
 - (b) Customs Control;
 - (c) Immigration Services;
 - (d) Plant Quarantine Services;
 - (e) Animal Quarantine Services;
 - (f) Health Services;
 - (g) Meteorological Services;
 - (h) Security Services;
 - (i) any other services as may be designated by the GOI from time to time.
- 2.3.2 The GOI hereby undertakes to procure the execution of memorandum of understanding between the Concessionaire and each Designated GOI Agency providing the Reserved Services, setting out the terms and conditions on which the Reserved Services shall be provided by the concerned Designated GOI Agency. In this regard, the Concessionaire shall provide free of charge, except the cost of utilities (such as electricity, water, etc., which shall be recoverable by the Concessionaire, and in accordance with Good Industry Practices), office space along with necessary office utilities for operational areas for the performance of their respective services and discharging their statutory functions. As regards space for back office usage by the Designated GOI Agency, the Concessionaire can charge the space usage charge upto the maximum rate of 50% (fifty percent) of the applicable market rates.
- 2.3.3 The Concessionaire shall not be entitled to reduce the space and facilities provided to any Designated GOI Agency at the Airport without the consent of that Designated GOI Agency.



- 2.3.4 In the event of any expansion, modernisation or redevelopment at the Airport which involves the movement or reconfiguration of any space or facilities used by any Designated GOI Agency for the purposes of providing the Reserved Services or otherwise, the Concessionaire shall duly inform the Designated GOI Agency and the Concessionaire and that Designated GOI Agency shall discuss and agree on any change to the space requirements of that Designated GOI Agency that may be required as a result of such expansion, modernisation or redevelopment at the Airport.
- 2.3.5 The Concessionaire shall collect rentals for the residential accommodation from the providers of the Reserved Services, which amount shall be paid as per the Applicable Laws/ extant guidelines of the providers of concerned Reserved Services.

2.4 Memorandum of Understanding with GOI Agencies

The GOI hereby undertakes to procure the execution of the memorandum of understanding between the Concessionaire and each GOI agency/department, providing the Reserved Services hereunder, setting out the terms and conditions on which the Reserved Services shall be provided by the relevant GOI agencies/departments.

2.5 Bilateral Air Services Agreement

Without impinging on or in any way restricting the sovereign rights of the GOI, GOI shall, where feasible, endeavour to renew all existing air services agreements and endeavour not to revoke or terminate any existing air services agreements affecting the Airport. GOI shall be entitled to revoke or terminate any air services agreement for reason of the failure of another state or its designated carrier(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.

2.6 Customs, Immigration and Quarantine

The Concessionaire shall establish the customs, immigration and quarantine procedures at the Airport in accordance with the Applicable Laws. Subject to the fulfilment of the conditions prescribed for obtaining the necessary Applicable Permits in this regard under the Applicable Laws, the GOI will endeavour to facilitate the Concessionaire to obtain such necessary Applicable Permits and resolve any issue pending before GOI.

2.7 Security

- 2.7.1 The GOI confirms that unless otherwise agreed under this MOU, it shall through the Designated GOI Agency, provide all aviation security at the Airport in accordance with the provisions of the Applicable Laws. The Parties recognise that the fee levied for security per departing passenger and its collection and utilization thereof will be regulated in accordance with the applicable guidelines issued by MoCA from time to time.
- 2.7.2 Without prejudice to the other provisions of this MOU, the Concessionaire shall comply with such rules and regulations established by BCAS and any other Designated GOI Agency in connection with the security of the Airport.
- 2.7.3 The Concessionaire shall be responsible for providing and maintaining all such security equipment as required by BCAS and any other Designated GOI Agency from time to time for the provisioning of the security at the Airport.



2.7.4 The procedures to be adopted for the security of the Airport building, passengers, persons working at the Airport and other visitors to the Airport and aircraft, freight and other property at the Airport, shall be as prescribed by BCAS and any other Designated GOI Agency. The Concessionaire shall be obliged to comply with all such procedures and directions as issued by BCAS and any other Designated GOI Agency from time to time.

2.7.5 The Concessionaire shall co-operate fully with the officers of the designated security agencies and other security agencies at all times.

2.8 Meteorological Service

2.8.1 The GOI confirms that it shall, through Indian Meteorological Department or through any other Designated GOI Agency, cause to provide meteorological services at the Airport in accordance with the practices established or recommended from time to time pursuant to the Chicago Convention on Meteorological Service for International Air Navigation.

2.8.2 The functions provided by the Indian Meteorological Department or through any other Designated GOI Agency and the access and space provided by Concessionaire under this Clause 2.8 shall be provided as per Good Industry Practices.

2.9 Non-Discrimination

Subject to the Applicable Laws and international treaty obligations as in force from time to time, the GOI shall follow a policy of non-discrimination with regard to the classes or descriptions of air traffic that are permitted to use the Airport and subject to reasonable regulations, shall endeavour to not impose any unfair limitations on aircraft movements at the Airport or otherwise restrict the capacity at the Airport.

3. CONCESSIONAIRE'S OBLIGATIONS

3.1 Compliance of Concession Agreement, Applicable Laws and Applicable Permits

The Concessionaire will comply with the terms of the Concession Agreement, Applicable Laws and Applicable Permits at all times. The Concessionaire hereby understands, acknowledges and agrees that the GOI will not be under any obligation to perform its part under this MOU, if the Concessionaire is in breach or default of any of the terms of the Concession Agreement, Applicable Laws or Applicable Permits.

3.2 Co-ordination with Government Instrumentalities

The Concessionaire will consult the concerned Government Instrumentalities during the detailed designing stage and the suggestions/ requests of such Government Instrumentalities will generally be adhered by the Concessionaire unless there is an overriding reason for not accepting the same. In such case, the Concessionaire will convey the said reason to the concerned Government Instrumentality whose suggestion/ request has not been accepted prior to finalising its design.

3.3 Land for Defence Forces

3.3.1 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.

- 3.3.2 Without prejudice to the provisions of Clause 3.3.1 above, 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, and to the extent thereof, the Concessionaire shall be relieved of its obligations to provide services to civilian users of the Airport.
- 3.3.3 A separate parking area for military aircraft shall be earmarked in the Site for use whenever required. In addition, a pocket of 16.42 ha of land will be earmarked for the strategic requirement of the Defence Forces. The Defence Forces shall have the right to construct the required facilities for their use within the earmarked area at their own cost.
- 3.3.4 The Concessionaire agrees and undertakes to cooperate with and assist the Defence Forces in the movement of the aircraft at the Airport and to facilitate the use of the Airport.

4. JOINT CO-ORDINATION COMMITTEE

4.1 Constitution of 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 ("**Joint Co-ordination Committee**") consisting of:

- (a) Authority Representative;
- (b) Ministry of Civil Aviation's representative;
- (c) CNS/ATM Services Representative;
- (d) Customs Control Representative;
- (e) Immigration Services Representative;
- (f) Meteorological Services Representative;
- (g) Security Services Representative;
- (h) Plant Quarantine Services Representative;
- (i) Animal Quarantine Services Representative;
- (j) Health Services Representative and
- (k) Concessionaires Representative.

- 4.1.2 The Authority shall constitute this committee and head the meetings, with mandate to resolve issues related to provision of Reserved Services. The Ministry of Civil Aviation and the Designated GOI Agencies shall be represented at the meetings by an officer of the level of Director and above.

4.2 Meetings and Support



- 4.2.1 The Joint Co-ordination Committee shall be chaired by the Vice Chairman and Managing Director of the Authority and shall, unless otherwise agreed by the Parties to hold the meeting at a later date, meet at least once every quarter at the Airport or any other location designated by the Authority in the city of the Airport, starting in the first instance within 30 (thirty) day(s) of the Effective Date.
- 4.2.2 GOI hereby undertakes to provide assistance to the Concessionaire in liaising with the relevant agencies, authorities, departments, inspectorates, ministries under the control and direction of GOI, in respect of the implementation, operation and maintenance of the Project.

5. TERM AND TERMINATION

5.1 Term

- 5.1.1 This MoU shall be effective from the Effective Date.
- 5.1.2 This MoU shall terminate automatically with the determination and/or early termination, for whatsoever reason, of the Concession Agreement (“Term”).

5.2 Termination

- 5.2.1 This MoU 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.
- 5.2.2 The rights and benefits granted to the Concessionaire pursuant to this MoU shall stand transferred to, and shall enure 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.

6. REPRESENTATIONS AND WARRANTIES

6.1 By the Concessionaire

The Concessionaire hereby represents and warrants to the GOI 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 MoU, 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 MoU.

6.2 By GOI

The GOI hereby represents and warrants to the Concessionaire that it has the right, power and authority and has taken all actions necessary to execute this MoU, exercise its rights and perform its functions, under this MoU on best endeavour basis

7. GOVERNING LAW AND DISPUTE RESOLUTION

7.1 Governing Law

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 Jurisdiction

Subject to the provisions of Clause 7.3 below, the courts of New Delhi shall have exclusive jurisdiction over matters arising out of or relating to this MoU.

7.3 Dispute Resolution

- 7.3.1 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 60 (sixty) days of such consultations having commenced, the provisions of Clause 7.3.2 shall apply.
- 7.3.2 Subject to the provisions of the AERA Act, any dispute, which could not be settled by the Parties through amicable settlement (as provided for under Clause 7.3.1 hereinabove), shall be finally settled by arbitration in accordance with the Arbitration and Conciliation Act, 1996.
- 7.3.3 The disputes shall be referred to a tribunal comprising of 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. 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 Delhi.
- 7.3.4 Such arbitration shall, unless otherwise agreeable to the Parties, be held at Delhi, India. All proceedings of such arbitration shall be in the English language.
- 7.3.5 The decision(s) of the Arbitral Tribunal shall be final and binding on the Parties.

8. MISCELLANEOUS

8.1 Notice

- 8.1.1 Any notice required or permitted under the terms of this MoU or required by Applicable Laws 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, Ministry of Civil Aviation, Government of India

E-mail: []

Fax No.: +91-11-[]

Concessionaire:

Address: []

Attention: []

E-mail: []

Fax No.: +91-[]-[]



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 3 (three) days after it was mailed in the manner hereinbefore provided

8.2 Force Majeure

- 8.2.1 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.
- 8.2.2 Where a Party is claiming suspension of its obligations on account of Force Majeure, it shall promptly, but in no case later than 7 (seven) 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.
- 8.2.3 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.
- 8.2.4 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.
- 8.2.5 Notwithstanding anything contained hereinabove, if an event of Force Majeure occurs and continues for a period of 165 (one hundred sixty five) 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.

8.3 Severability

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.

8.4 Entire Agreement

This MoU, together with all the Annexes 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.



8.5 Amendment

No addition, amendment or to or modification of this MoU shall be effective, unless it is in writing and signed by the Parties.

8.6 Assignment

Notwithstanding any change in the Applicable Law after the Effective 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. 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.

8.7 No Waiver

No failure on the part of GOI or the Authority 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).

Annex 1 Animal Quarantine Services

A. *Before Arrival:*

- (i) On receipt of an application for import of the animal, all the sheds and feed stoves are thoroughly cleaned, disinfected with suitable disinfectants and also fumigated;
- (ii) All animals are transported on a suitable animal carrier, as per the standards and requirements for different species of animals;
- (iii) The animal carrier is properly disinfected one day prior to the scheduled date of arrival of animals;
- (iv) All the arrangements are made for collection of necessary samples.

B. *On Arrival at the Point of Entry:*

- (i) On the day of arrival and time fixed with the Importer, the Regional/Quarantine Officer and other staff reach the airport;
- (ii) The animal or the products are thoroughly examined physically;
- (iii) The veterinary certificate accompanying the animals or products is checked thoroughly to ascertain the specified health requirements;
- (iv) 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;

- (v) The imported live animals are brought to the quarantine station under the supervision of the Regional/Quarantine Officer;
- (vi) 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;
- (vii) In case of livestock products, representative samples shall be drawn and tested in the relevant laboratories as per conditions laid down in the sanitary import permit.

Annex 2 CMS/ATM Services

GOI, through AAI or any other 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.

Annex 3 Customs Control

- (a) Customs Control at Walkthrough Channel;
- (b) Customs Control at baggage examination counters in Green / Red Channel;



- (c) Provision of the services of the Baggage Assistant / Deputy Commissioner within the Baggage Mall;
- (d) Customs Control for detained goods;
- (e) Customs Control for mishandled baggage;
- (f) Customs Control for valuables;
- (g) Customs Control for re-shipment goods;
- (h) Customs Control for confiscated goods;
- (i) Manning by the Gate Officer near Exit Gate;
- (j) Issuance of Export Certificate;
- (k) Services of relevant officials in connection with Custom's functions;
- (l) Air Intelligence Unit.

**Annex 4
Health Services**

- (a) 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 ("Health Services"):
 - (i) Medical facilities at the Airport Terminal Building 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;
 - (ii) Medical officers and other DGHS personnel to be located at the Airport Terminal Building, as decided by DGHS from time to time;
 - (iii) DGHS shall, from time to time, determine the number of staff and fix timings of medical facilities at/around the Airport;
 - (iv) DGHS shall also undertake such other functions at the Airport as may be directed by the Central Government from time to time.
- (b) It is clarified that in the event the DGHS does not provide all or any of the Health Services and/or the facilities mentioned in Clause (a)(i) 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 (a)(i) above.

**Annex 5
Immigration Services**



Providing Immigration facilitation and service at the Airport and work relating to registration of foreigners under Applicable Laws.

Annex 6 Meteorological Services

This includes provision of aviation weather services according to the technical provisions of the ICAO, Annex 3 and the World Meteorological Organization, as well as standards and recommended practices of Designated GOI Agency and conventions in air navigation towards the safety of aircraft operation.

Annex 7 Plant Protection and Quarantine Services

These functions are performed under the Destructive Insects & Pests 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. Such functions include the following:

- (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.

Annex 8 Security Services

- (a) Providing security through designated GOI Agency, in accordance with Annex 17 to Chicago Convention of ICAO, for airport operators, airlines operators, and their security agencies responsible for implementing AVSEC measures;
- (b) Ensure that designated GOI Agency and its persons implementing security controls are appropriately trained and possess all competencies required to perform their duties;
- (c) Planning and coordination of Aviation security matters;
- (d) Conducting – Surprise/Dummy checks through designated GOI Agency to test professional efficiency and alertness of security staff and mock exercises to test efficacy of Contingency Plans and operational preparedness of the various agencies.



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 GOVERNMENT OF INDIA Signed by	Witnessed by:
For and on behalf of the Concessionaire, NAVI MUMBAI INTERNATIONAL AIRPORT PRIVATE LIMITED Signed by	Witnessed by:



SCHEDULE V
STATE GOVERNMENT SUPPORT AGREEMENT
(See Clause 4.1.2(d)(vi) and Clause 4.1.3(i))

THIS STATE GOVERNMENT SUPPORT AGREEMENT is made at Mumbai on the [] day of [], 20[]

BY AND AMONGST:

THE GOVERNOR OF MAHARASHTRA, represented by Principal Secretary, Urban Development Department, Government of Maharashtra, having its principal office at 4th Floor, Mantralaya, Madam Cama Road, Hutatma Rajguru Square, Nariman Point, Mumbai – 400 032, Maharashtra (hereinafter referred to as the “**GOM**”, which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns);

AND

CITY AND INDUSTRIAL DEVELOPMENT CORPORATION OF MAHARASHTRA LIMITED, a company incorporated under the Companies Act, 1956, having corporate identification number U99999MH1970SGC014574 and its registered office at Nirma, 2nd Floor, Nariman Point, Mumbai – 400 021, Maharashtra, represented by its Vice Chairman & Managing Director (hereinafter referred to as the “**Authority**”, which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns);

AND

NAVI MUMBAI INTERNATIONAL AIRPORT PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956, having corporate identification number U45200MH2007PTC169174 and its registered office at Office of the Airport Director, Terminal 1-B, CSI Airport, Santacruz, Mumbai – 400 099, Maharashtra (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, GOM, 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. AV.24011/1/95-VB (Vol.VI) dated July 6, 2007 (“**GOI Approval**”) granted its approval for the establishment of an international airport for public use at Navi Mumbai in the State of Maharashtra 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 therein.
- B. Based on the GOI Approval, the Government of Maharashtra (“**GOM**”) vide its Government Resolution No. CID-3307/1541/Pra. Kra-144/07/Na Vi-10 dated July 30, 2008 (“**GOM 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, with 74% (seventy four percent) shareholding of the preferred bidder/ private participants and 26% (twenty six percent) shareholding of the Authority and/or its nominees.

- D. Upon the incorporation of the Concessionaire, the Authority and the Concessionaire entered into a Concession Agreement dated January 8, 2018 (“**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. GOM acknowledges that implementation of the Project requires continued support and grant of certain rights by the GOM 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 GOM 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 GOM, 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;

“**GOM**” means the Government of Maharashtra and any agency, authority (including any regulatory authority), department, inspectorate, ministry or statutory person (whether autonomous or not) under the control and direction of GOM;

“**GOM Approval**” has the meaning ascribed to it in Recital B;



“PPP” has the meaning ascribed to it under Recital A;

“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. GOM 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 Aamra Marg (“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, GOM hereby confirms that 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 GOM may, in its sole discretion, deem fit. Towards this end, the GOM 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 GOM hereby confirms that it shall make best endeavours to provide sufficient quantities of the Utilities (to the extent that these service are generally provided by the GOM or its departments/ agencies/ entities substantially owned



or controlled by the GOM) for the Airport on payment basis, to enable development and expansion of the Airport and to cater to increasing passenger and other traffic. GOM 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 GOM or its departments/ agencies/ entities substantially owned or controlled by the GOM).

2.3 Safety and Cleanliness 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 GOM 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 GOM 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 GOM to carry out the said function.
- 2.3.3 Notwithstanding anything to the contrary contained in this Agreement, the Parties hereby expressly acknowledge and agree that GOM 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.

2.4 Clearances

- 2.4.1 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 GOM 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 GOM 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 GOM 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 GOM shall nominate a senior officer of the rank of Deputy Secretary, Urban Development Department, GOM 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 GOM.
- 2.4.4 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.



2.5 State Level Taxes and Levies

On the receipt of the written request from the Concessionaire, the GOM will endeavour to provide the following:

- 2.5.1 Exemption from the payment of stamp duty, as may be leviable on the execution and delivery of the Concession Agreement, in the State of Maharashtra:
- 2.5.2 Deferment of 'water resource development charges', as currently leviable in accordance with the terms of the NMDLR upto a maximum period of 10 (ten) years from the Appointed Date. If the Concessionaire makes any such request, then, the Concessionaire shall be required to make payment of such deferred 'water resource development charges', within 30 (thirty) days of the commencement of the 11th year from the Appointed Date, along with an interest calculated at the rate of 3% (three percent) plus Bank Rate per annum compounded on quarterly rest basis.

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 enure 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 GOM 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 GOM

The GOM 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 co-ordination committee to be formed by the GOM and to be chaired by the Chief Secretary, GOM, with representatives from the GOI and other concerned parties.

This Agreement shall not confer any right against GOM for enforcement of any obligations by the state of Maharashtra 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 Mumbai, 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 Mumbai 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:

GOM

Address: 4th Floor, Mantralaya (Main), Mumbai – 400 032, Maharashtra
Attention: PS (UD-I), Urban Development Department, GOM
E-mail: psec.ud1@maharashtra.gov.in
Fax No.: +91-22-22026258

Authority:

Address: 2nd Floor, Nirmal, Nariman Point, Mumbai – 400 021, Maharashtra
Attention: Vice Chairman & Managing Director
E-mail: cidcomdoffice@gmail.com
Fax No.: +91-22-22022509

Concessionaire:

Address: Terminal 1, 1st Floor, CSI Airport, Santacruz (E), Mumbai – 400 099, Maharashtra
Attention: Managing Director
E-mail: sanjayreddy@gvk.com
Fax No.: +91-22-66851618

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 all the 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 GOM 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

<p>For and on behalf of GOVERNMENT OF MAHARASHTRA</p> <p>Signed by _____</p>	<p>Witnessed by:</p>
<p>For and on behalf of the Authority, CITY AND INDUSTRIAL DEVELOPMENT CORPORATION OF MAHARASHTRA LIMITED</p> <p>Signed by _____</p>	<p>Witnessed by:</p>
<p>For and on behalf of the Concessionaire, NAVI MUMBAI INTERNATIONAL AIRPORT PRIVATE LIMITED</p> <p>Signed by _____</p>	<p>Witnessed by:</p>



**SCHEDULE W
LDS AGREEMENT**

(See Clause 4.1.2(c)(vii) and Clause 4.1.3(j))

*[To be executed on stamp paper of appropriate value]
[To be executed separately for each Land Development Works related contract, which will be
novated to the Concessionaire]*

THIS LAND DEVELOPMENT WORKS SUBSTITUTION AGREEMENT (“Agreement”) is made at Mumbai on the [] day of [], 20[] (“**Substitution Date**”):

BY AND AMONGST:

CITY AND INDUSTRIAL DEVELOPMENT CORPORATION OF MAHARASHTRA LIMITED, a company incorporated under the Companies Act, 1956, having corporate identification number U99999MH1970SGC014574 and its registered office at Nirmal, 2nd Floor, Nariman Point, Mumbai – 400 021, Maharashtra, represented by its Vice Chairman & Managing Director (hereinafter referred to as the “**Authority**”, which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns);

AND

[], a [] incorporated under the [], having [corporate identification number [] and] its registered office at [] (hereinafter referred to as the “**Contractor**”, which expression shall be deemed to include its successors and permitted assigns);

AND

NAVI MUMBAI INTERNATIONAL AIRPORT PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956, having corporate identification number U45200MH2007PTC169174 and its registered office at Office of the Airport Director, Terminal I-B, CSI Airport, Santacruz, Mumbai – 400 099, Maharashtra (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, the Authority, Contractor and the Concessionaire are hereinafter collectively referred to as “**Parties**” and individually as “**Party**”.

WHEREAS:

- A. The Authority had executed a contract dated [] (“**Main Contract**”) with the Contractor for the implementation of certain Land Development works concerning [] (“**Works**”), the details of which are provided in Annex hereto, along with their status as of the Substitution Date.
- B. During the process of the implementation of the Works in accordance with the terms of the Main Contract, the Authority executed the concession agreement dated January 8, 2018 (“**Concession Agreement**”), with the Concessionaire for the implementation, development, operation and maintenance of the Project.
- C. One of the conditions precedent in the Concession Agreement requires the Concessionaire to



assign, substitute or novate, the Main Contract, in such a manner that the Authority in the Main Contract is substituted by the Concessionaire, and except as may be otherwise provided by the Authority, all the rights, obligations, responsibilities, liabilities, etc. of the Authority, is undertaken by the Concessionaire on 'as is where is' basis with effect from the effective date of the substitution.

- D. The Contractor has recognised the right of the Authority in the Main Contract to substitute itself with the Concessionaire.
- E. In view of the aforesaid, the Parties hereby agree for the substitution of the Authority with the Concessionaire in the Main Contract, in accordance with the terms and conditions contained herein, and the terms of the Main Contract shall accordingly be amended and modified, with effect from the Substitution Date.

1. DEFINITIONS AND INTERPRETATIONS

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 or the Main Contract, has the meaning ascribed to the term under the Concession Agreement or the Main Contract:

“**Agreement**” means this Land Development Works Substitution Contract;

“**Concession Agreement**” has the meaning ascribed to it in Recital B above;

“**Main Contract**” has the meaning ascribed to it in Recital A above, and shall include collectively the main contract, special conditions of contract and general conditions of contract, and in the event of any ambiguity or discrepancy, shall be interpreted in accordance with the terms thereof;

“**Project**” means the design, development, construction, modernization, upgradation, finance, management, operation, maintenance and management of the ‘Navi Mumbai International Airport’ as per the terms of the Concession Agreement;

“**Substitution Date**” means the date of execution of this Agreement by the Parties;

“**Works**” has the meaning ascribed to it in Recital A above.

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 or the Main Contract shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement or the Main Contract.

1.2.2 In case of discrepancy in the defined terms between the Concession Agreement and the Main Contract, the term as defined in the Concession Agreement will prevail over such term as may have been defined under the Main Contract.



- 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. SUBSTITUTION IN MAIN CONTRACT

2.1 Substitution of the Authority

The Parties hereby agree that the Authority in the Main Contract is hereby replaced and substituted by the Concessionaire with effect from the Substitution Date, and except as otherwise provided herein in Clause 3 below, the Main Contract is novated from the Authority to the Concessionaire, on 'as is where is' basis.

2.2 Affirmation

- 2.2.1 The Concessionaire hereby agrees, accepts and confirms, and the Contractor hereby acknowledges, agrees and confirms the novation of the Main Contract from the Authority to the Concessionaire, in accordance with the terms herein.
- 2.2.2 The Concessionaire is bound, and considered always to have been bound, by the rights and the performance of the obligations as an 'Employer' in respect of the performance of all the rights, obligations, duties, responsibilities and liabilities, as if the Concessionaire was and always had been named as the 'Employer' in the Main Contract in place of the Authority, with effect from the Substitution Date, on 'as is where is' basis.
- 2.2.3 The Contractor hereby accepts the Concessionaire as its 'Employer' for all the purposes of the Main Contract and hereby undertakes to perform all its rights, obligations, duties, responsibilities and liabilities, towards the Concessionaire, as if the Concessionaire was and always had been named as 'the Employer' in the Main Contract in place of the Authority, with effect from the Substitution Date, on 'as is where is' basis.
- 2.2.4 The Concessionaire hereby acknowledges, confirms and accepts [] as the Engineer, who shall also act as the Project Management and Implementation Consultant ("PMIC") for the purposes of the Main Contract. The Concessionaire hereby undertakes to continue to coordinate, work and perform along with such Engineer/ PMIC, in accordance with the terms of the Main Contract, as if the Concessionaire was and always had been named as the 'Employer' in the Main Contract in place of the Authority. The process of any change, variation or termination of such Engineer/ PMIC, shall be governed by the provisions of the Main Contract and the Authority's separate arrangements with such Persons.

2.3 Release and Discharge

- 2.3.1 Subject to the provisions of Clause 3 below, the Authority will no longer owe any obligation to the Contractor under the Main Contract with effect from the Substitution Date.
- 2.3.2 With effect from and including the Substitution Date, and in consideration of the mutual representations, warranties and covenants contained in this Agreement and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the Parties):



- (a) the Authority and the Contractor are each released and discharged from further obligations to each other with respect to the Main Contract, and their respective rights against each other thereunder are cancelled, provided that such release and discharge shall not affect any rights, liabilities or obligations of either of such Party, with respect to payments or other obligations, which has accrued or become due and payable or due to be performed on or prior to the Substitution Date, and all such payments and obligations shall be paid or performed by the concerned Party, in accordance with the terms of the Main Contract;
- (b) the Concessionaire and the Contractor, each undertake duties, performances, liabilities and obligations towards the other and acquire rights against each other, identical in their terms to each corresponding in the Main Contract (as if the Concessionaire were the Authority), save for any rights, liabilities or obligations of the Authority or the Contractor with respect to payments or other obligations due and payable or due to be performed on or prior to the Substitution Date); and
- (c) this Agreement shall be governed by and form part of the Main Contract and the Main Contract shall be deemed to be modified in accordance with this Agreement.

2.4 Grievance Redressal Committee

2.4.1 Notwithstanding anything contained contrary in the Main Contract including clause 36 of the special conditions of contract and clause 67 of the general conditions of contract, in the event of any dispute or difference of opinion arising due to the delays in the implementation of the Works as per the terms of the Main Contract, is due to:

- (a) any reason attributable to the Authority, then, the Contractor, and
- (b) any reason not attributable to the Concessionaire and is having a consequent impact on the performance of the Construction Works (as defined in the Concession Agreement), then, the Concessionaire,

can raise such dispute or difference of opinion before the Grievance Redressal Committee.

2.4.2 The Grievance Redressal Committee [will be set-up within 15 (fifteen) days of the execution of the Concession Agreement/ has been set-up], and shall comprise of the following members:

- (a) Principal Secretary, Urban Development Department, Government of Maharashtra, Chairman;
- (b) 1 (one) nominee each of the Authority and the Concessionaire; and
- (c) 1 (one) independent contract specialist and 1 (one) independent subject matter expert relating to the construction works (preferably construction works pertaining to airports), each identified and nominated by the Authority.

2.4.3 Upon the raising of any dispute or difference of opinion as per Clause 2.4.1 above and submission of all the supporting documents thereof, the Grievance Redressal Committee will analyse the issues raised. The Grievance Redressal Committee will grant an opportunity to the Parties to make their representations by granting a personal hearing to them.

2.4.4 Upon analysing the issues raised and hearing the Parties, the Grievance Redressal Committee



will:

- (a) decide the cause of delay in the implementation of the Works by a majority view;
- (b) decide and assign responsibility of such delay to the appropriate Party; and
- (c) recommend to the Authority, if appropriate, any extension in the (i) Time for Completion of the Works under the Main Contract, if the dispute or difference of opinion is raised by the Contractor; and (ii) Construction Period and the Concession Period, if the dispute or difference of opinion is raised by the Concessionaire.

2.4.5 Based on the decision and recommendation of the Grievance Redressal Committee as per Clause 2.4.4 above, the Authority will decide on granting the extension in the Time for Completion of the Works under the Main Contract, or the Construction Period and the Concession Period under the Concession Agreement, as the case may be.

2.4.6 The Grievance Redressal Committee will be free to determine any other process or procedure, not specifically set out herein but may be required to be determined while deciding on any dispute or difference of opinion raised by the Concessionaire as per Clause 2.4.1 above.

2.4.7 The Grievance Redressal Committee will take its decision and make recommendation (if appropriate) under Clause 2.4.4 within a period of 30 (thirty) days of the raising of any dispute or difference of opinion as per Clause 2.4.1 above.

2.4.8 It is clarified that the pendency of any dispute or difference of opinion before the Grievance Redressal Committee shall not be a reason or ground for the extension of Time for Completion of Works under the Main Contract or the Construction Period or the Concession Period under the Concession Agreement. It is further clarified that neither the Contractor under the Main Contract or the Concessionaire under the Concession Agreement shall be entitled to claim nor the Authority will be required to consider, any other form of relief, grant, compensation or otherwise, once the extension in Time for Completion under the Main Contract, and/ or the Construction Period and/ or the Concession Period, as the case may be, is extended as per the terms hereof.

3. CONTINUING OBLIGATIONS

3.1 Payment Obligations

3.1.1 Notwithstanding the substitution of the Authority by the Concessionaire under the Main Contract, the Authority shall continue to remain responsible for the payment of the Contract Price, in accordance with the terms of the Main Contract. Any payments made by the Authority to the Contractor pursuant to this Agreement is on behalf of the Concessionaire, shall form part of the Soft Loan (*as defined in the Concession Agreement*) in the manner provided in the Concession Agreement.

3.1.2 Such continuing payment obligations of the Authority shall also mean to include the obligation to pay any amounts that are allowed under or pursuant to the Main Contract, including but not limited to clause 23 of the special conditions of contract forming part of the Main Contract and clauses 36.5, 40, 51 and 70 of the general conditions of contract forming part of the Main Contract.

3.1.3 If the Employer becomes responsible for the payment of any amount in addition to the amounts



specified in Clause 3.1.1 and Clause 3.1.2 above, either under clause 53 of the general conditions of contract forming part of the Main Contract or otherwise, except on account of the change in scope attributable to the Employer, then, the Authority shall be liable for the payment of all such amounts. For any increase in cost and amount resulting due to change in scope attributable to the Employer, the Employer shall remain solely and exclusively liable for the payment of such amount, without any recourse to the Authority, Concession Agreement and/or Project.

3.2 Amendments to Main Contract

In view of the continuing obligations concerning payment as per Clause 3.1 above, the Main Contract is hereby amended and modified to read as below:

(a) Insertion of a new definition

A new definition is inserted in clause 1.1 of the Main Contract at an appropriate place in the alphabetical order:

““Authority” means CIDCO Limited a company incorporated under the Companies Act, 1956, and is also referred as the Corporation in the Contract.”

(b) Amendment of clause 60.10

Clause 60.10 of the general conditions of contract forming part of the Main Contract is hereby amended, modified and superseded for all purposes and intent:

“60.10 Time for Payment

The issuance of any Interim Payment Certificate by the Engineer pursuant to this Clause, or to any other term of the Contract, shall, subject to Clause 47, be perused and certified by the Employer for correctness and adequacy. If the Employer has any observation or recommendation or finds any mistake, incorrect or inadequate invoicing, etc., the Employer shall return such Interim Payment Certificate to the Engineer, within [15 (fifteen)] days of its receipt from the Engineer. The Engineer, if required, then, shall require the additional documents, clarifications, information from the Contractor or make appropriate modifications in the Interim Payment Certificate, and submit the revised Interim Payment Certificate to the Employer, along with its detailed reasoning and supporting documents, if any, if it has not accepted any of the Employer's observation, recommendation feedback, request, etc., within 15 (fifteen) days of the receipt from the Employer.

Upon the receipt of the Interim Payment Certificate (revised or otherwise) from the Engineer pursuant to this Clause, or to any other term of the Contract, the Employer shall recommend the Authority to make payment of an amount, subject to Clause 47, up to 75% of the amount due to the Contractor under such Interim Payment Certificate, within 7 working days the receipt of such recommendation along with the copies of the Interim Payment Certificate and all relevant documents and reasoning, by the Authority, and the balance amount of 25% within 21 working days thereafter. In the case of the Final Payment Certificate referred to in Sub-Clause 60.8, the Authority shall make payment within 60 days, of receipt of such Final Payment Certificate. In the event of the failure of the Authority to make payment within the times stated, the Authority shall pay to the Contractor interest at the rate stated in the Annexure - A



upon all sums unpaid but payable from the date by which the same should have been paid. The provisions of this Sub-Clause are without prejudice to the Contractor's entitlement under Clause 69 or otherwise."

(c) Specific Amendment

Any provision contained anywhere in the Main Contract for the payment of any amount, which is due and payable by the Employer under the Main Contract, shall be deemed to be amended and modified for all purposes and intent, to the effect that all such due and payable amounts shall be paid by the Authority, upon the receipt of the certification and recommendation from the Employer. *Provided however that*, any such obligation of the Authority to pay any amount to the Contractor under or pursuant to the Main Contract, shall be limited to the extent of Clause 3.1 above.

3.3 Payment and other securities

- (a) In compliance of the provisions of the Main Contract, the Contractor has provided various forms of bank guarantees and securities in favour of the Employer thereunder, including but not limited to the Indemnity Bond, Promissory Note and the Bank Guarantee in lieu of Contract Deposit.
- (b) In view of the continuing obligations concerning payment as per Clause 3.1 above, all the above referred bank guarantees and securities in favour of the Employer thereunder, including but not limited to the Indemnity Bond, Promissory Note and the Bank Guarantee in lieu of the Contract Deposit, provided by the Contractor to the Employer (now Authority) thereunder, shall continue to remain in the name of the Authority only, and any right, title or interest therein, shall not be transferred in favour of the Concessionaire, pursuant to this Agreement or otherwise.
- (c) It is however provided that, if any of the bank guarantees and/ or securities retained by the Authority in accordance with Clause 3.3.2 above, are invoked or encashed, then, the amounts from such invocation and encashment shall be held in trust by the Authority until the later of (a) completion of all the performance obligations of the Contractor under the Main Contract, and (b) no payments or other obligations outstanding of the Concessionaire/ Employer towards the Contractor under the Main Contract. The Authority shall, after adjusting the amounts that it may have incurred while performing its obligations herein, release the balance amounts to the Concessionaire after the expiry of such period.

3.4 Prior Approval

Notwithstanding anything contained contrary in the Main Contract and/ or this Agreement, the Concessionaire, in its capacity as the Employer under the Main Contract, will not grant any:

- (a) extension of Time for Completion as per clause 44 of general conditions of contract forming part of the Main Contract or any other provisions thereof, and
- (b) approval to any claim as per clause 53 of general conditions of contract forming part of the Main Contract or other amounts as per any other provisions thereof, except on account of the change in scope attributable to the Employer and which amounts shall be solely payable by the Concessionaire,

without the prior written consent of the Authority in such regard.



4. REPRESENTATIONS AND WARRANTIES

4.1 General Warranties

Each Party represents and warrants to the other Parties that:

- 4.1.1 It has the full power and authority to sign, deliver and perform its obligations under this Agreement.
- 4.1.2 This Agreement constitutes valid, legally binding and enforceable obligations of such Party.
- 4.1.3 All actions on the part of officers or directors of a Party that are necessary for the authorization, signing and delivery of this Agreement by and for the performance of all of its obligations hereunder have been taken.
- 4.1.4 Any and all consents or approvals, including shareholders' approvals, or governmental approvals as may be necessary in connection with:
 - (a) the signing and delivery of this Agreement; and
 - (b) the performance of its obligations hereunder;have been or will be obtained.
- 4.1.5 The entry into, delivery and performance by the Parties of, and the transactions contemplated by, this Agreement does not and will not conflict with:
 - (a) any Applicable Laws;
 - (b) their respective constitutional documents; or
 - (c) any contract or document which is binding upon them.

4.2 Authority's Specific Warranty

The Authority hereby warrants to the Concessionaire that it has not breached any of its obligations under the Main Contract, in any manner, which may impact the 'Employer's' performance obligations thereunder.

4.3 Contractor's Specific Warranty

- 4.3.1 The Contractor hereby warrants to the other Parties that it is continuing to work in accordance with the terms of the Main Contract and has not breached any of its obligations under the Main Contract, in any manner, which may impact the 'Employer's' performance obligations thereunder.
- 4.3.2 All other representations and warranties of the Contractor, either general or specific, contained in the Main Contract, are valid, binding and enforceable as on the Substitution Date and shall continue to remain as such during the term of the Main Contract.
- 4.3.3 As of the Substitution Date, all obligations of the Contractor under the Main Contract, have



been duly completed and fulfilled.

5. VALIDITY OF OTHER PROVISIONS

5.1 Survival

Save and except as hereby expressly provided, nothing herein contained shall limit or deem to limit or prejudicially affect the rights and benefits of the Employer or the Contractor under the Main Contract.

5.2 Entire Agreement

5.2.1 This Agreement is an integral part of the Main Contract and forms entire agreement amongst the Parties in respect of the subject matter hereof.

5.2.2 In the event of any inconsistency in the provisions of this Agreement on the one hand and the provisions of the Main Contract on the other hand, the provisions of this Agreement shall prevail to that extent of such inconsistency.

6. TERM AND TERMINATION

6.1 Term of the Agreement

This Agreement shall be valid and effective with effect from the Substitution Date, until it is terminated in accordance with Clause 6.2 below.

6.2 Termination

6.2.1 Notwithstanding anything contrary contained herein or in the Main Contract, this Agreement shall be terminated at the earlier of:

- (a) completion of the Works as per the terms of the Main Contract and fulfilment of all the terms and conditions as prescribed thereunder; and
- (b) termination of the Concession Agreement, without the requirement of any notice or otherwise hereunder.

6.2.2 In the event of termination of this Agreement as per Clause 6.2.1(b) above, the following shall occur:

- (a) in respect of the relationship of the Contractor existed with the Authority under the Main Contract prior to the Substitution Date, shall be restored in its original form and the Concessionaire shall have no role, power, authority or otherwise, under this Agreement and/ or the Main Contract;
- (b) any rights granted to the Concessionaire pursuant to this Agreement and/ or the Main Contract, shall terminate automatically and forthwith, without the need for any action to be taken by the Authority or the Contractor;
- (c) notify to the Authority forthwith, the location, status and particulars of all the Works executed by the Contractor pursuant to the Main Contract and this Agreement;



- (d) deliver forthwith, the actual possession of the Works and the Site, free and clear of all Encumbrances;
- (e) deliver and transfer relevant records, reports, Intellectual Property and other licences pertaining to the Works, and complete 'as built' Drawings as on the date of termination, free of any Encumbrance;
- (f) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- (g) execute such deeds, documents, instruments and other writings, as the Authority may require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Works and the right to receive outstanding insurance claims to the extent due and payable to the Concessionaire, absolutely unto the Authority or its nominee;
- (h) 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 Works, free from all Encumbrances, absolutely unto the Authority or to its nominee.

7. GOVERNING LAW, JURISDICTION AND DISPUTE RESOLUTION

7.1 Governing Law

This Agreement will be interpreted, construed and governed by the applicable laws of India.

7.2 Jurisdiction

Subject to the provisions of Clause 7.3, the Parties submit to the exclusive jurisdiction of the courts at Mumbai, Maharashtra.

7.3 Dispute Resolution

7.3.1 Any dispute, differences or disagreement (collectively, the "Dispute") amongst the Parties, arising out of or in connection with this Agreement in relation to the concerned Contract, be sought to be settled in accordance with clause 67 of the general conditions of contract forming part of the Main Contract.

7.3.2 The Parties will co-operate in good faith to expedite, to the maximum extent, the conduct of any arbitral proceedings commenced pursuant to this Agreement.

8. MISCELLANEOUS

8.1 Notices

Any notice to any Party pursuant to this Agreement can be served in accordance with the procedure specified in clause 68 of the general conditions of contract forming part of the Main Contract. In this respect, the addresses of the Parties noted in the array of the Parties above, shall be the place, where such notices shall be required to be delivered in the name of their authorised representative.



8.2 Amendment

No amendment, modification or waiver in respect of this Novation Agreement will be effective, unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.

8.3 Costs and Expenses

8.3.1 Each Party will pay their own costs and expenses (including legal fees) incurred in connection with this Agreement and as a result of the negotiation, preparation and execution of this Agreement.

8.3.2 Notwithstanding anything contained contrary in Clause 8.3.1, any stamp duty payable on the execution or delivery of this Agreement, shall be payable by the Concessionaire.

8.4 Counterparts

This Agreement will be executed in 3 (three) counterparts, all of which shall be considered as the original.

Annex
Details of Works
[To be inserted at the time of execution]

S. No.	Details of Works	Milestone (as per Main Contract)	Status as of Substitution Date
a.			
b.			
c.			
d.			
e.			



IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed and acknowledged by their respective officers or representatives hereunto duly authorized, as of the Substitution Date

SIGNED by the **Authority**)
[])
for and on behalf of)
CITY AND INDUSTRIAL DEVELOPMENT)
CORPORATION OF MAHARASHTRA LIMITED)
in the presence of)
[])

SIGNED by the **Concessionaire**)
[])
for and on behalf of)
NAVI MUMBAI INTERNATIONAL AIRPORT)
PRIVATE LIMITED)
in the presence of)
[])

SIGNED by the **Contractor**)
[])
for and on behalf of)
[])
in the presence of)
[])





महाराष्ट्र शासन राजपत्र

असाधारण भाग चार-ब

वर्ष २, अंक ७२(३)]

शनिवार, जून ४, २०१६/ज्येष्ठ १४, शके १९३८

[पृष्ठे २, किंमत : रुपये ९.००

असाधारण क्रमांक १६१

प्राधिकृत प्रकाशन

महाराष्ट्र शासनाने महाराष्ट्र अधिनियमान्वये तयार केलेले
(भाग एक, एक-अ आणि एक-ल यांमध्ये प्रसिद्ध केलेले नियम व आदेश यांब्यतिरिक्त) नियम व आदेश.

महसूल व वन विभाग

मादाम कामा मार्ग, हुतात्मा राजगुरु चौक, मंत्रालय,

मुंबई ४०० ०३२, दिनांक ३० मे २०१६

आदेश

महाराष्ट्र मुद्रांक अधिनियम.

क्रमांक मुद्रांक-२०१५/अनौ. सं. क्र. ३३/प्र.क्र. ७३०/म-१.—महाराष्ट्र मुद्रांक अधिनियम, (१९५८ चा अधिनियम क्र. ६०) (या पुढे ज्याचा उल्लेख उक्त अधिनियम म्हणून करण्यात येईल) च्या कलम ९ च्या खंड (अ) द्वारे प्रदान करण्यात आलेल्या अधिकारांचा वापर करून आणि शासन निर्णय नगरविकास विभाग क्र. सीआयडी-३३१५/(सीआर-३४०)/नवि-१०, दिनांक २७ एप्रिल २०१६ नुसार लोकाहितास्त्व पुढील कार्यवाही करणे आवश्यक असल्याची खात्री पटत असल्याने सिटी अॅन्ड इंडस्ट्रीयल डेव्हलपमेंट कॉर्पोरेशन ऑफ महाराष्ट्र लिमिटेड (सिडको) यांनी नवी मुंबई आंतरराष्ट्रीय विमानतळाच्या विकासाकरिता जमीन हस्तांतरणाशी संबंधित निष्पादित केलेल्या पहिल्या संलेखावर उक्त अधिनियमातील अनुसूची १ मधील अभिहस्तांतरणपत्र (अनुच्छेद २५), भाडेपट्टा (अनुच्छेद ३६) नुसार आकारणी योग्य असलेले मुद्रांक शुल्क माफ करीत आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने,

ज्योत्सना सु. माडेकर,

कक्ष अधिकारी.

भाग चार ब-१६१-१



(१)



REVENUE AND FOREST DEPARTMENT

Madam Cama Marg, Hutatma Rajguru Chowk, Mantralaya,
Mumbai 400 032, dated 30th May 2016

Order

MAHARASHTRA STAMP ACT.

No. MUDRANK-2015/U.O.R. 33/C.R. No. 730/M-1.—In exercise of the Powers conferred by Clause (a) of section 9 of the Maharashtra Stamp Act, 1958 (LX of 1958) (hereinafter referred to as "the said act") and as per Government Resolution, Urban Development Department No. CID-3315/(CR-340)/UD-10, dated 27th April 2016, the Government of Maharashtra, being satisfied that it is necessary to do so in the public interest, hereby remits the stamp duty on the first instrument of transfer of land, chargeable under Articles 25 (Conveyance) and Articles 36 (Lease) of the Schedule I appended to the said Act executed by City and Industrial Development Corporation of Maharashtra Ltd. (CIDCO) relating to the development of Navi Mumbai International Airport.

By order and in the name of the Governor of Maharashtra,

JYOTSNA M. MADEKAR,

Desk Officer.

