

Operation, Management and Development Agreement

between

Airports Authority of India

and

Mumbai International Airport Private Limited

for

Mumbai Airport

04Th APRIL, 2006

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OPERATION, MANAGEMENT AND DEVELOPMENT AGREEMENT

This **Operation, Management and Development Agreement** (the “**Agreement**” or “**OMDA**”) made on this 4th day of April, 2006,

BY AND BETWEEN:

1. The **Airports Authority of India** acting through its Chairman (hereinafter referred to as the “**AAI**”, which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns) of the FIRST PART; and
2. **Mumbai International Airport Private Limited**, a company incorporated under the Companies Act, 1956 having its registered office at Mumbai Airport, Mumbai (hereinafter referred to as the “**JVC**”, which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) of the SECOND PART.

AAI and JVC are hereinafter collectively referred to as “**Parties**” and individually as “**Party**”.

WHEREAS:

- (A) AAI is an authority established under the Airports Authority of India Act, 1994 (the “**AAI Act**”), which is responsible for the development, operation, management and maintenance of airports in India.

- (B) AAI, in the interest of the better management of the Airport (as defined herein) and/or overall public interest, is desirous of granting some of its functions, being the functions of operating, maintaining, developing, designing, constructing, upgrading, modernising, financing and managing the Airport to the JVC and for this purpose to lease the premises constituting the Airport Site (as defined herein), in accordance with the terms and conditions set forth herein.
- (C) JVC is a company established, *inter-alia* with the objectives of operating, maintaining, developing, designing, constructing, upgrading, modernising, financing and managing the Airport (as defined herein).
- (D) JVC is desirous and agreeable to undertake the function of operating, maintaining, developing, designing, constructing, upgrading, modernising, financing and managing the Airport (as defined herein) on and subject to the terms and conditions set forth herein.

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

CHAPTER I DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires:

“AAI Services” shall mean such services/ activities as performed by AAI pursuant to CNS/ATM Agreement.

“Aeronautical Assets” shall mean those assets, which are necessary or required for the performance of Aeronautical Services at the Airport and such other assets as JVC procures in accordance with the provisions of the Project Agreements (or otherwise on the written directions of the GOI/ AAI) for or in relation to, provision of any Reserved Activities and shall specifically include all land, property and structures thereon acquired or leased during the Term in relation to such Aeronautical Assets.

“Aeronautical Services” shall have the meaning assigned hereto in Schedule 5 hereof.

“Airport” means the Chhatrapati Shivaji International Airport, as located on the Airport Site.

“**Airport Business**” shall mean the business of operating, maintaining, developing, designing, constructing, upgrading, modernising, financing and managing the Airport, and providing Airport Services.

“**Aeronautical Charges**” shall have the meaning assigned thereto in Article 12.1.1.

“**Airport Operator Agreement**” means the service performance/ level agreement to be entered into between the JVC and the Airport Operator based on the principles annexed hereto as Schedule 8.

“**Airport Operator**” or “**Operator**” means **ACSA Global Limited**, being the Entity identified as such by the Consortium Members during the competitive bidding procedure, who enters into an agreement with the JVC for provision of such services as are contained in the Airport Operator Agreement.

“**Airport Services**” shall mean the services constituting Aeronautical Services, and Non-Aeronautical Services

“**Airport Site**” shall mean the underlying land forming part of the Demised Premises (as defined in the Lease Deed) agreed to be demised by AAI in pursuance of this Agreement under the Lease Deed and all land acquired or leased by the JVC during the Term in pursuance of this Agreement under the Lease Deed or otherwise.

“**Applicable Law**” means any and all applicable laws including rules, direction, regulations and notifications made thereunder and judgements of the Supreme court of India as may be in force and effect in India during the subsistence of this Agreement.

“**Bid Bond**” shall mean the bank guarantee of Rs. 50 Crores (as the same has since been increased from Rs. 50 Crores to Rs. 500 Crores prior to the date hereof) from a reputed Scheduled Commercial bank in India submitted by the Consortium Members to the AAI during the competitive bidding procedure undertaken by AAI for the purposes of the selection of the private participants in the JVC in the form attached herewith as Schedule 17.

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

“**Book Value**” shall mean the written down value in the books of the JVC of a specific asset or class of asset in accordance with depreciation rates as set forth in the Indian Companies Act, 1956. In the event, the depreciation rates for certain assets are not available in the aforesaid Act, then the depreciation rates as provided in the Income Tax Act for such asset as converted to straight line method from the written down value method will be considered. In the event, such rates are not available in either of the Acts then depreciation rates as per generally accepted Indian accounting standards may be considered.

“**Business Plan**” means the plan for the Airport Business, updated periodically from time to time, that sets out how it is intended to operate, manage and develop

the Airport over a planning horizon and will include financial projections for the plan period.

“Carved Out Assets” shall mean the assets set out in Schedule 27 hereunder;

“Chartered Accountancy Firm” shall mean a firm (either of Indian or foreign origin) which is permitted by the Institute of Chartered Accountants of India (ICAI) to practice its services in India;

“Clearance” means any 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 any Governmental Authority and any other governmental, quasi governmental, administrative, judicial, public or statutory body, ministry, department, instrumentality, agency, authority, board, bureau, corporation entrusted with, and carrying out, any statutory functions(s) or commission, required from time to time in connection with the performance of obligations hereunder.

“CNS/ATM Agreement” shall mean the agreement for provision of CNS/ATM Services to be entered into between the AAI and the JVC.

“CNS/ATM Services” means Communication, Navigation and Surveillance and Air Traffic Management Services as described in CNS/ ATM Agreement;

“Conditions Precedent” shall mean collectively the AAI Conditions Precedent, the JVC Conditions Precedent and the Common Conditions Precedent.

“Consortium Members” shall mean (i) GVK Airport Holdings Pvt Ltd; (ii) ACSA Global Limited; and (iii) Bid Services Division (Maritius) Ltd.

“Debt” means the quantum of outstanding principal payable to Lenders as of Transfer Date, in respect of financial assistance provided by the Lenders on an arms-length basis by way of loans, guarantees (to the extent invoked), subscription to non-convertible debentures, subscription to convertible debentures (to the extent not converted into equity) and other debt instruments secured by a first charge (including parri passu charge) including loan agreements, notes, bonds and other debt instruments, security agreements, and other documents relating to the financing of capital expenditure for the development and upgradation of the Transfer Assets pursuant to the terms hereof. It is clarified that the following shall not constitute Debt: (i) debt repayments (principal, interest, levies, charges, penal charges, penalties and/ or damages) payable prior to Transfer Date, on which the JVC has defaulted; (ii) any working capital facilities relating to Transfer Assets; (iii) any financial assistance of any nature whatsoever relating to Non-Transfer Assets; and (iv) Sub-ordinate Debt.

“Development Standards and Requirements” mean the standards and requirements set forth in Schedule 1 hereof.

“Dispute” shall mean any dispute, difference, question or controversy between the Parties arising out of, in connection with or in relation to this Agreement.

“Effective Date” means the date on which the Conditions Precedent have been satisfied or waived according to the terms hereof.

“Encumbrance” means any mortgage, right of way, pledge, equitable interest, prior assignment, conditional sales contract, hypothecation, right of others, claim, security interest, title retention agreement, voting trust agreement, interest, option, lien, charge, easement, encroachment or other condition, commitment, restriction or limitation of any nature whatsoever, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership. The word “Encumber” shall be construed accordingly.

“Entity” means any person, body corporate, trust, partnership firm or other association of persons/ individuals whether registered or not.

“Environment Audit and Report” means the report covering the status of the environmental condition at the Airport prepared by an independent expert in accordance with Article 8.5.10(i) hereof.

“Environmental Management Strategy” shall mean the plan required to be produced by the JVC under the provisions of Article 8.5.10 hereof setting out the strategy and actions planned to address matters identified in the Environmental Audit Report.

“Escrow Account” shall mean the escrow account established pursuant to/ under the Escrow Agreement.

“Escrow Agreement” shall mean the escrow agreement to be entered into between the AAI, the JVC and a bank in the form set forth in Schedule 13 hereof.

“Essential Assets” shall mean those assets which are necessary or required for the performance of Essential Services;

“Essential Services” shall mean those Aeronautical Services and Non-Aeronautical Services that are listed in Schedule 16 hereof and such other services that are mutually agreed to be added to the schedule from time to time.

“Equity” shall mean the paid-up share (equity and preference) capital of the JVC and shall include any Sub-ordinate Debt advanced by shareholders of the JVC to the JVC, provided that the Lenders’ or their agent classifies such Sub-ordinate Debt as equity and conveys the same by a written notice to the AAI; provided however that notwithstanding the foregoing, any amounts that have been infused in the JVC as paid-up share capital or Subordinate Debt would not be classified as ‘Equity’ to the extent that such amounts do not relate to Transfer Assets.

“Existing Assets” means the physical, tangible, intangible and other assets of whatsoever nature existing at the Airport Site as on the date hereof except working capital assets other than inventory, stores and spares.

“**Existing Leases**” shall mean the leases presently valid and subsisting for any portion of the Airport, entered between the AAI and various third parties, details of which are set out in Schedule 28 appended hereto;

“**Evaluated Entities**” shall mean (i) Airports Company South Africa Limited; (ii) GVK Industries Limited; and (iii) The Bidvest Group Limited.

“**Fair Market Value**” in relation to Transfer Date means the market value of the entire asset less the market value of land prevailing as on the Transfer Date.

“**Financing Documents**” means the documents executed by the JVC for raising Debt.

“**Financial Investor**” shall mean any Qualified Institutional Buyer as defined in the SEBI (Disclosure & Investor Protection) Guidelines, 2000 or any financially regulated Entity in India involved in the business of banking, insurance, lending or financing projects, as incorporated in India and who is not a Prime Member and/or Evaluated Entity.

“**Force Majeure**” shall mean events as described in Article 16.1.

“**Foreign Airlines**” means a Foreign Entity that provides air transport services;

“**Foreign Entity**” means any Entity other than an Indian Entity;

“**General Employees**” shall mean all the permanent employees of AAI who are posted at the Airport as on the Effective Date, except those pertaining to Air Traffic Control (“**ATC**”), Security (if any) and Communication, Navigation and Surveillance (“**CNS**”) departments, and senior management staff above the position of Deputy General Manager or equivalent.

“**GOI**” means the central government of India and any ministry, department, or instrumentality of the central government which is under its control and performs its sovereign functions.

“**Good Industry Practice**” means the exercise of that degree of skill, diligence efficiency, reliability and prudence and those practices, methods, specifications and standards of equipment, safety, services and performance, as may change from time to time and which would reasonably and ordinarily be expected to be used by a skilled and experienced international operator / contractor engaged in designing, construction, operation and maintenance of a world class international airport of a capacity similar to the capacity of the Airport.

“**Governmental Authority**” means the GOI and provincial, state or local government in India and any political subdivision thereof.

“**Group Entity**” with respect to a specified Entity, means any other Entity directly or indirectly controlling, controlled by or under common control with such specified Entity; *provided however*, that, for purposes of this definition, the terms “controlling”, “controlled by” or “under common control with” mean the

possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an Entity, whether through the ownership of voting securities, by contract or otherwise, or the power to elect or appoint at least 50% of the directors, managers, partners or other individuals exercising similar authority with respect to such Entity.

“IATA” shall mean International Air Transport Association.

“IATA Slot Allocation Guidelines” shall mean the slot allocation rules and guidelines as followed by IATA members.

“ICAO” shall mean International Civil Aviation Organisation formed in pursuance of the Chicago Convention or any successor thereof.

“Independent Auditor” shall mean a Chartered Accountancy Firm appointed in accordance with Article 11.2 hereof;

“Independent Engineer” shall mean the independent engineer appointed in accordance with Article 8.5.8 hereof.

“Indian Entity” means any Entity incorporated/formed/domiciled (as the case may be) in India.

“Initial Development Plan” shall mean the development plan for the development of the Airport submitted by the Consortium Members forming the JVC to the AAI during the competitive bidding process for modernisation and development of the Airport, and annexed hereto as Schedule 14.

“Indian Defence Forces” shall mean the armed forces of India and para-military forces of India.

“Lease Deed” shall mean the lease deed to be entered into between the Parties for the Demised Premises (as defined therein).

“Legacy Matters” shall mean those liabilities or obligations relating to the Airport as pertaining directly to or arising out of actions or inactions during the period prior to the Effective Date

“Lenders” means the financing institutions, banks, multilateral funding agencies and similar bodies undertaking lending business or their trustees/ agents including their successors and assignees, who have agreed to guarantee or provide finance to the JVC under any of the Financing Documents for meeting costs of all or any part of the development of the Transfer Assets as per the terms hereof.

“Major Development Plan” shall mean a plan prepared for each major aeronautical or other development or groupings of developments which sets out the detail of the proposed development which has been set out in broad terms in the Master Plan and will include functional specification, design, drawings, costs, financing plan, timetable for construction and capital budget.

“Mandatory Capital Projects” means the development projects described in Schedule 7 hereof.

“Master Plan” means the master plan for the development of the Airport, evolved and prepared by the JVC in the manner set forth in the State Support Agreement, which sets out the plans for the staged development of the full Airport area, covering Aeronautical Services and Non-Aeronautical Services, and which is for a twenty (20) year time horizon and which is updated and each such updation is subject to review/ observations of and interaction with the GOI in the manner described in the State Support Agreement.

“Material Adverse Effect” shall mean a material adverse effect on the business, condition (financial or otherwise), liabilities, assets, operations (or the results of operations) or prospects of the JVC or the Airport solely to the extent materially frustrating or impairing either Party's ability to perform, discharge, receive and/or assume the respective obligations, undertakings, rights and benefits ascribed to such Party pursuant to the express terms under this Agreement.

“Net Present Value” with respect to any asset, shall mean the discounted value as estimated on the date of valuation, of the free cash flows (reflecting the then prevailing market value of the underlying land as on the valuation date) expected to be generated by the said asset from the valuation date for the economic life or life of such asset as intended under the current Master Plan whichever is lower, assuming no residual value of the asset at the end of such economic life .

“Non-Aeronautical Assets” shall mean:

1. all assets required or necessary for the performance of Non-Aeronautical Services at the Airport as listed in Part I of Schedule 6 and any other services mutually agreed to be added to the Schedule 6 hereof as located at the Airport (irrespective of whether they are owned by the JVC or any third Entity); and
2. all assets required or necessary for the performance of Non-Aeronautical Services at the Airport as listed in Part II of Schedule 6 hereof as located at the Airport (irrespective of whether they are owned by the JVC or any third Entity), to the extent such assets (a) are located within or form part of any terminal building; (b) are conjoined to any other Aeronautical Assets, asset included in paragraph (i) above and such assets are incapable of independent access and independent existence; or (c) are predominantly servicing/ catering any terminal complex/cargo complex

and shall specifically include all additional land (other than the Demised Premises), property and structures thereon acquired or leased during the Term, in relation to such Non-Aeronautical Assets.

“Non-Aeronautical Services” shall mean such services as are listed in Part I and Part II of Schedule 6 hereof.

“Non-Transfer Assets” shall mean all assets required or necessary for the performance of Non-Aeronautical Services as listed in Part II of Schedule 6 hereof as located at the Airport Site (irrespective of whether they are owned by the JVC or any third Entity), provided the same are not Non-Aeronautical Assets.

“Objective Service Quality Requirements” means the standards set forth in Schedule 3 hereof.

“OMDA Implementation Oversight Committee” shall have the meaning assigned thereto in Article 8.5.9 hereof.

“Operations and Maintenance Standards and Requirements” means the standards set forth in Schedule 2.

“Operation Support” shall have the meaning assigned thereto in Article 6.1.1 hereof.

“Operation Support Cost” means all annual costs incurred by AAI in relation to the General Employees at the Airport including but not limited to the salary, benefits, statutory payments, perks and contribution towards terminal benefits accruing during the period of Operation Support. It is clarified that Operation Support Cost shall include all employee benefits that have accrued during the Operation Support Period but are payable after the expiry of the Operation Support Period. It is further clarified that the Operation Support Cost would specifically exclude any costs or expenses that have accrued prior to the commencement of the Operation Support Period but are payable to General Employees during the Operation Support Period.

“Operation Support Period” shall have the meaning assigned thereto in Article 6.1.1 hereof.

“Passenger Service Fees” shall mean the fees charged per embarking passenger at the Airport as described in the State Support Agreement.

“Performance Bond” shall mean an unconditional and irrevocable bank guarantee enforceable and encashable at New Delhi of a value and validity set forth in Article 8.6 hereof in the form attached herewith as Schedule 18.

“Prime Member” shall mean (i) GVK Airport Holdings Pvt Ltd; (ii) ACSA Global Limited; and (iii) Bid Services Division (Maritius) Ltd.

“Project Agreements” shall mean the following agreements:

1. This Agreement;
2. The State Support Agreement;
3. Shareholders Agreement;
4. CNS-ATM Agreement;
5. Airport Operator Agreement;
6. State Government Support Agreement;
7. The Lease Deed;

8. Substitution Agreement; and
9. Escrow Agreement.

and Project Agreement shall mean any one of them.

“Rate of Inflation” for any Year, shall mean the average inflation rate (as measured by the All India Consumer Price Index – Industrial Workers (“AICPI-IW”)) for the immediately preceding Year .

“Regulatory Authority” means any independent regulatory authority set up/ to be set up in India for the regulation of any aspect of airports.

“Relevant Authority” includes the GOI, AAI, DGCA, BCAS, Department of Immigration & designated security agency of the Ministry of Home Affairs, quarantine department of Ministry of Health and plant quarantine department of Ministry of Agriculture, Meteorological department of Ministry of Science & Technology, Regulatory Authority, if any, Department of Customs, the Ministry of Finance or any other subdivision or instrumentality thereof, any local authority or any other authority empowered by the Applicable Laws.

“Reserved Activities” shall mean customs, immigration, security at the Airport in respect of Aeronautical Assets and related services only (and specifically excluding areas removed from the vicinity of Aeronautical Assets), Health, meteorology, plant and animal quarantine and CNS/ATM Services and other statutory or sovereign functions, as per Applicable Law.

“Retirement Compensation” shall mean the average ‘voluntary retirement scheme’ (“VRS”) cost for all the General Employees other than those General Employees who have accepted offers of employment made by the JVC under the provisions of Article 6 hereof, as per the latest VRS of the AAI, if any, or, in the absence of an AAI specific VRS, the highest VRS as applicable for the then available profitable schedule A public sector undertakings.

“Revenue” means all pre-tax gross revenue of JVC, excluding the following: (a) payments made by JVC, if any, for the activities undertaken by Relevant Authorities or payments received by JVC for provision of electricity, water, sewerage, or analogous utilities to the extent of amounts paid for such utilities to third party service providers; (b) insurance proceeds except insurance indemnification for loss of revenue; (c) any amount that accrues to JVC from sale of any capital assets or items; (d) payments and/or monies collected by JVC for and on behalf of any governmental authorities under Applicable Law (e) any bad debts written off provided these pertain to past revenues on which annual fee has been paid to AAI. It is clarified that annual fee payable to AAI pursuant to Article 11 and Operational Support Cost payable to AAI shall not be deducted from Revenue

“Scheduled Airlines” means those airlines that operate "Scheduled air transport service" as defined under the Aircraft Rules, 1937;

“Shareholders Agreement” means the shareholders agreement dated on or about the date hereof entered into between the shareholders of JVC.

“Subjective Service Quality Requirements” mean the standards set forth in Schedule 4 hereof.

“Substitution Agreement” shall mean the agreement to be entered into between AAI, JVC and the Lenders in the form set forth in Schedule 9 hereof.

“Surplus Account” shall have the meaning assigned thereto in the Escrow Agreement.

“Stage 1” shall mean the period of development of the Airport commencing on Effective Date and terminating on March 31, 2010.

“Stage 2” shall mean the period of development of the Airport commencing on the expiry of Stage 1 and terminating on 31st March, 2015.

“Sub-ordinate Debt” shall mean any debt advanced to the JVC by the shareholders of JVC.

“Term” shall have the meaning assigned thereto in Article 18 hereof.

“Transfer Assets” shall mean the following types of assets:

- Aeronautical Assets; and
- Non-Aeronautical Assets.

“Transfer Date” shall mean the date on which JVC transfers possession (and in respect of such assets that are not owned by AAI, ownership and possession) of the Transfer Assets and/ or Non-Transfer Assets, as the case may be, to AAI or its nominee in accordance with the terms hereof, which shall be the date of termination as per the relevant notice of termination issued by JVC or AAI, as the case may be, or the date of expiry of this Agreement.

“Transition Plan” shall mean the plan for transition of the Airport from AAI to the JVC annexed hereto as Schedule 10.

“Upfront Fee” shall mean the amount payable by JVC to AAI pursuant to Article 11.1.1.

“Year” shall mean a period of 12 consecutive months ending on March 31 of any year; provided however that the first Year shall mean the period commencing on the Effective Date and ending on the immediately succeeding March 31 and the last Year shall mean the period commencing April 1 and ending on the date of expiry or termination hereof.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (i) A reference to the singular shall include a reference to the plural and vice-versa; and a reference to any gender shall include a reference to the other gender.
- (ii) A reference to any Article, Clause, Appendix, Schedule, Attachment or Annex shall be to an Article, Clause, Appendix, Schedule, Attachment or Annex of this Agreement.
- (iii) The Appendices, Schedules, Attachments and Annexes form an integral part of this Agreement. In the event of any conflict between any provision of the Articles and any provision of the Appendices, Schedules, Attachments or Annexes, the provision of the Articles shall prevail.
- (iv) Reference to any law or regulation having the force of law includes a reference to that law or regulation as from time to time amended, modified, supplemented extended or re-enacted.
- (v) Any reference to time shall, except where the context otherwise requires, be construed as a reference to the time in India. Any reference to the calendar shall be construed as reference to the Gregorian calendar.
- (vi) The headings of the Articles, Clauses, Appendices, Schedules, Attachments and Annexes in this Agreement are inserted for convenience of reference only and shall not affect the meaning or interpretation of this Agreement.
- (vii) The words “include” or “including” shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases.
- (viii) Unless the context otherwise requires, any period of time referred to shall be deemed to expire at the end of the last date of such period.
- (ix) If any provision in Article 1 is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it were a substantive provision in the body of this Agreement;
- (x) 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;
- (xi) All references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instrument as amended, supplemented, modified, substituted, novated or assigned from time to time.

CHAPTER II SCOPE OF GRANT

2.1 Grant of Function

- 2.1.1 AAI hereby grants to the JVC, the exclusive right and authority during the Term to undertake some of the functions of the AAI being the functions of operation, maintenance, development, design, construction, upgradation, modernization, finance and management of the Airport and to perform services and activities constituting Aeronautical Services, and Non-Aeronautical Services (but excluding Reserved Activities) at the Airport and the JVC hereby agrees to undertake the functions of operation, maintenance, development, design, construction, upgradation, modernization, finance and management of the Airport and at all times keep in good repair and operating condition the Airport and to perform services and activities constituting Aeronautical Services and Non-Aeronautical Services (but excluding Reserved Activities) at the Airport, in accordance with the terms and conditions of this Agreement (the “**Grant**”).
- 2.1.2 Without prejudice to the aforesaid, AAI recognizes the exclusive right of the JVC during the Term, in accordance with the terms and conditions of this Agreement, to:
- (i) develop, finance, design, construct, modernize, operate, maintain, use and regulate the use by third parties of the Airport;
 - (ii) enjoy complete and uninterrupted possession and control of the Airport Site and the Existing Assets for the purpose of providing Aeronautical Services and Non-Aeronautical Services;
 - (iii) determine, demand, collect, retain and appropriate charges from the users of the Airport in accordance with Article 12 hereto; and
 - (iv) Contract and/or sub contract with third parties to undertake functions on behalf of the JVC, and sub-lease and/or license the Demised Premises in accordance with Article 8.5.7.

2.2 Sole Purpose of the JVC

- 2.2.1 The JVC having been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the JVC or any of its subsidiaries shall not, except with the previous written consent of AAI, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein. Provided however that the JVC may engage in developing, constructing, operating or maintaining a second airport pursuant to exercise of the Right of First Refusal granted to the JVC under the State Support Agreement.

2.2.2 Reserved Activities

Notwithstanding Article 2.1 above, Reserved Activities shall unless otherwise instructed in writing by AAI/ GOI, not be undertaken by the JVC. Nothing in this Article 2.2 or in the definition of Reserved Activities shall prevent the AAI or GOI from requiring the JVC to undertake any or all of the Reserved Activities on such terms and conditions (including consideration for rendering such services) as may be reasonably acceptable to both Parties, and include them in the list of Aeronautical Services/ Non-Aeronautical Services.

2.2.3 Aeronautical Services, Non-Aeronautical Services and Essential Services

Subject to the foregoing and to Applicable Law, JVC shall undertake/provide Aeronautical Services and Essential Services at the Airport Site. JVC may seek to undertake/provide Non-Aeronautical Services at the Airport Site by including them in the proposed (draft) Master Plan, provided however, if the same form a part of the (final) Master Plan then the same shall be undertaken as provided in this Agreement. JVC and AAI shall upon mutual agreement between the Parties update the list of Non-Aeronautical Services to include such other activities, as requested by AAI or JVC.

Notwithstanding anything contained in this Agreement, the JVC shall not undertake any activities at the Airport Site other than Aeronautical Services, Non-Aeronautical Services and Essential Services.

2.2.4 It is expressly understood by the Parties that JVC shall provide Non-Aeronautical Services at the Airport as above, provided however that the land area utilized for provision of Non- Transfer Assets shall not exceed ten percent (or such different percentage as set forth in the master plan norms of the competent local authority of Mumbai, as the same may change from time to time) of the total land area constituting the Demised Premises. Provided however that the Non-Transfer Assets, if any, that form part of the Carved-Out Assets and/or situated upon the Existing Leases shall be taken into account while calculating the percentage of total land area utilized for provision of Non-Transfer Assets.

2.3 Other Material Investments

Without prejudice to the generality of Article 2.2, the JVC shall not during the Term, without the written consent of the AAI hold any shares, ownership participation or any other ownership interest in any undertaking other than the Airport.

Provided that the JVC or its subsidiaries/ joint ventures may undertake treasury operations in the ordinary course of business and may hold shares, ownership participation or any other ownership interest in any undertaking specifically incorporated/created for performing any Aeronautical Services, Non-Aeronautical Services or Essential Services as contemplated under this Agreement or engaging in designing, constructing, financing, operating, managing, developing or maintaining a second airport pursuant to exercise of the Right of First Refusal under the State Support Agreement.

2.4 Employees / Agents

The JVC shall not require, permit or suffer any of its employees, concessionaire, sub-concessionaire, partner, business associate, licensee, sub-licensee, sub-lessee, contractor or agent to carry on any activity or business at, or in relation to, the Airport or the Airport Site, which the JVC is prohibited from engaging in or conducting under this Agreement.

2.5 JVC Ownership Structure

- (a) The Parties hereto agree that the Prime Members of the JVC shall not transfer, create any Encumbrance or deal with any equity shares in the JVC held by them for the duration of five (5) years from the Effective Date. Provided however that the Prime Members may transfer the shares held by them to a Financial Investor, subject to the relevant Prime Member(s) continuing to hold at least 10% of the issued and paid-up equity share capital in the JVC and the Prime Members (collectively, as a group) continuing to hold at least 26% of the issued and paid-up equity share capital in the JVC after any such transfer to any such Financial Investor at any time during such aforesaid period. Provided further, that a Prime member who has a corresponding Evaluated Entity, shall not transfer its shares in the JVC to a Financial Investor, resulting in dilution of the Beneficial Ownership of the Evaluated Entity in the JVC to below 10% and the sum of the Beneficial Ownership in the JVC of all Evaluated Entities and direct shareholding of the Prime Members (who have no corresponding Evaluated Entity, and whose *own* qualifications have been considered for the purpose of evaluation during the competitive bidding procedure undertaken by AAI for the purpose of selection of the Consortium Members for the JVC) in the JVC collectively to below 26% of the issued and paid-up equity share capital in the JVC. Provided still further that in the event any equity shares (the “**Transfer Shares**”) in the JVC are so transferred to any Financial Investor (the “**Transferee Financial Investor**”) by any Prime Member(s) (the “**Transferring Prime Member**”), the Transferring Prime Member(s) and the JVC shall procure that such Transferee Financial Investor shall not, for a duration of five (5) years from the Effective Date, transfer the whole or any portion of the Transfer Shares to any Entity other than another Financial Investor, who in turn (and purchasers of the whole and any portion of Transfer Shares from him) shall be bound by a similar restriction. It is clarified that Financial Investor(s) who become shareholders in the JVC pursuant to this Article 2.5(a) shall not, for a duration of five (5) years from the Effective Date, transfer the whole or any portion of the Transfer Shares to any Entity other than another Financial Investor.
- (b) During the period commencing from the beginning of the 6th year and ending at the end of the 7th year from the Effective Date the Prime Members may transfer, create any Encumbrance or deal with any shares in the JVC held by them, provided however that notwithstanding any such transfer, or creation of any such Encumbrance or any such dealing, the relevant Prime Member continues to hold at least 10% of the issued and paid-up share capital in the JVC and the Prime Members (collectively, as a group) continue to hold 26% of the issued and paid-up share capital in the JVC subsequent to any such transfer. Provided further, that a Prime member who has a corresponding Evaluated Entity, shall not transfer,

create any Encumbrance or deal with any shares in the JVC, resulting in dilution of the Beneficial Ownership of the Evaluated Entity in the JVC to below 10% and the sum of the Beneficial Ownership in the JVC of all Evaluated Entities and direct shareholding of the Prime Members (who have no corresponding Evaluated Entity, and whose *own* qualifications have been considered for the purpose of evaluation during the competitive bidding procedure undertaken by AAI for the purpose of selection of the Consortium Members for the JVC) in the JVC collectively to below 26% of the issued and paid-up share capital in the JVC.

- (c) After the expiry of seven (7) years from the Effective Date, the Prime Members may, without the approval of the AAI, transfer, create any Encumbrance or deal with any shares in the JVC held by them, provided however that notwithstanding any such transfer, or creation of any such encumbrance or any such dealing, the relevant Prime Member continues to hold at least 10% of the issued and paid-up share capital in the JVC and the Prime Members (collectively, as a group) continue to hold 26% of the issued and paid-up share capital in the JVC subsequent to any such transfer. Provided further, that a Prime member who has a corresponding Evaluated Entity, may transfer, create any Encumbrance or deal with any shares in the JVC, provided that such transfer, creation of Encumbrance or dealing does not result in dilution of the Beneficial Ownership of the Evaluated Entity in the JVC to below 10% and the sum of the Beneficial Ownership in the JVC of all Evaluated Entities and direct shareholding of the Prime Members (who have no corresponding Evaluated Entity, and whose *own* qualifications have been considered for the purpose of evaluation during the competitive bidding procedure undertaken by AAI for the purpose of selection of the Consortium Members for the JVC) in the JVC collectively to below 26% of the issued and paid-up share capital in the JVC, without the prior approval of the AAI. After the expiry of seven (7) years from Effective Date, shares of the JVC held by any Prime Member (or its transferee shareholder or their subsequent transferee shareholder(s)) shall not be transferred to any Entity (other than transfer permitted under the preceding sentences of this Article 2.5(c)), save with the prior written permission of the AAI, which permission shall be given unless AAI reasonably believes that the technical, financial or operational capability of the JVC pursuant to such transfer of shares (and consequent exit of the said Prime Member (or its transferee shareholder or their subsequent transferee shareholder(s)) would be inferior than prior to such transfer; save that if not approved or disapproved within 30 days it is deemed to have been approved.
- (d) It is the intention of the Parties, that the JVC may, if its development funding necessitates, procure, the listing of shares of the JVC on the Mumbai and/ or the National stock exchange(s) at any time. Provided however that during the first seven years from Effective Date, any public offer of shares in the JVC resulting in dilution of the percentage holding of the Prime Members shall not be of such number of shares as would dilute the shareholding of the Prime Members to below 10% and the shareholding of the Prime Members (collectively) to below 26% of the issued and paid-up share capital of the JVC. Provided further, that a Prime member who has a corresponding Evaluated Entity, shall not dilute the Beneficial Ownership of the Evaluated Entity in the JVC to below 10% and the sum of the Beneficial Ownership in the JVC of all Evaluated Entities and direct shareholding of the Prime Members (who have no corresponding Evaluated Entity, and whose

own qualifications have been considered for the purpose of evaluation during the competitive bidding procedure undertaken by AAI for the purpose of selection of the Consortium Members for the JVC) in the JVC collectively to below 26% of the issued and paid-up share capital in the JVC. Any such listing shall be without prejudice to the obligation of the shareholders of the JVC to maintain their shareholding in the JVC in the manner contemplated in this Article 2.5.

(e) It is further the intention of the Parties that for duration of five (5) years from the Effective Date, Evaluated Entities shall:

1. not transfer, create any Encumbrance or deal with any shares held by them in their respective Prime Members.

Provided however that where an Evaluated Entity holds shares in its respective Prime Member indirectly through one or more subsidiaries, Evaluated Entities shall retain the same Beneficial Ownership (and not create any Encumbrance thereof) in their respective Prime Member that they held at the time of submission of the bid for the Airport by the Consortium Members during the competitive bidding procedure undertaken by AAI for the purpose of selection of the Consortium Members for the JVC;

2. retain the same amount of Control over their respective Prime Member that it had at the time of submission of the bid for the Airport by the Consortium Members during the competitive bidding procedure undertaken by AAI for the purpose of selection of the Consortium Members for the JVC.

(f) During the period commencing from the beginning of the 6th year and ending at the end of the 7th year from the Effective Date the Evaluated Entities may transfer, create any Encumbrance or deal with any shares in their respective Prime Member (or change their Beneficial Ownership in their respective Prime Member, as the case may be), provided however that notwithstanding any such transfer, or creation of any such Encumbrance or any such dealing:

1. the relevant Evaluated Entity continues to retain Beneficial Ownership of at least 10% of the issued and paid-up share capital in the JVC;
2. the sum of the Beneficial Ownership in the JVC of all Evaluated Entities and direct shareholding of the Prime Members (who have no corresponding Evaluated Entity, and whose *own* qualifications have been considered for the purpose of evaluation during the competitive bidding procedure undertaken by AAI for the purpose of selection of the Consortium Members for the JVC) in the JVC collectively is at least 26% of the issued and paid-up share capital in the JVC
3. the relevant Evaluated Entity continues to retain Control over its respective Prime Member

- (g) Notwithstanding the foregoing, during the first seven years from the Effective Date, an Evaluated Entity may transfer its Beneficial Ownership in the JVC to a Financial Investor; provided however that any such transfer to a Financial Investor shall not be of such number of shares as would dilute the Beneficial Ownership of the Evaluated Entity in the JVC to below 10% and the sum of the Beneficial Ownership in the JVC of all Evaluated Entities and direct shareholding of the Prime Members (who have no corresponding Evaluated Entity, and whose *own* qualifications have been considered for the purpose of evaluation during the competitive bidding procedure undertaken by AAI for the purpose of selection of the Consortium Members for the JVC) in the JVC collectively to below 26% of the issued and paid-up share capital in the JVC. Furthermore, the Evaluated Entity shall continue to retain Control over their respective Prime Member that it had at the time of submission of the bid for the Airport by the Consortium Members during the competitive bidding procedure undertaken by AAI for the purpose of selection of the Consortium Members for the JVC.
- (h) After the expiry of seven (7) years from the Effective Date, the Beneficial Ownership and Control of Evaluated Entities in their respective Prime Members shall not be altered save with the prior written permission of the AAI, which permission shall be given unless AAI reasonably believes that the technical, financial or operational capability of the JVC pursuant to such transfer of shares (and consequent exit of the said Evaluated Entity (or its transferee shareholder or their subsequent transferee shareholder(s)) would be inferior than prior to such transfer; save that if approval or disapproval is not provided within 30 days it is deemed that approval has been provided.
- (i) For the purposes of this Article 2.5:
- (i) an Evaluated Entity's "**respective Prime Member**" is the Prime Member who has been ascribed the qualification of such Evaluated Entity for the purpose of evaluation during the competitive bidding procedure undertaken by AAI for the purpose of selection of the private participants in the JVC.
- (ii) An Evaluated Entity's "**Beneficial Ownership**" in the JVC shall mean the shareholding of the Evaluated Entity in its respective Prime Member multiplied by the shareholding of the Prime Member in the JVC, represented as a percentage; and
- where the Evaluated Entity holds shares in the respective Prime Member indirectly through one or more subsidiaries, then Beneficial Ownership shall mean the shareholding of the Evaluated Entity in its subsidiary multiplied by the shareholding of the subsidiary in its subsidiary or Prime Member (and so on) multiplied by the shareholding of the Prime Member in the JVC, represented as a percentage.

As an illustration:

If an Evaluated Entity holds 60 % shares in a Prime Member who holds 30% shares in JVC, then such Evaluated Entity's Beneficial Ownership in JVC is:

$$0.60 * 0.30 = 0.18 * 100 = 18 \%$$

If an Evaluated Entity holds 60 % shares in B who holds 80% shares in the Prime Member who holds 30% shares in JVC, then such Evaluated Entity's Beneficial Ownership in JVC is:

$$0.60 * 0.80 * 0.30 = 0.144 * 100 = 14.4\%$$

Provided however that in the event the 'respective Prime Member' of an Evaluated Entity is not a company, then the Beneficial Ownership of such Evaluated Entity in the JVC shall be calculated by a method that achieves the intent and has the same effect as the method used for the calculation of the Beneficial Ownership of the Evaluated Entity in the JVC where respective Prime Member of such Evaluated Entity is a company.

- (iii) “**Control**” of an Entity means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an Entity, whether through the ownership of voting securities, by contract or otherwise, or the power to elect or appoint at least 50% of the directors, managers, partners or other individuals exercising similar authority with respect to such Entity
- (j) The Parties hereby agree and JVC shall accordingly procure that the Operator shall remain the operator in relation to the Airport for the term of this Agreement. Provided that the Operator may be changed with the prior consent of AAI after the expiry of a period of seven (7) years from the Effective Date, such consent not to be withheld if the Alternate Operator is acceptable in accordance with Clause (k) below. It is hereby understood and agreed that the selection of the Alternate Operator shall be subject to the political sensitivity of the GOI and GOI's approval would be an additional condition. Nothing in this Article shall prevent a termination of the Airport Operator Agreement for breach of the obligations of the Airport Operator as provided therein. Notwithstanding the foregoing, after the expiry of a period of seven (7) years from the Effective Date, with the prior consent of AAI, the JVC may itself become the Operator of the Airport provided it satisfies the requirement of the Alternate Operator as set forth below
- (k) Any alternate operator (the “**Alternate Operator**”) proposed to substitute the Operator shall have the same or higher technical and financial capability and expertise as the Operator. The JVC shall be entitled to select and propose to AAI for its approval an Alternate Operator (the “**Proposal**”). The Proposal of the JVC pursuant to this sub-clause (k) shall contain the particulars and information in respect of the Alternate Operator, including the years of experience in a comparable airport as the Airport, the latest audited balance sheet, details of the

management and shareholding pattern. Without prejudice to the foregoing the JVC agrees and undertakes to provide to AAI such further and other information and such clarifications in respect of any data, particulars or information furnished pursuant hereto as AAI may reasonably require. AAI shall convey its approval or otherwise of such Proposal, in its sole discretion within 60 (sixty) days of (a) the date of receipt of the Proposal by AAI, or (b) two weeks after the date when last of further and other information and such clarifications in respect of any data, particulars or information comprised in the Proposal, as have been requested by AAI have been received, whichever is later. Provided however that AAI's disapproval of any Alternate Operator shall be reasoned. It is expressly agreed that the Proposal shall be accompanied by an unconditional undertaking by the Alternate Operator that it shall upon approval by AAI of the Proposal, observe, comply, perform and fulfill the terms, conditions and covenants of the Airport Operator Agreement which according to its terms are required to be observed, complied with, performed and fulfilled by the Operator. Upon approval of the Proposal by AAI, such Alternate Operator subject to GOI's approval shall become the Operator under the Airport Operator Agreement. Provided however that in the event the AAI does not approve of the Proposal, then the JVC shall propose another Entity as the Alternate Operator, and the procedure mentioned in this sub-Clause (k) shall be repeated until a Proposal is approved by AAI. It is clarified that until such time as an Alternate Operator meeting the approval of AAI is not found by the JVC, the JVC shall cause the Operator to continue as the operator under the Airport Operator Agreement.

(l) Notwithstanding anything to the contrary, the JVC hereby undertakes and agrees that at no point during the Term of this Agreement:

(i) shall the aggregate Foreign Shareholding exceed forty-nine (49) percent of the total issued and paid up capital of the JVC; and

For the purpose of this Clause, "Foreign Shareholding" shall mean the aggregate of:

- (a) the aggregate of the direct shareholding of all Foreign Entities; and
- (b) the aggregate of the "**Beneficial Foreign Ownership**" in the JVC of the Indian Entities. Such Beneficial Foreign Ownership shall mean the shareholding of the Foreign Entity in an Indian Entity multiplied by the shareholding of the Indian Entity in the JVC, represented as a percentage; and where the Foreign Entity holds shares in an Indian Entity (holding shares in the JVC) indirectly through one or more Entities, then Beneficial Ownership shall mean the shareholding of the Foreign Entity in the Entity multiplied by the shareholding of the Entity in the Indian Entity holding shares in the JVC (and so on) multiplied by the shareholding of the Indian Entity (holding shares in the JVC) in the JVC, represented as a percentage. *Provided however*, if the Indian Entity is public listed company, any shares of such Indian Entity held by foreign institutional investors shall not be included for the

purposes of determining Beneficial Foreign Ownership as set out above.

As an illustration:

If a Foreign Entity holds 60 % shares in an Indian Entity who holds 30% shares in JVC, then such Foreign Entity's Beneficial Ownership in JVC is:

$$0.60 * 0.30 = 0.18 * 100 = 18 \%$$

If a Foreign Entity holds 60 % shares in B (an Indian Entity) who holds 80% shares in another Indian Entity who holds 30% shares in JVC, then such Foreign Entity's Beneficial Ownership in JVC is:

$$0.60 * 0.80 * 0.30 = 0.144 * 100 = 14.4\%$$

Provided however, no Foreign Airlines shall, at any time during the Term, be allowed to hold any equity shares in the JVC; and

- (ii) Shall the aggregate shareholding of Scheduled Airlines and their respective Group Entities (other than such Group Entities that were airport operators on the date of the issue of the Invitation to Register an Expression of Interest and the Request for Proposal documents issued by AAI during the competitive bidding procedure undertaken by AAI for the purposes of the selection of the private participants in the JVC) exceed ten (10) percent of the total issued and paid up capital of the JVC.
- (m) It is clarified that nothing contained in this Article 2.5 is intended to or shall be construed to impose any limitation on the right of the AAI to change its shareholding in the JVC in any manner, including, subject to the right of first refusal under the Shareholders Agreement, to transfer shares to any Entity, including to a competitor of any Prime Member and/ or the Airport Operator.
- (n) Notwithstanding the foregoing, all transfers of shares in the JVC at any time shall be subject to the relevant security and probity clearance requirements set forth by AAI during the competitive bidding procedure undertaken by AAI for the purposes of the selection of the private participants in the JVC.

2.6 AGREEMENT TO GRANT LEASE INTEREST AND ADDITIONAL LAND

- 2.6.1 In consideration of the Lease Rent, this Agreement and the covenants and warranties on the part of the JVC herein, the AAI, in accordance with the AAI Act and the terms and conditions set forth herein, hereby, agrees to demise to the JVC under the Lease Deed, commencing from the Effective Date, all the land (along with any buildings, constructions or immovable assets, if any, thereon) which is described, delineated and shown in the Schedule 25 hereto, other than (i) any lands (along with any buildings, constructions or immovable assets, if any,

thereon) granted to any third party under any Existing Lease(s) constituting the Airport on the date hereof; and (ii) any and all of the Carved Out Assets and the underlying land together with any buildings, constructions or immovable assets thereon, on an “as is where is basis” together with all Encumbrances thereto, (hereinafter “**Demised Premises**”) to hold the said Demised Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Demised Premises, hereditaments or premises or any part thereof belonging to or in anyway appurtenant thereto or enjoyed therewith, for the duration of the term hereof for the purposes permitted under this Agreement.

- 2.6.2 It is expressly clarified that the leasehold rights agreed to be granted hereunder shall terminate forthwith upon the expiry or early termination of this Agreement for any reason.
- 2.6.3 With respect to land underlying the Carved Out Assets, the Parties further agree that if, at any time during the Term, the JVC requires the said land for providing any Aeronautical Services or developing and/or constructing any Aeronautical Assets, the Parties shall come together to negotiate in good faith the terms and conditions on which the AAI shall lease to the JVC, and the JVC shall take on lease from the AAI, the said land.

CHAPTER III CONDITIONS PRECEDENT

3.1 Conditions Precedent

3.1.1 Conditions Precedent to be satisfied by the AAI

The obligations of the JVC hereunder are subject to the satisfaction by the AAI of the following conditions precedent (“**AAI Conditions Precedent**”) unless any such condition has been waived by the JVC as hereinafter provided:

- (i) AAI shall have executed and delivered to the JVC a counterpart of the Shareholders Agreement;
- (ii) AAI shall have executed and delivered to the JVC a counterpart of the CNS-ATM Agreement;
- (iii) AAI shall have executed and delivered to the JVC a counterpart of the Escrow Agreement;
- (iv) AAI shall have provided to the JVC a list of all General Employees along with details of their designations, salary and other employment related costs as part of a schedule of the Operation Support Cost to AAI;
- (v) AAI shall have provided a list of all existing contracts and agreements between AAI or any Relevant Authority and any third party as relatable to the Airport proposed to be transferred/ novated to JVC pursuant to Article 5.1 hereof;
- (vi) AAI shall have obtained and furnished to the JVC a copy of the approval of the GOI under Section 12 A (2) of the Airports Authority of India (Amendment) Act, 2003, authorizing the AAI to make a lease of the Airport;
- (vii) AAI shall have reviewed and commented on the Airport Operator Agreement in accordance with Article 3.1.2 (v) below. Provided however that AAI may offer comments to the Airport Operator Agreement only if it does not contain and/or is inconsistent with the principles set forth in Schedule 8 hereunder and for no other reason; and
- (viii) AAI shall have executed and delivered to the JVC a counterpart of the Lease Deed. Provided however that Parties agree that AAI shall execute the Lease Deed only after all other conditions precedent mentioned in this Chapter 3 have been fulfilled.

3.1.2 Conditions Precedent to be satisfied by JVC

The obligations of the AAI hereunder are subject to the satisfaction by JVC of the following conditions precedent (“**JVC Conditions Precedent**”) unless any such condition has been waived by the AAI as hereinafter provided:

- (i) The JVC shall deliver to the AAI the original copy of the Performance Bond (in accordance with Article 8.6);
- (ii) The JVC shall have executed and delivered to the AAI a counter part of the CNS-ATM Agreement;
- (iii) The JVC shall have executed and delivered to the AAI a counterpart of the Escrow Agreement;
- (iv) The Consortium Members shall have executed and delivered to the AAI, the Shareholders Agreement and undertaken initial capitalisation of the JVC in order to convert the same into a joint venture between AAI and the Consortium Members;
- (v) The JVC shall have executed and delivered to the AAI, the Airport Operator Agreement, consistent with and containing all the principles set forth in Schedule 8 hereunder:

In this regard, it is clarified that the Airport Operator Agreement, as drafted, shall contain all the principles set forth in Schedule 8 hereunder and shall have been commented on and reviewed by the AAI. The procedure of obtaining AAI review/ comments on the draft Airport Operator Agreement is as contained hereunder:

- (a) Within 14 days from the date hereof, the draft Airport Operator Agreement shall be presented to AAI.
 - (b) The AAI shall furnish its comments on the Airport Operator Agreement within 14 days of receipt of the draft Airport Operator Agreement.
 - (c) AAI shall convey the reasons of its comments to the JVC who shall address the same in the revised draft of the Airport Operator Agreement to be presented to the AAI within 14 days of receipt of AAI's reasons.
 - (d) Thereafter the procedure mentioned in Clauses (a), (b) and (c) shall be repeated once again;
- (vi) The JVC shall have paid the full Upfront Fee to AAI;
 - (vii) Upon satisfaction of condition precedent set forth in Article 3.2(iv), the JVC and the Consortium Members shall have executed and delivered to the AAI the Disclaimer Certificate in the form attached hereto as Schedule 20 hereof;
 - (viii) The Consortium Members shall have delivered to the AAI a bank guarantee(s) (the "**Equity Bank Guarantee**") from a scheduled commercial bank in India in favour of JVC in the form enclosed in Schedule 22, guaranteeing the equity commitment in the JVC of the Consortium Members up to Rs. 500 Crores. The said Equity Bank Guarantee shall be maintained until the entire amount of Rs 500 Crores is infused by the Consortium Members as its equity contribution into the

JVC, provided however that the value of the Equity Bank Guarantee may be progressively reduced correspondingly as amounts are actually infused by the Consortium Members into the JVC as equity. Within seven days of receipt of the Equity Bank Guarantee, AAI would duly return the commitment letters from the ultimate holding company of Consortium Members and also return the joint and several undertaking with respect to the equity commitment of the Consortium Members as received from the Consortium Members during the competitive bidding procedure undertaken by AAI for the purposes of the selection of the private participants in the JVC. In the event AAI invokes the Equity Bank Guarantee, the receivables there from shall be deposited into the Escrow Account; and

- (ix) The JVC shall have executed and delivered to the AAI a counter part of the Lease Deed.

3.1.3 **Conditions Precedent to be satisfied jointly by both the Parties**

The obligations of the Parties are subject to the satisfaction of the following conditions precedent (“**Common Conditions Precedent**”):

- (i) JVC shall have entered into the State Government Support Agreement with Government of Maharashtra;
- (ii) JVC shall have entered into the State Support Agreement with GOI and GOI shall have provided the guarantee thereunder; and
- (iii) The JVC shall have received all Clearances then requisite for operation and management of the Airport by the JVC as set forth in Schedule 24 hereof. AAI shall use all reasonable endeavours to grant such Clearances as are within its power to grant, as soon as possible, subject to receipt of the relevant application duly completed and in full compliance with Applicable Law.

- 3.2 The JVC and AAI shall take reasonable steps to ensure expeditious fulfillment of the JVC’s Condition Precedent and the AAI Conditions Precedent respectively and jointly for expeditious fulfillment of the Common Conditions Precedent.

3.3 **Non-fulfilment of Conditions Precedent**

In the event that any of the conditions set forth in Articles 3.1.1, 3.1.2 or 3.1.3 have not been fulfilled within 3 months from the date of this Agreement, or such later date as may be mutually agreed by the Parties, the JVC (in case of non-fulfilment of any of the AAI Conditions Precedent), the AAI (in case of non-fulfilment of any of the JVC Conditions Precedent) and any of the Parties (in case of non-fulfilment of Common Conditions Precedent) may terminate this Agreement.

Provided however that in the event this Agreement is terminated by AAI for non-fulfilment of the JVC Conditions Precedent, the AAI shall be entitled to encash the Bid Bond/ Performance Bond (as the case may be).

Provided further that upon any such termination, each Party shall return to the other Party, any monies (other than the termination payments mentioned above) received from such Party prior to such termination.

Neither Party shall be entitled to terminate this Agreement for non-fulfillment of the JVC Conditions Precedent, or the AAI Conditions Precedent, or the Common Conditions Precedent, as the case may be, to the extent that such non-fulfillment is the result and/or consequence of an event of Force Majeure.

- 3.4 Notwithstanding anything contained herein, it is expressly understood by the Parties that prior to Effective Date, AAI shall provide to the JVC reasonable and immediate access to the Airport in order to enable the JVC to prepare the Master Plan and any Major Development Plans required in Stage 1.

CHAPTER IV REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties by JVC

The JVC hereby represents and warrants to the AAI that on the date hereof and as on the Effective Date:

- (a) the JVC is a private company limited by shares incorporated under the laws of India and has been properly constituted and is in continuous existence since incorporation;
- (b) the JVC has the corporate power and authority and has taken all corporate actions necessary to execute and deliver validly and to exercise its rights and perform its obligations validly under this Agreement;
- (c) the obligations of the JVC under this Agreement will be legally valid, binding and enforceable obligations against the JVC in accordance with the terms hereof;
- (d) no proceedings against the JVC are pending or threatened, and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (e) the JVC is a special purpose company incorporated only for the purpose of operating, maintaining, developing, designing, constructing, upgrading, modernising, financing and managing the Airport;
- (f) the shareholding pattern of the JVC is as follows:

As on the date hereof:

S. No.	Shareholder	Percentage Shareholding
1.	AAI	100 %

As of the Effective Date:

S. No.	Shareholder	Percentage Shareholding
1.	ACSA Global Limited	10 %
2.	GVK Airport Holdings Pvt Ltd	37 %
3.	Bid Services Division (Maritius) Ltd	27 %
4.	AAI	26 %

- (g) the shareholding pattern of the Evaluated Entities in their respective Prime Members is as follows:

S. No.	Prime Member	Evaluated Entity	Shareholding of Evaluated Entity in Prime Member
1.	GVK Airport Holdings Pvt Ltd	GVK Industries Limited	28%
2.	ACSA Global Limited	Airports Company South Africa Limited	100%
3.	Bid Services Division (Mauritius) Ltd	The Bidvest Group Limited	100%*

* The Bidvest Group Limited holds approximately 100% shares in Bid Services Division (Pty) Limited, which in turn holds 100% of Bid Services Division (Mauritius) Ltd

- (h) no sums in cash or kind, have been paid or promised to, or accepted by any person or will be paid to, or accepted by, any person or on its behalf by way of fees, commission or otherwise to induce AAI to enter into this Agreement, or to keep this Agreement in continuance, except as provided for in this Agreement; and
- (i) Neither it nor any of the Consortium Members have intentionally withheld from the AAI, any material information or material document, whose non-disclosure would have a material adverse effect or would have adversely affected the evaluation or acceptance of the Evaluated Entities/ Prime Members or the bid submitted by the Consortium Members.

4.2 Representations and Warranties by AAI

AAI hereby represents and warrants to the JVC that on the date hereof and as on the Effective Date:

- (a) the AAI has the right, power and authority and has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) the AAI has the right, power and authority to own the Existing Assets and operate the Airport up to the Effective Date;
- (c) The AAI has not intentionally withheld from the Consortium Members, any material information or material document, whose non-disclosure would have a Material Adverse Effect;
- (d) the obligations of AAI under this Agreement will be legally valid, binding and enforceable obligations against AAI in accordance with the terms hereof;
- (e) It has good and valid title to the Demised Premises, and has power and authority to grant a lease interest in respect thereto to the JVC; and

- (f) Upon the JVC paying the Lease Rent and performing the covenants herein, AAI shall not at any time during the term hereof, interfere with peaceful enjoyment of the Demised Premises by JVC, in accordance hereof.

4.3 Disclosure

In the event at any time after the date hereof, any event or circumstance comes to the attention of either Party that renders any of its abovementioned representations or warranties untrue or incorrect, then 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 or adversely affect or release any obligation of either Party under this Agreement.

CHAPTER V
TRANSFER OF RIGHTS IN RELATION TO AIRPORT ON EFFECTIVE DATE
AND TRANSITION PHASE

5.1 Upon satisfaction or waiver, as the case may be, of the Conditions Precedent, on and from the Effective Date, the rights and obligations associated with the operation and management of the Airport would stand transferred to the JVC, who shall be solely responsible and liable for the performance of all Aeronautical Services, Essential Services and all other activities and services as presently undertaken at the Airport (other than Reserved Activities). JVC shall perform under all existing contracts and agreements between AAI or any Relevant Authority and any third party as relatable to the Airport from the Effective Date, as if JVC was an original party to such contracts and agreements instead of AAI and towards this end shall perform all responsibilities, liabilities and obligations of AAI at JVC's risk and cost (including payment obligations to counter parties). Provided however that in order to ensure smooth transfer of the Airport from the AAI to the JVC, AAI shall during the Transition Phase provide assistance to the JVC (on a best endeavour basis) in the manner provided hereinbelow.

5.2 Transition Phase

- (a) The period commencing from Effective Date and terminating three (3) months thereafter shall constitute the **Transition Phase**. Provided however that in the event the activities proposed to be undertaken during the Transition Phase have not been completed within the abovementioned period of three (3) months, then the Transition Phase shall be extended by an additional period of three (3) months, and in such event, the period commencing from Effective Date and terminating six (6) months thereafter shall constitute the **Transition Phase**.
- (b) During the Transition Phase, the following activities shall take place:
 - (i) **Existing Contracts:** The JVC shall take best efforts, and AAI shall render all reasonable assistance, to transfer / novate AAI under all existing contracts and agreements between AAI and any third party, as relatable to the Airport, with the JVC, on the principle that such transfer / novation would release AAI of all liabilities and obligations under such contracts or agreements as arising from and after the Effective Date (except those pertaining to Legacy Matters). The Parties, along with relevant third parties shall execute necessary documentation or put in place necessary arrangements for the aforesaid transfer / novation. The Parties expressly agree that in respect of existing arrangements of Indian Airlines Ltd. and Air India Ltd. for usage of land and/or building at the Airport and Public Sector oil companies in respect of common hydrant infrastructure for aircraft fuelling at the Airport, for which no express written contract has been executed or presently exists, such existing arrangements shall continue for a period of six (6) months from the Effective Date and the JVC shall during such period mutually agree with Indian Airlines Ltd., Air India Ltd. and

Public Sector Oil companies in respect of such arrangements going forward. Provided however that any third party contract that cannot be specifically novated to the JVC for any reason whatsoever shall be performed by the JVC (at its own risk and cost) for and on behalf of AAI (as if the JVC was an original party to the said contracts, in place of AAI). Provided further that JVC shall indemnify and keep indemnified the AAI against any liability or costs arising under such contracts (including, for the avoidance of doubt, contracts relating to capital works-in-progress included in the list of Mandatory Capital Projects), including specifically, payments due to the counter-parties of such contracts or to any other Entities pursuant to such contracts. Any benefits arising from such contracts shall also vest with JVC. Nothing contained in this Article 5.2 (b) (i) shall prejudice the payment obligation of the JVC in respect of payments due from August 30, 2005 under contracts for capital works-in-progress as contained in Article 5.2 (b) (ii) hereof.

- (ii) **Work in Progress:** Parties expressly agree that from the Effective Date, JVC shall be liable to perform all obligations of AAI (including payment obligations) under all contracts and agreements between AAI and any third party as existing on Effective Date. Without prejudice to the generality of the foregoing, from the Effective Date, the JVC shall be liable for performance of all works-in-progress at the Airport; provided however that notwithstanding the foregoing and Article 3 hereof, JVC shall be liable for making all payment in respect of all capital works-in-progress at the Airport from August 30, 2005, which payment shall be made by JVC to AAI within 15 (fifteen) days of Effective Date on the basis of detailed separate accounts maintained by AAI in this regard and furnished to JVC on Effective Date. It is clarified that these capital works-in-progress are part of the Mandatory Capital Projects to be undertaken by the JVC. Furthermore, AAI hereby undertakes to provide to JVC, from time to time until Effective Date, provisional accounts in respect of the abovementioned capital works-in-progress.

In relation to the accounting treatment of capital works-in-progress, the expenditure incurred by the JVC from Effective Date will continue to be shown by the JVC in its books as capital work-in-progress till such time the JVC completes the relevant capital work-in-progress. The amount shown in the books of account of the JVC will be restricted to the expenditure incurred by the JVC on such works till the time of its completion. On the completion of the capital works-in-progress, the JVC should transfer the same to the concerned completed works assets. Further the JVC should also provide depreciation on those portions of the completed assets.

- (iii) It is expressly agreed that notwithstanding anything contained in this Article 5, nothing contained in this Article 5 shall apply or

relate to any contract entered into by AAI with any third Entity in respect of or relating to the provision of CNS-ATM Services to be provided by the AAI under the provisions of the CNS-ATM Agreement.

- (iv) **Joint Committee:** Immediately after the date hereof, the Parties will constitute a joint committee for the duration of the Transition Phase consisting of 3 representatives each of AAI and the JVC, which joint committee shall be responsible for the overall supervision of the Airport operations. Provided however, the JVC shall have the responsibility of putting into place the Transition Plan and operating, maintaining, developing, designing, constructing, upgrading, modernising, financing and managing the Airport
 - (v) **List of Existing Assets:** The JVC shall prepare a list of all Existing Assets at the Airport and AAI and JVC shall mutually agree on the same.
- (c) It is clarified that any actions of AAI during the Transition Phase pursuant to this Article 5.2 shall be undertaken by AAI not in its personal capacity. All benefits and burdens associated with the actions of the AAI pursuant to this Article 5.2 shall be to the account of the JVC and not the AAI. To this end, JVC shall indemnify and keep indemnified AAI, against any liability or cost, arising on account of any reason whatsoever (except any liability or cost arising due to gross negligence or willful default of the AAI), as relatable to the Airport, during the Transition Phase. It is further clarified that any portion of the charges (Aeronautical Charges and charges for Non-Aeronautical Services) as may be collected by the AAI during the Transition Phase shall be collected by AAI for and on behalf of the JVC and shall be deposited by AAI into the Escrow Account.

5.3 At the end of the Transition Phase, JVC would operate and maintain the Airport independently.

5.4 Notwithstanding anything contained herein, JVC shall be liable for making all payment in respect of other capital works in addition to the abovementioned capital works-in-progress, incurred by AAI at the Airport from August 30, 2005, which payment shall be made by JVC to AAI within 15 (fifteen) days of Effective Date on the basis of detailed separate accounts maintained by AAI in this regard and furnished to JVC on Effective Date. Provided however that the above referred amount in this Article 5.4 shall not in any event exceed Rs. 50,00,00,000/- (Rupees Fifty Crore) in the aggregate (in respect of all such capital works until Effective Date). Furthermore, AAI hereby undertakes to provide to JVC, from time to time until Effective Date, provisional accounts in respect of the abovementioned capital works.

CHAPTER VI OPERATION SUPPORT

6.1 Operation Support

6.1.1 For a period of 3 (three) years from the Effective Date (herein referred to as the “**Operation Support Period**”), AAI shall provide operational support to the JVC through the General Employees in the manner and subject to the terms provided herein (such support is hereinafter referred to as “**Operation Support**”). The estimated annual Operation Support Cost is Rs 95 Crores (Rupees Ninety Five Crores), as per the break-up in Schedule 23.

6.1.2 (i) General Employees shall be retained at the Airport for the duration of the Operation Support Period by the AAI and shall be dealt with in the manner provided herein. In order to provide Operation Support, AAI shall procure that the General Employees perform such functions and undertake such duties, and in such capacities, as may be required by JVC, subject to compliance with Applicable Law and the existing terms of employment of such employees. For the limited purposes of provision of Operation Support, the AAI shall act for and on behalf of the JVC and shall direct the General Employees to undertake such functions and duties as may be reasonably directed by JVC.

(ii) JVC may require AAI to take disciplinary action against / remove from the Airport (or cause to be removed) any General Employee who:

(a) persistently fails to perform or undertake his duties and function in accordance with instructions;

(b) persists in any misconduct or lack of care or carries out duties incompetently or negligently; or

(c) persists in any conduct which affects, or which may reasonably be expected to affect, JVC’s compliance with its obligations under this Agreement (including, by way of example only, its obligations to operate the Airport so as to achieve the standards set out in this Agreement).

provided, in each case, the person’s acts or omissions would justify disciplinary action under the terms of his employment with AAI. Upon receipt of such complaint, AAI shall initiate proceedings against such General Employee in accordance with its rules and regulations.

6.1.3 During the Operation Support Period or until the relevant General Employees have joined the JVC, the JVC shall pay to the AAI, monthly Operation Support Cost in relation to such General Employees (excluding (i) those General Employees who have joined the JVC; and (ii) those who are no longer working at the Airport). The JVC shall from time to time cause the Escrow Bank to make payment of the monthly Operation Support Cost to AAI in advance on or prior to the 7th day of each month by cheque drawn in favour of AAI. Notwithstanding

anything contained herein, the JVC shall during the Operation Support Period be liable to pay the monthly Operation Support Cost to AAI in advance on or prior to the 7th day of each month. Upon JVC making such payment to the AAI, it shall not be held responsible for non-payment of emoluments by AAI to the relevant General Employees.

- 6.1.4 At any time during the Operation Support Period but not later than three (3) months prior to the expiry of the Operation Support Period, the JVC shall make offers (on terms that are no less attractive in terms of salary, position, etc, than the current employment terms of such employees) of employment to the General Employees that it wants to employ. Provided however that JVC shall be required to make offers to a minimum of 60.00 % of the General Employees (as reduced for retirements, transfers, death and any fractions to be rounded off to the nearest whole number). Any offers already made and accepted during the Operation Support Period will be counted for the purposes of such minimum number of offers. The General Employees shall have the option of accepting or declining the offers within one month. The General Employees accepting the employment offers of the JVC, upon resigning from AAI, shall cease to be AAI employees from the date of acceptance of the offer or completion of the Operation Support Period, as applicable. The JVC shall be the new employer for these employees on terms and conditions mutually agreed between the JVC and such employees. Provided however that if less than 60.00% of the General Employees (as reduced for retirements, transfers, resignations and death and any fractions to be rounded off to the nearest whole number) accept the offers of employment made by the JVC, then the JVC shall pay to AAI Retirement Compensation for such number of General Employees as represent the difference between 60.00% of the General Employees (as reduced for retirements, transfers, death and any fractions to be rounded off to the nearest whole number) and the number of General Employees accepting offers of employment made by JVC, including cumulatively the offers made and accepted during the Operational Support Period.
- 6.1.5 While testing whether the terms and conditions offered to the General Employees under the terms of Article 6.1.4 hereof, are no less attractive in terms of salary, position, etc, than the current employment terms of such employees, a cost to company basis comparison would be undertaken.
- 6.1.6 At any time during the Operation Support Period, if a General Employee is transferred out of the Airport, then notwithstanding anything contained hereinabove, from the date of the transfer, the JVC shall not be liable for making payment of the monthly Operation Support Cost with respect to the said General Employee.
- 6.1.7 At the end of the Operation Support Period, the General Employees opting to continue employment with AAI or those not receiving offers from JVC, shall continue their employment with AAI and be deployed at establishments other than the Airport.
- 6.1.8 It is expressly agreed by the Parties that during the Operation Support Period AAI shall not be liable for any losses, costs, charges, expenses and damages caused to the JVC or any third Entity as a result of any acts, deeds or things done or omitted

to be done by any General Employee or as a result of failure or negligence on the part of any General Employee to perform any of its obligations, or committing breach of any of the terms and conditions of its employment contract or on the failure of the General Employee to perform any of its statutory duties or failure or negligence on the part of the General Employee to comply with any statutory provision. Provided however that nothing contained herein shall apply in the case of losses, costs, charges, expenses or damages caused as a result of instruction or instigation by AAI to any General Employee.

6.2 Personnel

During the Transition Phase, JVC alongwith the Airport Operator shall put in place, in a phased manner increasing numbers of senior management (employees above the level of Deputy General Managers or equivalent of AAI on the date hereof) to manage the Airport in conjunction with existing AAI senior management (employees above the level of Deputy General Managers or equivalent of AAI on the date hereof) at the Airport. During the Transition Phase, AAI senior management would continue to manage the Airport in conjunction with personnel of the JVC. JVC shall have the right to appoint its senior management at the Airport. Consequently upon such appointments by the JVC, AAI shall reduce (at no cost to JVC) the number of its senior management (employees above the level of Deputy General Managers or equivalent of AAI on the date hereof) located at the Airport, such that upon the expiry of the Transition Phase, no such AAI senior management (employees above the level of Deputy General Managers or equivalent of AAI on the date hereof) remain at the Airport. It is expressly understood by the Parties that salary, benefits, statutory payments, perks and contribution towards terminal benefits payable to the senior management of the AAI for the duration of their deployment at the Airport during the Transition Phase shall be paid by the JVC to the AAI.

Without prejudice to the generality of the foregoing, the JVC shall engage the experts listed in Schedule 15 hereof at the Airport for the duration mentioned therein.

CHAPTER VII ACCEPTANCE OF SITE/DISCLAIMER

7.1 Acceptance of Site

- 7.1.1 (i) For the purposes of this Agreement, the JVC shall be deemed to have:-
- (a) inspected the Airport, and the Airport Site including the terminals and all buildings thereat and its surroundings;
 - (b) satisfied itself as to the nature of the climatic, hydrological and general physical conditions of the Airport, the nature of the ground and subsoil, the form and nature of the Airport, 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) obtained for itself all necessary information as to the risks, contingencies and all other circumstances which may influence or affect the JVC and its rights and obligations hereunder and its other rights and obligations under or pursuant to this Agreement.
- (ii) JVC expressly acknowledges that it shall have no recourse against the AAI in the event of any mistake made or misapprehension harboured by the JVC in relation to any of the foregoing provisions of Article 7.1.1 (i) and the AAI hereby expressly disclaims any liability in respect thereof.
- 7.1.2 JVC acknowledges that prior to the execution of this Agreement, it has, after a complete and careful examination, made an independent evaluation of the Airport as a whole and each of its facilities, buildings, assets, machinery, equipment, personnel and know-how 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 modernisation required. JVC further acknowledges that it shall have no recourse against the AAI if it is, at a later date, found that the Demised Premises or any building or structure thereon, is/are deficient in any manner whatsoever (the “**Deficiency**”). If a Deficiency is found, the JVC hereby acknowledges and agrees that it shall, at its own cost and at no cost to the AAI, take all appropriate measures to remedy the same.
- 7.1.3 JVC acknowledges and hereby accepts the difficulties, upgradations, inputs, costs, time, resources, risks and hazards associated with the performance of its obligations hereunder and hereby agrees that AAI shall not be liable for the same in any manner whatsoever to JVC, other than as expressly provided in this Agreement.

- 7.1.4 The JVC shall not be entitled to make any claim against the AAI or any Government Authority whether for rescission, in damages or otherwise on the grounds of any misunderstanding or misapprehension in respect of incorrect or insufficient information given to it by any Entity, whether or not in the employment of the AAI or any Government Authority, nor, unless expressly provided otherwise in this Agreement, shall the JVC be relieved from any obligations or risks imposed on or undertaken by it in relation to the works or otherwise on any such ground or on the ground that it did not or could not foresee any matter which may, in fact, affect or have affected the performance of its obligations hereunder.
- 7.1.5 It is clarified that all fossils, antiquities, structures and/or other remains or things either of archaeological or of particular geological interest discovered at the Airport Site or in the course of carrying out any work shall not be the property of the JVC and JVC shall have no right or interest in such fossils, antiquities and structures.

7.2 Deemed Knowledge and Disclaimer

- 7.2.1 Subject to the provisions of this Agreement, the JVC shall be fully and exclusively responsible for, and shall bear the financial, technical, commercial, legal and other risks in relation to the design, financing, modernization, construction, completion, commissioning, maintenance, operation, management and development of the Airport and all its other rights and obligations under or pursuant to this Agreement regardless of whatever risks, contingencies, circumstances and/or hazards may be encountered (foreseen or not foreseen) and notwithstanding any change(s) in any of such risks, contingencies, circumstances and/or hazards on exceptional grounds or otherwise and whether foreseen or not foreseen and none of the JVC shall have any right whether express or implied to bring any claim against, or to recover any compensation or other amount from, the AAI, GOI and/or any of their agencies other than in respect of those matters in respect of which express provision is made in this Agreement.

CHAPTER VIII

CONSTRUCTION/DEVELOPMENT, OPERATION & MANAGEMENT

8.1 General Obligations:

- (i) JVC shall at all times comply with Applicable Law in the operation, maintenance, development, design, construction, upgradation, modernising, financing and management of the Airport. JVC shall operate, maintain, develop, design, construct, upgrade, modernise, manage, and keep in good operating repair and condition the Airport, in order to ensure that the Airport at all times meets the requirements of an international world class airport. The JVC shall further operate, maintain, develop, design, construct, upgrade, modernise, and manage the Airport in accordance with Good Industry Practice and, in accordance with the Development Standards and Requirements; and Operation and Maintenance Standards and Requirements and renew, replace and upgrade to the extent reasonably necessary. All maintenance, repair and other works shall be carried out in such a way as to minimise inconvenience to users of the Airport.
- (ii) JVC shall at all times, obtain and maintain all Clearances, including registrations, licenses and permits (including immigration, temporary residence, work and exit permits), which are required by Applicable Law for the performance of its obligations hereunder.
- (iii) The JVC will operate, maintain, develop, design, construct, upgrade, modernize and manage the Airport during the Term with regard to safety precautions, fire protection, security, transportation, delivery of goods, materials, plant and equipment, control of pollution, maintenance of competent personnel and labour and industrial relations and general Airport Services including, without limitation, access to and on the Airport, allocation of space for contractors' and sub-contractors' offices and compounds and the restriction of access to the Airport to authorized Entities only, ensuring at all times smooth operation of the Airport and minimum interference with day to day running of the Airport and will prepare and issue a manual of rules and regulations relating to the Airport to be observed by all Entities having business upon the Airport and which shall apply to all such Entities without discrimination. The JVC shall provide such manual to the AAI who may require JVC to make reasonably appropriate modifications in the said manual.
- (iv) The JVC will ensure that all materials, equipment, machinery, etc installed and/or used at the Airport including the constructions or repair of the Airport will be of sound and merchantable quality, that all workmanship shall be in accordance with Good Industry Practices applicable at the time of installation, construction or repair and that each part of the construction will be fit for the purpose for which it is required as stated in or as may be reasonably inferred from the Master Plan and the Major Development Plan.

- (v) Neither the submission of any drawing or document under or pursuant to any provision of this Agreement or otherwise, nor its approval or disapproval, nor the raising of queries on, or the making of objections to or the making of comments, suggestions or recommendations on the same by the AAI shall prejudice or affect any of the JVC's obligations or liabilities in relation to design and construction, which shall not be relieved, absolved or otherwise modified in any respect.
- (vi) The JVC shall pay all taxes, levies, import duties, fees (including any license fees) and other charges, dues, assessments or outgoings payable in respect of the Demised Premises or the structures to be constructed thereon or in respect of the materials stored therein which may be levied by any Governmental Authority and any other governmental, quasi governmental, administrative, judicial, public or statutory body, ministry, department, instrumentality, agency, authority, board, bureau, corporation entrusted with, and carrying out, any statutory functions(s) or commission.

8.2 Mandatory Capital Projects

- 8.2.1 The JVC shall, latest by March 31, 2010, commence, carry out and complete the Mandatory Capital Projects set out under Schedule 7 at the times set forth therein and in accordance with the terms and conditions set forth therein.
- 8.2.2 In the event that the JVC delays in commencement of construction of a Mandatory Capital Project at the time set forth in Schedule 7 and no lawful explanation for delay is provided by the JVC that is satisfactory to AAI (at its sole discretion), AAI shall have the right to levy liquidated damages on the JVC equivalent to 0.5% (zero decimal five percent) of the estimated capital cost of the such Mandatory Capital Project for each week (or part thereof) of delay in commencement of construction of such Mandatory Capital Project.
- 8.2.3 AAI shall further have the right to levy liquidated damages on JVC at the same rate in the event the time period for the completion of any Mandatory Capital Project exceeds the time period for completion of such Mandatory Capital Project as set out in Schedule 7, subject to the delay not being on account of delay in commencement, in respect of which liquidated damages have been paid by JVC to the AAI.

Provided however that the total liability of the JVC under this Article 8.2 for delay in respect of a particular Mandatory Capital Project shall not exceed 10% (ten percent) of the capital cost of the relevant Mandatory Capital Project.

- 8.2.4 Notwithstanding the foregoing, in the event the commencement of construction of a particular Mandatory Capital Project has been delayed and liquidated damages for such delay have been levied and paid according to Article 8.2.2 above, and such Mandatory Capital Project has, notwithstanding the delay in commencement in construction, been completed by the time it would have been completed had the construction of the relevant Mandatory Capital Project been commenced on time, as set forth in Schedule 7, then the liquidated damages that have been paid for

delay in commencement of construction shall be returned by AAI to JVC without any interest.

8.3 Master Plan

8.3.1 The JVC shall prepare a Master Plan for the Airport setting out the proposed development for the entire Airport, planned over a 20 year time horizon. The Master Plan shall include traffic forecasts for this period 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) The Development Planning Principles set forth in Schedule 1 hereof.
- (c) Details of planned developments separately for each broad area, namely commercial development, surface transport, terminal area, runway system, environmental management (including aircraft noise);
- (d) Details of traffic forecasts and provide the traffic trigger points for all developments which are linked to traffic growth, indicating at what traffic level the project will be commenced and finished;
- (e) Vision of how the Airport and each of its precincts will look at the end of 20 years and at critical intermediate stages and the ultimate vision of the Airport, at the end of the period when it reaches capacity;
- (f) Report on the outcome of consultations with users, community, businesses and the government
- (g) Obstacle limitation surfaces for the airport and approach and takeoff areas
- (h) Noise exposure contours for areas surrounding the Airport for the traffic level forecast for the 20 year Master Plan period
- (i) Such other matters that may be specified by the GOI .

Notwithstanding anything to the contrary contained in this Agreement, the Parties hereby acknowledge and agree that nothing in this Article 8.3 shall be deemed to be an approval by AAI of any Master Plan (or any part thereof) submitted by the JVC in accordance with the aforesaid provisions, including but not limited to any minimum projected traffic. It is expressly agreed that it shall be sole responsibility and obligation of the JVC to ensure that the final Master Plan is in full compliance with the requirements of this Agreement and is, additionally, in accordance with the parameters set out in the State Support Agreement and nothing in this Agreement shall, in any way, absolve the JVC of its obligation to ensure that the final Master Plan is in accordance with the provisions of the OMDA and the State Support Agreement or any other obligations under any of the Project Agreements.

8.3.2 The first Master Plan for the Airport must be consistent with the Initial Development Plan and must incorporate the Mandatory Capital Projects. Any significant deviations from the Initial Development Plan must be fully explained. The Master Plan shall be made pursuant to full consultation with all major stakeholders, including but not limited to airlines , passenger groups and GOI.

8.3.3 The Master Plan must demonstrate that it is consistent with the quality and service performance standards as set out in this Agreement. The Master Plan must further

demonstrate that the Airport development shall take place such that the Airport Site is developed for the purposes of development and enhancement of Transfer Assets (and within Transfer Assets, Aeronautical Assets shall be prioritised) and that the Airport Site is not exploited for purely Non-Transfer Assets. The Master Plan shall at all times envisage and ensure availability of land and space for development and enhancement of Transfer Assets (and within Transfer Assets, Aeronautical Assets shall be prioritised). Utilisation of land and space for Non-Transfer Assets shall at all times be subject to development and enhancement of Transfer Assets. In this regard, it is clarified that JVC shall ensure that sufficient portions of the lands constituting the Airport Site, as may be required for the development and enhancement of Transfer Assets, keeping in mind future traffic growth, shall be reserved for Transfer Assets, and only the remaining lands constituting the Airport Site shall be used for Non-Transfer Assets. The JVC shall ensure that the Master Plan clearly demarcates those portions of the Airport Site that are used and proposed to be used for the development of Aeronautical Assets, Non-Aeronautical Assets, Transfer Assets and Non-Transfer Assets. The JVC shall ensure that all developments at the Airport are in accordance with the Master Plan.

- 8.3.4 The Master Plan shall inter alia provide for identifiable traffic triggers for undertaking specific capital expenditure projects and shall provide for traffic linked capacity expansions
- 8.3.5 Notwithstanding the provisions of Article 3 above and subject to the Successful Bidder being provided immediate access to the Airport, the JVC hereby undertakes to submit the initial Master Plan to the AAI for its information, and to the Ministry of Civil Aviation (“MCA”) for its review and comments before the expiry of six (6) months from the date of execution of this Agreement, which thereafter must be updated and resubmitted to the AAI for its information and to the MCA for its review and comments periodically, every 10 years. Provided however that the Master Plan shall be updated at shorter intervals, if the JVC finds that the traffic growth is such as to require more frequent updates or for any other reasonable reason, or at such intervals as may be notified by AAI or MCA in the event the Airport reaches passenger capacity, cargo capacity and other capacity restraints.
- 8.3.6 In the event the JVC does not submit the initial Master Plan for the information of the AAI and the comments of the MCA by the due date for submission thereof, then AAI shall have the right to levy liquidated damages on the JVC at the rate of Rs.25,00,000/- (Rupees Twenty Five Lakhs) for every day of delay, provided however that the JVC’s total liability pursuant to this Article 8.3.6 shall not exceed Rs. 25,00,00,000 (Rupees Twenty Five Crores). Provided further and it is clarified that this Article 8.3.6 shall only become effective and be applicable after Effective Date, such that while the liquidated damages shall be calculated for any period of delay after the expiry of six (6) months from the date of execution of this Agreement, the obligation to pay such liquidated damages shall arise only after Effective Date.
- 8.3.7 The JVC shall develop the Airport in accordance with the then applicable Master Plan. Where an existing Master Plan is in place, the JVC shall develop the Airport

in accordance with that plan until a new Master Plan is approved. It is clarified that:

- (a) All developments (Aeronautical Assets, Non-Aeronautical Assets, Transfer Assets and Non-Transfer Assets) at the Airport shall be as per the then existing Master Plan;
- (b) No development (Aeronautical Assets, Non-Aeronautical Assets, Transfer Assets or Non-Transfer Assets) that is not envisaged in the Master Plan shall be allowed to be undertaken; and
- (c) The Airport, inclusive of aeronautical and non-aeronautical developments, Aeronautical Assets, Non-Aeronautical Assets, Transfer Assets and Non-Transfer Assets shall at all times comply with the then existing Master Plan.

8.3.8 The Master Plan will incorporate target dates for construction of individual facilities (the “**Targets**”) linked to traffic trigger points or otherwise. The JVC shall ensure that each of the Targets is met fully and on time. To the extent not already covered under Article 8.2.2, in the event that a project set out in the approved Master Plan is not commenced at the designated traffic trigger or such other trigger and there is no explanation provided by the JVC to AAI that is satisfactory to AAI (at its sole discretion), AAI shall have the right to levy liquidated damages on JVC equivalent to 0.5% of the estimated capital cost of the project for each week the project is delayed, on the JVC. AAI shall further have the right to levy liquidated damages on JVC at the same rate in the event the time period for the completion of the project exceeds the time period of construction set out in the Master Plan, subject to the delay not being on account of delay in commencement, in respect of which liquidated damages have been paid by JVC to the AAI. Provided however that in the event there is delay in commencement of a project, and liquidated damages have been paid in respect of such delay, and in spite of delay in commencement, the relevant project is completed within the time period set forth in the Master Plan, then the liquidated damages already received in respect of delay in commencement shall be returned by AAI to the JVC without any interest. Provided further that the total liability of the JVC under this Article 8.3.8 for delay in respect of a particular project shall not exceed 10% of the capital cost of the relevant project.

8.4 Major Development Plan

8.4.1 The JVC shall develop the Airport in accordance with the Master Plan. The JVC must prepare a Major Development Plan for each major development or any development, which is expected to have a capital cost in excess of Rupees 100,00,00,000/- (Rupees One Hundred Crores Only) and shall ensure that each such major development is undertaken by contractors selected pursuant to a competitive bidding process. The Major Development Plan must be in accordance with the finalised Master Plan and, in the case of aeronautical developments, must be the subject of full consultation with Airport users.

8.4.2 The JVC hereby agrees to submit each Major Development Plan to the AAI for its information and MCA for its review and comments. The Major Development

Plan must be submitted to the MCA for its review and comments as soon as it is prepared.

Provided, however that, notwithstanding Article 3 hereof, the JVC shall submit the Major Development Plan(s) relating to the design, development and construction of (i) terminal buildings; and (ii) parallel runways (if possible) at the Airport, within six (6) months of the date hereof

8.5 Provision of Facilities and Services at Airport

8.5.1 Essential Services and Aeronautical Services

The JVC shall at all times provide at the Airport, Aeronautical Services, Non-Aeronautical Services and Essential Services at the Airport for the Term.

8.5.2 VIP Lounge

The JVC shall provide and maintain at all times at the Airport (free of charge and cost) a Government VIP Lounge for the use and comfort of designated guests and personnel of GOI and the AAI as per the list of personnel eligible to use such facilities as provided by the GOI/ AAI from time to time. The JVC shall in addition provide and maintain at the Airport (free of charge and cost), a ceremonial lounge adhering to existing principles of protocols and courtesies.

8.5.3 Indian Defence Forces and Military Activities

The JVC hereby undertakes and agrees that the Indian Defence Forces shall, at all times have the right to use the Airport and all facilities at the Airport, free of charge without any restriction or constraint of any nature whatsoever. Without prejudice to the generality of the foregoing, the JVC's obligations to the Indian Defence Forces in respect, inter alia, of airspace allocation and closure, runway usage at times of emergencies shall be as decided by GOI from time to time and JVC's obligations to the Indian Defence Forces in respect, inter alia, of airspace allocation and closure, runway usage at times other than emergencies shall be subject to mutual consultations, if any, between JVC and the GOI and as per existing principles and operating procedures of the GOI, and shall be without any relatable compensation to JVC. Provided however that the right of Indian Defence Forces to airspace allocation and runway usage shall not be restricted on account of lack or delay of notification or consultation by GOI. Provided still further that JVC shall be relieved of its obligations to provide aeronautical services to civilian aircrafts and related obligations to the extent that such obligations are affected by emergency, exceptional or unusual use by the Indian Defence Forces of the Airport.

8.5.4 Slots

The JVC is responsible for the management and allocation of aircraft landing and timetable slots at the Airport, for both domestic and international traffic. JVC shall allocate slots at the Airport in consultation with airlines, in accordance with IATA

Slot Allocation Guidelines as issued and updated from time to time in a fair, reasonable and equitable manner.

8.5.5 Access

Subject to the provisions of this Agreement and subject to BCAS' guidelines, JVC shall have the right to grant access to all parts of the Airport Site to such Entities as it shall determine.

8.5.6 Insurance

(i) Insurance during Term

During the Term, JVC shall effect and maintain at its own cost, at all times the insurances set out in Schedule 11, the insurances required under the Financing Documents and such additional insurances as JVC may reasonably consider necessary or prudent in accordance with Good Industry Practice. The insurance policies so procured shall mention AAI as co-insured.

(ii) Policies

Within 15 (fifteen) days of receiving any insurance policy certificate in respect of insurances required to be obtained and maintained under Article 8.5.6(i), JVC shall furnish to AAI, 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 or lapse until the expiration of at least forty-five (45) days notice of such cancellation, modification or non-renewal, has been provided by JVC to AAI.

(iii) Remedy for failure to insure

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

(iv) Application of Insurance Proceeds

Subject to the Escrow Agreement, all insurance claims received by JVC shall be applied for reconstruction of the Airport except for (i) insurance proceeds unrelated to physical damage; and (ii) insurance proceeds relating to business interruption, loss of profit or delay in start up.

Subject to the restriction on application of insurance proceeds, the Lenders may be loss payees under all such policies of insurance.

8.5.7 Contracts, Leases and Licenses

- (i) Sub-Contracting, Sub-leasing and Licensing
 - (a) Any activity may be sub-contracted by the JVC, provided always that notwithstanding the sub-contract, the JVC retains overall management, responsibility, obligation and liability in relation to the sub-contracted Airport Service. Any such subcontracting shall not relieve the JVC from any of its obligations in respect of the provision of such Airport Services under this Agreement. It is clarified that JVC shall remain liable and responsible for any acts, omissions or defaults of any sub-contractor, and shall indemnify AAI in respect thereof. Provided however that any sub-contract involving foreign manpower or materials shall be subject to the political sensitivities of GOI.
 - (b) AAI hereby recognizes the right of JVC to sub-lease and license any part (but not whole) of the Airport Site to third parties for the purpose of performance of its obligations hereunder.
 - (c) Before entering into contracts or granting any sub-lease or license, the JVC will:
 - (aa) comply with Applicable Laws including without limitation (where applicable) the procedures for competitive bidding in the field of public works concessions and in any case for every contract whose value exceeds Rs. 50,00,00,000/- (Rupees Fifty Crores Only) the JVC shall ensure that the selection of the counter party is by way of a competitive bidding procedure; and
 - (bb) inform AAI of the counter-party or parties to every contract, sub-lessee or licensee (as the case may be) and their shareholding pattern.
 - (d) Without prejudice to the foregoing, every contract entered into by the JVC shall be on an arms-length basis (and comply with contracting procedures set forth in Schedule 12), and shall contain an express provision allowing the transfer of the rights and obligations of the JVC under such contract to the AAI in the event of termination or expiry hereof. Every contract (including any sub-lease or license arrangement) entered into by the JVC shall contain an express provision recognising the right of the AAI to acquire the Transfer Assets and the Non-Transfer Assets (including reversion of underlying land) in the manner provided herein, and contain an undertaking by the counter-party (ies), licensee/ sub-lessees, or owners of the relevant asset, as the case may be to transfer the relevant Transfer Asset and/ or the Non-Transfer Asset (including the reversion of the underlying land), as the case may be, upon the exercise of such right by AAI. JVC shall further procure that any

contracts entered into by any counter-party (ies), licensees/ sub-lessees, as the case may be and relating to any Transfer Asset and/ or the Non-Transfer Asset shall also recognise the right of the AAI to acquire the Transfer Assets and the Non-Transfer Assets in the manner provided herein, and contain an undertaking by the counter-party (ies), sub-licensee, sub-sub-lessees, as the case may be to transfer the relevant Transfer Asset and/ or the Non-Transfer Asset, as the case may be, upon the exercise of such right by AAI.

- (e) JVC shall ensure that any sub-contract, license or sub-lease granted in relation to the Airport expires on the thirtieth (30th) anniversary of Effective Date. JVC shall further procure that any contracts entered into by any counter-party (ies), licensees/ sub-lessees, as the case may be and relating to the Airport shall also expire on the thirtieth (30th) anniversary of Effective Date.
- (f) The JVC shall prior to entering into or modifying any contract with a Group Entity of the JVC or any of its shareholders (other than AAI), inform AAI about the key terms of such contract and disclose the draft contract to the AAI. In relation to such contracts, AAI shall have the right to object to any key terms that it can reasonably demonstrate are not equitable, are inconsistent with or contrary to the letter or spirit of this Agreement or not on arms-length, and the JVC shall address the reasonable concerns of AAI prior to execution of such contracts. The JVC shall further ensure that any contract with a Group Entity of the JVC or any of its shareholders (other than AAI) shall only be entered into after the board of directors of the JVC (the “**Board**”) duly approves such contract itself and the same is not approved by any sub-committee of the Board or by delegation to any person whatsoever. The Board shall have the right to consider and comment on the terms and conditions of such contracts and suggest modifications thereto. The Board shall be entitled to seek a report on the terms of contracts from the Independent Engineer. The Board shall approve any such contract only if it is satisfied that the terms thereof are no less favourable to the JVC than those which could have been obtained from bona fide non-Group Entities/ non-shareholders on arms-length commercial basis. The rights and obligations of the Board hereunder shall be incorporated into the Articles of Association of the JVC prior to Effective Date.

(ii) Management and Control

- (a) Notwithstanding anything contained in Article 8.5.7 (i) above, under no circumstances shall the JVC sub-contract the overall operation and management of the Airport and the JVC shall at all times exercise and be responsible for overall management control and supervision of the Airport through its senior management staff, irrespective of any sub-contracting of activities and/or services.

The JVC shall further under no circumstance sub-lease or license the whole Airport Site.

- (b) The JVC shall establish fair, reasonable and objective criteria for the grant of sub-contracts. In granting, and in determining whether or not to grant, any sub-contract to any Entity, and in determining whether to amend, waive, terminate or extend any such rights, the JVC shall consistently comply with and apply such criteria.
- (c)
 - (i) Without prejudice to the generality of the other provisions hereof, the JVC shall ensure that, within six (6) months from Effective Date, at least two unrelated (non-Group) Entities (of which one may be the JVC) are responsible for provision of cargo handling services at the Airport so as not to create a monopoly, or monopolistic arrangements and one sub-contractor is not unfairly discriminated against in comparison with any another sub-contractor. Until such time this arrangement for cargo handling services is put in place, JVC shall ensure that the then applicable charges for cargo as levied by AAI shall be charged at the Airport.
 - (ii) The JVC shall be responsible for the provision of ground handling services as per Applicable Law.
- (d) Neither the JVC nor any sub-contractor shall:
 - (i) adopt, in relation to any activities carried on by it at the Airport, any trade practice, or any pricing policy, which unreasonably discriminates against any class of users of the Airport or any particular user or which unfairly exploits its bargaining position relative to users of the Airport generally or which directly causes the adoption by any other Entity of a practice which has a similar effect.
 - (ii) adopt, in relation to the granting of any sub-contracts, any practice which:
 - (aa) unreasonably discriminates against Entities granted any class of such rights, or any particular grantee of such a right, or unfairly exploits its bargaining position relative to the grantees of such rights generally; or
 - (bb) unreasonably discriminates against any class of Entities applying for such rights or any particular applicant, or unreasonably limits the number of such rights that are granted in the case of any particular services or facilities.

or which directly causes the adoption by any other Entity of a practice, which has a similar effect.

It is hereby expressly acknowledged and agreed that the provisions of this sub-clause (d) shall in no way be used or construed to limit or adversely affect the ability of the JVC to offer discounts or customized packages for high-volume users and other valued customers, or other incentive packages as are normal and customary in the ordinary course of business of maintaining, managing and operating the Airport and/or providing any other Airport Services hereunder.

8.5.8 Independent Engineer

(i) Appointment of Independent Engineer

(a) A reputable concern of Independent Engineer shall be appointed for the purpose of determining and ensuring compliance with planning approvals and standards with respect to Airport development and performing the duties mentioned in Schedule 21 hereof.

(b) The procedure of the appointment of the Independent Engineer shall be as follows:

AAI shall nominate a panel of six (6) engineers with expertise in airport development supervision of direct relevance to the needs of the assignment, with no conflict of interest to the JVC. The JVC shall have the right to object to one or more of such nominees but not in any circumstance exceeding three (3) nominees. AAI shall appoint any one of the nominees to whom JVC has not objected, as the Independent Engineer.

(c) AAI and the JVC shall equally bear all costs of, including costs associated with the appointment of, the Independent Engineer.

(ii) Subject to the dispute resolution mechanism contained herein where a technical issue arises in which the two parties have a different view, then either party can nominate suitable technical experts to review the process in the same manner as the appointment of an Independent Engineer and the other party selects one of these experts. Each party would brief the expert in writing on the issue to be addressed and would provide a copy of the briefing to the other party. The two parties would agree with the expert on the time frame to review and report on the matter. The cost of the review will be borne equally by the two Parties.

8.5.9 OMDA Implementation Oversight Committee

Notwithstanding Article 3 hereof, in order to perform its obligations hereunder, AAI shall within 30 (thirty) days of the execution hereof create a separate dedicated unit (the “**OMDA Implementation Oversight Committee**” or “**OIOC**”) under the chairmanship of Secretary, MCA and such other members as

the MCA may determine. The OIOC will be responsible for ensuring that the Conditions Precedent as contemplated under this Agreement are duly met/fulfilled and this Agreement becomes fully effective within three (3) months as provided under Article 3 hereof. Further, the OIOC shall be the 'single point of contact' for the JVC for all matters concerning this Agreement. The OOIC would meet as often as may be required with representatives of the JVC and conduct a joint review of emerging issues and concerns and keep an oversight of the development of the Airport.

8.5.10 Environment Audit and Report

- (i) The JVC shall, within six months of the Effective Date procure that an independent expert undertakes a full environmental audit of the Airport and provide a copy of such audit to AAI.
- (ii) Based on the information from the environmental audit, the JVC shall, within a further six months produce an Environmental Management Strategy for the Airport, which sets 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.
- (iii) The JVC shall review annually, progress under the Environmental Management Strategy and will from time to time update the said Environmental Management Strategy. The JVC shall provide annual reports in relation to progress under the Environmental Management Strategy to AAI.
- (iv) Prior to the termination of this Agreement, the JVC shall procure that an independent expert undertakes a further environmental audit of the Airport. JVC shall ensure that at termination the environmental condition of the Airport meets all statutory and regulatory requirements.
- (v) The independent expert undertaking the environment audit of the Airport mentioned in sub-paragraphs (i) and (iv) above shall be appointed in the following manner:
 - (a) The JVC shall nominate one or more Entities having appropriate experience and qualifications to undertake the environment audit, and shall notify AAI of the proposed independent expert, along with the terms of reference of the said expert for the approval of the AAI. The Parties hereby expressly agree that the independent expert and the terms of reference of the audit shall be approved by the AAI, prior to undertaking an environment audit.
- (vi) The JVC and AAI will jointly bear all costs of, including costs associated with the appointment of, the independent expert.

8.5.11 Complaints Register

- (i) JVC shall maintain a public relations office at the Airport where it shall keep a register (the "**Complaint Register**") with access at all times for recording of complaints by any person (the "**Complainant**"). Immediately, after a complaint is registered, JVC shall give a receipt to the Complainant stating the date and complaint number. Details of any complaint that remains unaddressed after 30 days of lodgement thereof shall be immediately uploaded on the JVC website (without disclosing the name or details of the complainant).
- (ii) The Complaint Register can either be in hard copy form or electronic form . 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 JVC. Information relating to the availability of and access to the Complaint Register shall be prominently displayed by JVC at the Airport.
- (iii) JVC 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 JVC to the Complainant under a certificate of posting or by fax with confirmation of transmission.
- (iv) To the extent that the complaints made by any Complainant relate to the performance or otherwise of the Reserved Activities or of any airline or any other Entity, JVC shall immediately notify the Relevant Authority, the airline or such Entity about the same.
- (v) Any means of notice, record-keeping or registration contemplated by this Article 8.5.11 may be accomplished or effected by any more-efficient or effective automated or modern systems, technologies or methods of comparable or better accuracy and reliability.

8.6 Performance Bond

- (a) The JVC shall furnish a Performance Bond in the form of a bank guarantee from a reputed scheduled commercial bank in India with a minimum validity of 12 months at a time for an amount of Rs. 500,00,00,000/- (Rupees Five Hundred Crores) (escalating at the Rate of Inflation annually after first anniversary of Effective Date) for the first five (5) Years after Effective Date.
- (b) Upon submission of the Performance Bond, AAI shall return/ release the Bid Bond. The Performance Bond shall be rolled over periodically and shall be renewed three (3) months prior to its expiry for a period until the expiry of five (5) years after Effective Date.

- (c) The whole or part of the Performance Bond shall be encashable, inter alia, in the following situations:
- (i) Non completion of the Mandatory Capital Projects within the agreed time frame;
 - (ii) Failure to make offers of employment in accordance with the terms hereof;
 - (iii) Non-compliance with Development Standards and Requirements, Objective Service Quality Requirements and Subjective Service Quality Requirements in accordance with the terms hereof;
 - (iv) Failure to provide adequate insurance in accordance with the terms set forth in this Agreement (except where such insurance has been obtained by AAI and AAI has been indemnified in respect of the cost thereof);
 - (v) Failure to pay any liquidated damages hereunder for one (1) month after the same become due and payable; and
 - (vi) Any other material breach / non-performance of / under this Agreement.
- (d) In the event any portion of the Performance Bond is en-cashed pursuant to sub-clause (c) of this Article 8.6 then immediately following such encashment, the JVC shall replenish the Performance Bond. In the event the Performance Bond is not replenished within three (3) months of its encashment, the AAI shall have the right to en-cash the entire Performance Bond. Provided however that AAI shall not en-cash the replenished Performance Bond twice for the same default for which the Performance Bond was previously encashed.
- (e) Any delay in invocation or non-invocation of the encashment of the Performance Bond shall not be construed as a condonation of the breach or default or waiver of the right to invoke or encash the Performance Bond in the future.

8.7 Certification

Any certification of the commencement of construction or the completion of Mandatory Capital Projects and / or facilities to be constructed under the Master Plan, which is necessary for determining compliance by the JVC of its obligations under this Agreement shall be performed by the Independent Engineer.

The Independent Engineer shall be obliged to complete its certification as soon as reasonably practicable after being requested to do so by JVC and / or AAI.

CHAPTER IX
SERVICE QUALITY REQUIREMENTS AND DEVELOPMENT STANDARDS

9.1 It is the intention of the Parties that the JVC shall operate, maintain, develop, design, construct, upgrade, modernise, finance and manage the Airport to bring it to and maintain it at a world class standard for major international airports in terms of the quality of the facilities, airport management and the quality of service provided to all airport users. Without prejudice to the generality of the forgoing, the JVC shall undertake the following in order to establish mechanisms to review and assess performance in respect to service delivery and management systems.

9.1.1 ISO9001: 2000 certification:

(a) Requirement:

The JVC will, within two years from the Effective Date achieve and thereafter maintain throughout the Term ISO9001: 2000 certification (or appropriate substitute certification in the event of ISO9001:2000 certification being discontinued) for all facilities relating to Aeronautical Services of the Airport.

(b) Report:

The JVC shall provide to AAI, in a timely manner a copy of the ISO 9001:2000 certification.

(c) Default:

At any time after the expiry of two (2) Years after Effective Date, in the event that the Airport has not achieved ISO 9001:2000 certification, the JVC shall produce an action plan within 30 days that sets out how it will address the deficiencies and these initiatives shall be immediately implemented.

Should the JVC fail to produce such an action plan within 30 days or if the Airport (or any part thereof) continues not to achieve ISO 9001:2000 certification, for further 6 months from the date of submission of action plan or fails to maintain the certification at any time during the Term after having achieved certification, the JVC shall thereafter pay to the AAI 2.5% of the monthly Revenue (prior to default) for every month, that the Airport does not achieve or maintain ISO 9001:2000 certification, as the case may be, as liquidated damages provided however that the total liquidated damages payable hereunder shall not exceed 15% of the monthly Revenue (prior to default).

9.1.2 Objective Service Quality Requirements

(a) Requirement

The JVC shall within the time frame mentioned therein, achieve the Objective Service Quality Requirements set out in Schedule 3.

(b) Report

The JVC shall on a quarterly basis, measure compliance of Objective Service Quality Requirements in accordance with Schedule 3 and provide compliance reports to AAI in a timely manner.

(c) Default

At any time after the JVC is obligated to achieve and maintain a particular Objective Service Quality Requirement, in the event that the immediately succeeding quarterly report show that the Airport (or any part thereof) is rated below the respective Objective Service Quality Requirement, the JVC will achieve the particular Objective Service Quality Requirement within 30 days of the last submitted quarterly report.

Should the JVC fail to achieve the above, or if the Airport (or any part thereof) continues to perform below the targets mentioned in Schedule 3, the JVC shall pay to the AAI 0.5% of the monthly Revenue (prior to default) for every month, that the standards are below any of the Objective Service Quality Requirements, for each such performance area, as liquidated damages provided however that the total liquidated damages payable hereunder shall not exceed 1.5% of the monthly Revenue (prior to default).

9.1.3 Subjective Service Quality Requirements

(a) Requirement

(i) The JVC shall, commencing from the first anniversary of Effective Date, and thereafter every quarter, participate in the IATA/ACI AETRA passenger survey.

(ii) During the implementation of Stage 1 and Stage 2 of the Initial Development Plan, as subsequently reflected in the Master Plan, the JVC will seek to achieve steady improvements in performance over time. Where there is a decline in performance between any two consecutive surveys in this period, the JVC will provide a full explanation and an action plan to seek to reverse the decline and these initiatives shall be implemented immediately.

(iii) JVC shall ensure that, at the completion of the implementation of Stage 2 as referred to above, the JVC achieves a rating of 3.75 in

the IATA/ACI AETRA passenger survey or greater and maintains the same throughout the Term.

(b) Report

After each quarterly IATA/ACI AETRA passenger survey the JVC shall provide to AAI in a timely manner the results of each survey, together with its analysis of the results and any proposed actions that it intends to take to seek improvements in regard to the measures set out in Schedule 4.

(c) Default

The JVC shall at all times during the Term hereof make best endeavours to ensure improvement of the Airport in the IATA/ACI AETRA passenger surveys. After the completion of Stage 1, the Airport target rating shall be 3.5; provided however that after the completion of Stage 2, the Airport target rating shall be 3.75. The target rating of 3.5 on the IATA/ACI AETRA passenger surveys after the completion of Stage 1, and 3.75 after the completion of Stage 2, as furnished in the report as per sub-clause (b) above, is hereinafter referred to as “**Target Rating**”.

At any time after the completion of Stage 1 or Stage 2, in the event that two successive quarterly IATA/ACI AETRA passenger surveys show that the Airport is rated below the applicable Target Rating, then the JVC shall pay to the AAI 2.5% of the monthly Revenue (prior to default) for every month that the standards are below the Target Rating by more than 0.1 points and 1.25% of the monthly Revenue (prior to default) for every month in the event the standards are below the Target Rating by less than 0.1 points, as liquidated damages; provided however that the maximum period that liquidated damages shall be paid hereunder shall not exceed a period of 6 months.

9.1.4 Development Standards and Requirements

(a) Requirement

It is the intention of the Parties to achieve a world-class airport with world-class facilities. The design, construction modernization, upgradation and operation of the Airport (including all Transfer Assets will comply with all appropriate technical requirements as set out in international, national and local standards and laws and in particular will comply with the requirements set out in Schedule 1.

(b) Report

The JVC shall provide to the AAI in a timely manner full information and report on each development that is completed in accordance with any development plan and a quarterly report in respect of developments completed or under progress for the entire Airport and on the results

achieved for each completed development for each of the Development Standards and Requirements measures.

(c) Default

- (i) If after the review of such reports furnished by the JVC and independent verification carried out by the Independent Engineer, the Independent Engineer certifies that a particular development under progress at the Airport (or any portion thereof) is below the respective Development Standards and Requirement, which post notification of AAI to JVC is not rectified prior to completion of that development; or
- (ii) the completion report of any development submitted by the JVC shows that the development at the Airport (or any portion thereof) is below the respective Development Standard and Requirement; or
- (iii) two consecutive quarterly reports of various developments in progress show that the Airport (or any portion thereof) is rated below the respective Development Standard and Requirement,

In respect of any of the aforesaid default, the JVC shall pay to the AAI 2.5% of the monthly Revenue (prior to default) for every month that the standards are below any of the Development Standards and Requirements as liquidated damages provided however that the total liquidated damages payable hereunder shall not exceed 15% of the monthly Revenue (prior to default).

9.1.5 In the event the JVC believes that some of the measures or targets mentioned in any of Schedules 1, 2 or 3 should be revised or changed (as a result of technological changes, or changes to business practices, rendering the existing measures or targets redundant), it shall provide a full written explanation of its proposals to AAI, which shall assess and finally reasonably decide whether any changes should be made.

9.1.6 In the event the AAI believes that some of the measures or targets mentioned in any of Schedules 1, 2 or 3 should be revised or changed for any reason, it shall provide a full written explanation of its proposals to JVC, and the Parties shall mutually consult with each other to determine if any changes to the said measures or targets should be made.

CHAPTER X MONITORING AND INFORMATION

- 10.1 The JVC shall submit the following reports to the AAI on a regular basis:
- (a) Monthly activity report (passenger traffic, aircraft movements, cargo, etc.)
 - (b) Other operating statistics as required by MCA, AAI, ICAO, IATA and Relevant Authorities.
 - (c) Reports on various indicators of performance measurement as specified in this Agreement
 - (d) Quarterly financial accounts
 - (e) Annual budget
 - (f) Latest update of Business Plan
 - (g) Annual maintenance program
 - (h) If so required by the AAI, the JVC shall deliver to the AAI the daily traffic record.
 - (i) Such other reports/ information (or analysis thereof) in relation to the Airport operations that AAI may request from time to time.

10.2 Maintenance of Records

- (a) The JVC shall maintain accurate, up-to-date and complete financial records in accordance with the requirements of Applicable Laws and this Agreement.
- (b) The JVC shall maintain accurate, up-to-date and complete records relating to the operation and maintenance of assets, which it owns or operates, and operational performance of the Airport. Such requirements may reasonably (but not retrospectively) be amended from time to time by the AAI in order to take account of changed circumstances.
- (c) The JVC shall make available and, if reasonably requested by the AAI, provide copies of, on reasonable notice by the AAI and at reasonable times, the records referred to in Article 10 for inspection by the AAI. The AAI shall be entitled to appoint one or more authorised representatives to check and take copies of any such records. The JVC shall provide the AAI with such further information, explanations and other assistance as may be reasonably required by the AAI or any of its authorised representatives for the purpose of checking any of such records.

- (c) All records required to be maintained in accordance with this Article shall be held for a period of five years from the date of creation of the relevant records or until twenty four months after the expiry or earlier termination of the Term, whichever is the later, provided that the JVC shall notify the AAI before any such disposal and provide the AAI with a reasonable opportunity to take delivery of such records. All such records may be maintained in the electronic form provided such electronic form is duly authenticated and admissible in evidence. It is expressly understood by the Parties that this Article shall survive the termination or expiry of this Agreement.

10.3 Provision of Accounts

The JVC shall, at the end of its accounting reference period, deliver to the AAI as soon as reasonably practical after they are available but no later than the expiry of the period provided under the Companies Act, 1956 for the finalisation of the audited accounts, beginning with the first accounting reference period which ends within the Term, copies of the annual report, audited profit and loss account, balance sheet and cash flow statement for the JVC (and (if applicable) for any subsidiary of the JVC) as at the end of and for that accounting reference period, together with copies of all related director's and auditor's reports.

Each set of accounts delivered hereunder shall, save as stated in the notes thereto, be prepared and audited in accordance with accounting principles and auditing standards and practices generally accepted in India and consistently applied and in accordance with all Applicable Laws and, together with those notes and subject to any qualifications contained in any relevant auditor's report, shall give a true and fair view of the state of affairs and profits or loss for the period covered by such accounts. Each set of accounts shall be prepared consistently in accordance with the JVC's normal accounting policies, details of which shall be supplied, on request, to the AAI and any changes to which shall be notified to the AAI upon submission of such accounts.

The JVC shall, in addition, deliver to the AAI unaudited profit and loss account and balance sheet and cash flow statement for each reporting period as well as management accounts for each month as soon as reasonably practical after they are available. Each set of accounts shall be prepared consistently in accordance with the JVC's normal accounting policies, details of which shall be supplied, on request, to the AAI and any changes to which shall be notified to the AAI on submission of such accounts. The accounting reference period of the JVC shall be a twelve month period

All accounts may also be maintained in the electronic form.

10.4 Changes in Business

The JVC shall inform the AAI of any material change or proposed material change in the conduct or condition of the Airport Business, as soon as reasonably practicable prior to (or, if it is not reasonably practicable prior to, as soon as reasonably practicable after the occurrence of) any such change, (including the

termination of any key contracts, any litigation or other dispute which may have a Material Adverse Effect on the Airport Business and any material change in or restructuring of the capitalisation or financing of the JVC).

10.5 Rights of Inspection

The AAI and its representatives shall be permitted to inspect at any time but with reasonable prior intimation any part of the Airport Site or any of the assets at the Airport and undertake any survey or other check in order to monitor compliance with the JVC's obligations under this Agreement, or check the quality of service performance by the JVC or any Relevant Authority, or for any other reason whatsoever, for which purpose the JVC shall grant such access or procure the grant of such access (including to or from third parties) as they shall reasonably require in connection therewith, provided that such persons shall not interfere with the performance of the relevant works or give any instruction in relation thereto or interfere with the carrying on of the Airport Services. If any such exercise reveals that the JVC has not complied in any material respect with its obligations under this Agreement, the costs of any such inspection shall be borne by the JVC.

10.6 Access to Management

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

10.7 Notification of Disputes

The JVC shall notify the AAI of any dispute that arises or is threatened against the JVC and/or the Airport, the adverse outcome of which might have a Material Adverse Effect on the JVC or the Airport, or any of the Airport Services.

10.8 Information Warranty

10.8.1 The JVC hereby warrants to the AAI that:

- (a) each set of audited accounts provided/to be provided by the JVC under this Agreement are and will be a true and fair state of the financial affairs and condition of the JVC as for the period for which such accounts relate;
- (b) each of Master Plan, Major Development Plan and Business Plan is and will be prepared in good faith with proper care and diligence and represents/ will represent fair, reasonable and complete information, estimates and forecasts and has no/ would have no material omissions;
- (c) all other information provided to the AAI under this Agreement is true, accurate and complete in all material respects.

CHAPTER XI FEES

11.1 In consideration of the aforementioned Grant, the JVC hereby agrees to make the following payments to the AAI in the manner and at the times mentioned hereunder.

11.1.1 Upfront Fee

The JVC shall pay to the AAI an upfront fee (the “**Upfront Fee**”) of Rs 150 Crores (Rupees one hundred and fifty Crores only) on or before the Effective Date. It is mutually agreed that this Upfront Fee is non-refundable (except on account of termination of this Agreement in accordance with Article 3.3 hereof) and payable only once during the Term of this Agreement.

11.1.2 Annual Fee

11.1.2.1 The JVC shall also pay to the AAI an annual fee (“**AF**”) for each Year during the Term of this Agreement of the amount set forth below:

AF = 38.7 % of **projected** Revenue for the said Year

Where projected Revenue for each Year shall be as set forth in the Business Plan.

11.1.2.2 The AF shall be payable in twelve equal monthly instalments, each instalment (hereinafter referred to as “**Monthly AF**” or “**MAF**”) to be paid on the first day of each calendar month. The JVC shall from time to time cause the Escrow Bank to make payment of the MAF to AAI in advance on or prior to the 7th day of each month by cheque drawn in favour of AAI. If AAI does not receive the payment of MAF due hereunder by the due date provided herein, the amount owed shall bear interest for the period starting on and including the due date for payment and ending on but excluding the date when payment is made calculated at State Bank of India Prime Lending Rate + 10% p.a. Notwithstanding anything contained herein, the JVC shall at all times be liable to pay the MAF in advance on or prior to the 7th day of each month

11.1.2.3 (i) In the event that in any quarter the actual Revenue exceeds the projected Revenue, then JVC shall pay to AAI the additional AF attributable to such difference between the actual quarterly Revenue and the projected quarterly Revenue within 15 days of the commencement of the next quarter; and

(ii) in the event that the projected Revenue in any quarter exceeds the actual Revenue, then AAI shall pay to JVC such portion of the AF received as is attributable to the difference between the projected Revenue and the actual Revenue by way of an adjustment against the AF payable by the JVC to AAI in the current quarter; provided further that in the event the actual Revenue in any quarter is greater than 110% of the projected Revenue of such quarter, the JVC shall pay to AAI interest for difference between the

actual Revenue and the projected Revenue at the rate of State Bank of India Prime Lending Rate plus 300bps in the following manner:

- (i) interest of three (3) months on $1/3^{\text{rd}}$ of the difference between the projected Revenue and the actual Revenue;
- (ii) interest of two (2) months on $1/3^{\text{rd}}$ of the difference between the projected Revenue and the actual Revenue;
- (iii) interest of one (1) month on $1/3^{\text{rd}}$ of the difference between the projected Revenue and the actual Revenue.

It is clarified that if the projected quarterly Revenue is equal to or less than 110% of the actual quarterly Revenue, then no interest shall be payable; interest shall only be payable on the difference between the actual quarterly Revenue and the projected quarterly Revenue in the event the actual quarterly Revenue is greater than 110% of the projected quarterly Revenue.

11.1.2.4 The applicable Revenue used for final verification/reconciliation of the AF shall be the Revenue of the JVC as certified by the Independent Auditor every quarter.

11.2 Independent Auditor

- (i) Appointment of Independent Auditor
 - (a) An Independent Auditor shall be appointed for the purposes mentioned herein.
 - (b) The procedure of the appointment of the Independent Auditor shall be as follows:

AAI shall nominate a panel of six (6) Chartered Accountancy Firms to the JVC. The JVC shall have the right to object to one or more of such nominees but not in any circumstance exceeding three (3) nominees. AAI shall appoint any one of the nominees to whom JVC has not objected, as the Independent Auditor.
 - (c) JVC and AAI shall bear equally all costs of, including costs associated with the appointment of, the Independent Auditor.

11.3 Right of Inspection

The AAI and its representatives shall be permitted to inspect at any reasonable time the books, records and other material kept by or on behalf of the JVC in order to check or audit any information (including the calculation of Revenue) supplied to the AAI under this Agreement. The JVC shall make available to the AAI and its representatives such information and grant such access or procure the grant of such access (including to or from third parties) as they shall reasonably

require in connection therewith. If any such exercise reveals that information previously supplied to the AAI was in any material respect inaccurate on the basis of information available to the JVC at the time, the costs of any such exercise shall be borne by the JVC.

CHAPTER XII TARIFF AND REGULATION

12.1 Tariff

12.1.1 For the purpose of this Agreement, the charges to be levied at the Airport by the JVC for the provision of Aeronautical Services and consequent recovery of costs relating to Aeronautical Assets shall be referred to as **Aeronautical Charges**.

12.1.2 The JVC shall at all times ensure that the Aeronautical Charges levied at the Airport shall be as determined as per the provisions of the State Support Agreement. It is hereby expressly clarified that any penalties or damages payable by the JVC under any of the Project Agreements shall not form a part of the Aeronautical Charges and not be passed on to the users of the Airport.

12.2 Charges for Non-Aeronautical Services

Subject to Applicable Law, the JVC shall be free to fix the charges for Non-Aeronautical Services, subject to the provisions of the existing contracts and other agreements.

12.3 Charges for Essential Services

12.3.1 Notwithstanding the foregoing, those Aeronautical or Non-Aeronautical Services that are also Essential Services, shall be provided free of charge to passengers.

12.4 Passenger Service Fees

12.4.1 The Passenger Service Fees shall be collected and disbursed in accordance with the provisions of the State Support Agreement.

CHAPTER XIII FINANCING ARRANGEMENTS & SECURITY

13.1 Financing Arrangements and Security

- (a) It is expressly understood that the JVC shall arrange for financing and/or meeting all financing requirements through suitable debt and equity contributions in order to comply with its obligations hereunder including development of the Airport pursuant to the Master Plan and the Major Development Plans.
- (b) Security
 - (i) This Agreement shall not be assigned by the JVC. Provided however that Lenders may be given a right of substitution by execution of the Substitution Agreement. Provided further that at any given time, the AAI shall enter into only one (1) Substitution Agreement with one (1) lenders' agent; such lenders' agent being an agent for one consortium of Lenders. The Lenders shall be free to modify the composition of the consortium of Lenders. It is further expressly clarified that lenders that provide financing for Non-Transfer Assets shall not be given any right of step-in.
 - (ii) The JVC shall neither create nor permit to subsist any Encumbrance or title defect over or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreements or the Transfer Assets. In this respect, the JVC shall clearly demarcate and distinguish, in the Master Plan, Transfer Assets and Non-Transfer Assets. Provided further, any Encumbrance on the Non-Transfer Assets shall be subject to the land usage restrictions set forth in the Master Plan and this Agreement. Provided however that notwithstanding the foregoing, the JVC shall within 60 days of the Effective Date create the first mortgage on all the Transfer Assets (present and future) in favour of AAI as security for payment of amounts due from JVC to AAI under this Agreement.
 - (iii) Lenders may exercise the rights of step in or substitution as provided in the Substitution Agreement provided that the person substituting the JVC shall be deemed to be the JVC under this Agreement and shall enjoy all rights and be responsible for all obligations under this Agreement as if it were the JVC.
 - (iv) Notwithstanding anything to the contrary contained in this Agreement, it is clarified that AAI may assign any of its rights and benefits and / or obligations under this Agreement with 30 days prior written notice to the JVC.

- (v) It is clarified that for the purpose of securing its borrowings for the purpose of the Airport, JVC may encumber any assets including Non-Transfer Assets, that it is not prohibited from encumbering under the foregoing sections of this Article 13.1. Provided however that the JVC may create a charge over its Revenue in favour of the escrow agent appointed under the terms of the Escrow Agreement, to be disbursed by such escrow agent as provided in the Escrow Agreement. AAI has the right to require the JVC to create a charge over its Revenue in favour of the escrow agent (to be held by such escrow agent for and on behalf of the Lenders and the AAI) appointed under the terms of the Escrow Agreement, to be disbursed by such escrow agent as provided in the Escrow Agreement.

- (vi) The JVC shall not create an Encumbrance or title defect over the Airport Site land, Transfer Assets and any of the underlying lands corresponding to the Transfer or Non-Transfer Assets. Provided however, the JVC shall have the right to create an Encumbrance over the Non-Transfer Assets (other than underlying land).

- (vii) Notwithstanding anything contained to the contrary in this Agreement, any (i) shareholder in the JVC (including for the avoidance of doubt any Prime Member) may create an Encumbrance over the shares of the JVC in favour of Lenders, as per the terms and conditions of the Financing Documents.. Provided however, upon invocation of the said Encumbrance the Lenders shall necessarily transfer the said shares in the JVC to such third party/ies as selected by the Lenders (and approved by AAI) using the following criteria:
 - (a) the third party shall be capable of ensuring discharge by JVC of its duties, obligations and liabilities under this Agreement;
 - (b) the third party shall provide security/ comfort to the satisfaction of Lenders for repayment by JVC of their dues;
 - (c) the third party shall have the capability and demonstrate its ability to ensure the payment and discharge of dues of the JVC to AAI under and in accordance with this Agreement;
 - (d) the third party shall have the experience and technical capability parameters as set forth in this Agreement or prescribed by AAI during the process of selection of the private participant to the JVC or at any time thereafter in respect of the JVC;
 - (e) the third party shall have not been in breach of any agreement between the third party and AAI; and
 - (f) any other appropriate circumstance, whereby continuity in the performance of the JVC's obligations under this Agreement is maintained and the security in favour of Lenders under the Financing Documents is preserved.

Provided further that that any transfer as above shall be subject to the relevant security and probity clearance requirements set forth by AAI during the competitive bidding procedure undertaken by AAI for the purposes of the selection of the private participants in the JVC.

The JVC shall procure that the foregoing conditions are provided for in the document creating the Encumbrance over its shares in favour of Lenders.

AAI shall apply the above criteria in the selection of the said third party/ies and the AAI shall be entitled to refuse or delay its approval of such third party/ies only in the event that it is not satisfied, acting reasonably, that the above foregoing criteria will be satisfied by the third party/ies.

CHAPTER XIV STEP IN RIGHTS OF AAI

14.1 Requisition of Airport in Emergency

- (a) In the event of an emergency (as communicated by GOI, in writing through AAI or otherwise, at its sole discretion), AAI, shall have the right, to temporarily assume control of the Airport in place of the JVC in the manner described in the State Support Agreement. During the period in which AAI assumes control of the Airport, AAI shall be deemed to be the JVC for the purpose of discharging the obligations of the JVC under this Agreement for the limited period during which the Airport is under the control of AAI. The duties and obligations of the JVC shall be suspended during such period and AAI shall operate and maintain the Airport in accordance with the provisions of this Agreement. Provided however, within seven (7) 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, AAI shall hand the Airport (as it stands on that date) back to the JVC to operate and manage the same in accordance with the terms and conditions set out herein.
- (b) Any charges in relation to provision of Aeronautical Services or Non-Aeronautical Services levied and collected by AAI during such period shall be held by AAI for and on behalf of the JVC and shall be given to the JVC subject to the subsequent sub-paragraph (c) of this Article 14.1.
- (c) The JVC shall reimburse and indemnify AAI (other than costs, expenses or liabilities arising as a result of gross negligence or wilful default of the AAI) for any and all costs and expenses incurred by AAI relating to operation and maintenance of the Airport, during the period of step-in, which costs and expenses may be set-off by AAI from the amounts payable by the AAI to JVC under paragraph (b) above.
- (d) In the event, the period of step-in, exceeds three months, the same shall be treated as an event of Force Majeure under Article 16.1 and dealt with accordingly.

14.2 Interruption of Operation

- (a) If following the Effective Date and otherwise than as a result of an event of Force Majeure or pursuant to Article 14.1 (a) , JVC ceases or substantially ceases the operation of the Airport for more than 12 hours, at the request of either Party, AAI will meet with JVC to discuss and agree a plan and the appointment of a joint operation and management committee (and the terms and conditions upon which such committee is to be appointed), to procure that operation of the Airport recommences as soon as practicable. If AAI and JVC are unable to meet or to agree a plan and appoint a joint operation and management committee within six (6) hours of the expiry of the period referred to above, AAI shall be entitled, at the

risk and cost of the JVC, to operate the Airport either itself or through a nominee. It is expressly agreed that the AAI will be entitled to collect all Aeronautical Charges (that are receivable by JVC on its own account) applicable during such time and set them off against operation costs and expenses incurred by AAI. It is further clarified that the JVC shall also indemnify AAI for all costs, expenses and liabilities incurred by AAI during the time the AAI or its nominee is operating the Airport (other than costs, expenses or liabilities arising as a result of gross negligence or wilful default of the AAI). If such Revenue as received by JVC is less than the operation costs and expenses of AAI and indemnification amounts (if any payable by JVC to AAI), then JVC shall forthwith pay such shortfall amount to the AAI.

- (b) Before the expiry of 48 hours from the time that AAI or its nominee assumed control of the Airport under this Article 14.2, JVC shall produce an action plan for rectifying the causes of the interruption that caused AAI or its nominee to take-over the Airport and upon the production of an action plan as acceptable to AAI, have the right to resume control and operation of the Airport, whereupon AAI, shall be obligated to hand back control and operation of the Airport to the JVC.
- (c) If any time, within six (6) months of any interruption leading to AAI or its nominee assuming control of the Airport, JVC once again ceases or substantially ceases the operation of the Airport for more than 12 hours, and AAI takes control of the Airport following the procedure mentioned in Article 14.2 hereof, then AAI will be entitled to collect and retain all Aeronautical Charges (that are receivable by JVC on its own account) applicable during such time and in addition be entitled to all costs, expenses and liabilities incurred by AAI during the time the AAI or its nominee is operating the Airport (other than costs, expenses or liabilities arising as a result of gross negligence or wilful default of the AAI). JVC shall in this regard indemnify AAI for all costs, expenses and liabilities incurred by AAI during the time the AAI or its nominee is operating the Airport (other than costs, expenses or liabilities arising as a result of gross negligence or wilful default of the AAI). The costs and expenses of AAI and indemnification amounts (if any, payable to AAI by JVC) shall be paid forthwith by JVC to AAI.

CHAPTER XV DISPUTES

15.1 Disputes

15.1.1 Amicable Settlement

The Parties shall use their respective reasonable endeavours to settle any Dispute amicably. If a Dispute is not resolved within sixty (60) days after written notice of a Dispute by one Party to the other Party then the provisions of Article 15.2 shall apply.

15.2 Arbitration

15.2.1 All Disputes arising under this Agreement, that remain unresolved pursuant to this Article 15, shall be referred to a tribunal comprising three (3) arbitrators under the (Indian) Arbitration and Conciliation Act, 1996. 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”).

15.2.2 The decision(s) of the Arbitral Tribunal, shall be final and binding on the Parties.

15.2.3 The venue of arbitration shall be New Delhi.

15.2.4 This Article 15.2 shall survive the termination or expiry of this Agreement.

15.2.5 The governing law of the arbitration shall be the substantive laws of India.

15.3 Continue performance

While any Dispute under this Agreement is pending, including the commencement and pendency of any Dispute referred to arbitration, the Parties shall continue to perform all of their respective obligations under this Agreement without prejudice to the final determination in accordance with the provisions under this Article 15.

CHAPTER XVI FORCE MAJEURE

16.1 Force Majeure

16.1.1 The JVC, or AAI, as the case may be, shall be entitled to suspend or excuse performance of its respective obligations under this Agreement to the extent that AAI or JVC, as the case may be, is unable to render such performance by an event of Force Majeure (a "**Force Majeure**").

16.1.2 In this Agreement, "Force Majeure" means any event or circumstance or a combination of events and circumstances, which satisfies all the following conditions:

- (a) materially and adversely affects the performance of an obligation;
- (b) are beyond the reasonable control of the affected Party;
- (c) such Party could not have prevented or reasonably overcome with the exercise of Good Industry Practice or reasonable skill and care;
- (d) do not result from the negligence or misconduct of such Party or the failure of such Party to perform its obligations hereunder; and
- (e) (or any consequence of which), have an effect described in Article 16.1.1.

16.1.3 "Force Majeure" includes the following events and / or circumstances to the extent that they, or their consequences satisfy the requirements set forth in Article 16.1.1 and Article 16.1.2:

- (i) war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy in each case involving or directly affecting India;
- (ii) revolution, riot, insurrection or other civil commotion, act of terrorism or sabotage in each case within India;
- (iii) nuclear explosion, radioactive or chemical contamination or ionizing radiation directly affecting the Airport, unless the source or cause of the explosion, contamination, radiation or hazardous thing is brought to or near the Airport by the JVC or any affiliate of the JVC or any contractor or sub-contractor of the JVC or any such affiliate or any of their respective employees, servants or agents;
- (iv) strikes, working to rule, go-slows and/or lockouts which are in each case widespread, nationwide or political;
- (v) any effect of the natural elements, including lightning, fire, earthquake, unprecedented rains, tidal wave, flood, storm, cyclone, typhoon or tornado, within India;
- (vi) explosion (other than a nuclear explosion or an explosion resulting from an act of war) within India;
- (vii) epidemic or plague within India;
- (viii) aircraft accident or breakdown;
- (ix) Any period of step-in by AAI, under Article 14.1(d) exceeding a period of three months; or
- (x) any event or circumstances of a nature analogous to any events set forth in paragraphs (i) to (viii) of this Article 16.1.3 above within India.

16.1.4 Notwithstanding anything contained herein, a strike by General Employees at the Airport shall be an event of Force Majeure.

16.1.5 Procedure for Force Majeure

- (a) If a Party claims relief on account of a Force Majeure event, then the Party claiming to be affected by the Force Majeure event shall, immediately on becoming aware of the Force Majeure event, give notice of and describe in detail: (i) the Force Majeure event(s) that has occurred;(ii) the obligation(s) affected as described in Article 16.1; (iii) the dates of commencement and estimated cessation of such event of Force Majeure and (iv) the manner in which the Force Majeure event(s) affect the Party's obligation(s) under this Agreement. No Party shall be able to suspend or excuse the non-performance of its obligations hereunder unless such Party has given the notice specified above.
- (b) The affected Party shall have the right to suspend the performance of the obligation(s)affected as described in Article 16.1 , upon delivery of the notice of the occurrence of a Force Majeure event in accordance with sub-clause (a) above.
- (c) The time for performance by the affected Party of any obligation or compliance by the affected Party with any time limit affected by Force Majeure, and for the exercise of any right affected thereby, shall be extended by the period during which such Force Majeure continues and by such additional period thereafter as is necessary to enable the affected Party to achieve the level of activity prevailing before the event of Force Majeure.
- (d) The Party receiving the claim for relief under Force Majeure shall, if it wishes to dispute the claim, give a written notice of dispute to the Party making the claim within 15 days of receiving the notice of claim. If the notice of claim is not contested within 15 days as stated above, all the Parties to this Agreement shall be deemed to have accepted the validity of the claim. If any Party disputes a claim, the Parties shall follow the procedures set forth in Article 15.

16.1.6 Mitigation

The Party claiming to be affected by an event of Force Majeure shall take all reasonable steps to prevent, reduce to a minimum and mitigate the effect of such event of Force Majeure.

16.1.7 Termination Due to Force Majeure

- (a) If Force Majeure event continues for more than 365 days either Party shall have the right to terminate this Agreement by giving a notice of termination in respect thereof.
- (b) In the event of any such termination, AAI shall-

- (i) acquire all of JVC's rights, title and interests in and to the Transfer Assets in the manner set out in Article 19, on payment within 6 months of Transfer Date of 100% of Debt in respect of the Transfer Assets as recorded in the books of the JVC, as determined in accordance with Article 19.6.
- (ii) have the right but not the obligation to acquire all of JVC's rights, title and interests in and to all or any of the Non-Transfer Assets in the manner set out in Article 19, on payment within 6 (six) months of Transfer Date of Discounted Fair Value (Lower of Book Value (as recorded in the books of the JVC) and the Net Present Value) of such Non-Transfer Assets, as determined in accordance with Article 19.6.

CHAPTER XVII DEFAULT

17.1 AAI's Events of Default

Each of the following events or circumstances, to the extent not caused by a default of the JVC or Force Majeure, shall be considered for the purposes of this Agreement as events of default of the AAI ("**AAI's Event of Default**") which, if not cured within the time period permitted, shall provide the JVC the right to terminate this Agreement in accordance with Article 17.3:

- (a) any breach of its obligations under this Agreement which has a Material Adverse Effect and such breach is not remedied within 60 days of receipt of written notice from the JVC specifying such breach and requiring the AAI to remedy the same; *provided* that if such breach cannot be cured within a period of 60 days after such notice with the exercise of reasonable diligence, then such 60-day period shall be extended for an additional period of 30 days so long as AAI is exercising reasonable diligence to cure such breach;
- (b) a breach of any representation or warranty by AAI which materially adversely affects the JVC's ability to perform its obligations under this Agreement and such breach, if capable of being remedied, is not remedied within 60 days of receipt of written notice from the JVC specifying such breach and requiring the AAI to remedy the same; and
- (c) AAI suspends the performance of its obligations for a period exceeding 30 consecutive days.

17.2 JVC Event of Default

Each of the following events or circumstances, to the extent not caused by a default of the AAI or Force Majeure shall be considered for the purposes of this Agreement as events of default of the JVC ("**JVC Event of Default**") which, if not cured within the time period permitted, shall provide the AAI the right to terminate this Agreement in accordance with Article 17.3:

- (a) any material breach by the JVC of its obligations under this Agreement and such breach is not remedied within 60 days of receipt of written notice from the AAI specifying such breach and requiring the JVC to remedy the same; *provided* that if such breach cannot be cured within a period of 60 days after such notice with the exercise of reasonable diligence, then such 60-day period shall be extended for an additional period of 30 days so long as JVC is exercising reasonable diligence to cure such breach;
- (b) a breach of any representation or warranty by the JVC which materially adversely affects the AAI's ability to perform its obligations under this Agreement and such breach, if capable of being remedied, is not remedied

within 30 days of receipt of written notice from the AAI specifying such breach and requiring the JVC to remedy the same;

- (c) suspension by the JVC of the performance of the obligations under this Agreement for a period exceeding 30 consecutive days (except during the subsistence of an event of Force Majeure);
- (d) Failure by the JVC to operate and maintain the Airport in accordance with the Applicable Laws, and such breach is not remedied within 30 days of receipt of written notice from the AAI specifying such breach and requiring the JVC to remedy the same;
- (e) Non-achievement or non-maintenance of any of ISO9001: 2000 certification in violation of Article 9.1.1 for a period of 6 months following the date that JVC first becomes liable to pay liquidated damages in respect thereof under the provisions of Article 9.1.1(c). Provided however, notwithstanding anything contained herein (including without limitation Article 17.3 hereof), after the issue of the Notice of Intention to Terminate (as defined hereinafter), if so issued, the JVC shall have a further period of 2 months to achieve the required certification, and if the same is achieved, within the said period of 2 months, and additional damages of 2.5 % of the monthly Revenue (prior to default) for each month of delay has also been paid for such 2 month period, then AAI shall withdraw the relevant Notice of Intention to Terminate and this JVC Event of Default shall be deemed to have been cured;
- (f) Continued breach of obligations under Objective Service Quality Requirements, for a period of 3 months following the date that JVC first becomes liable to pay liquidated damages in respect thereof under the provisions of Article 9.1.2. Provided however, notwithstanding anything contained herein (including without limitation Article 17.3 hereof), after the issue of the Notice of Intention to Terminate (as defined hereinafter), if so issued, the JVC shall have a further period of 2 months to achieve the relevant target, and if the same is achieved, within the said period of 2 months, and additional damages of 0.5 % of the monthly Revenue (prior to default) for each month of non-achievement of target has also been paid for such 2 month period, then AAI shall withdraw the relevant Notice of Intention to Terminate and this JVC Event of Default shall be deemed to have been cured;
- (g) Continued breach of obligations under Subjective Service Quality Requirements for a period of 6 months following the date that JVC first becomes liable to pay liquidated damages in respect thereof under the provisions of Article 9.1.3. Provided however, notwithstanding anything contained herein (including without limitation Article 17.3 hereof), after the issue of the Notice of Intention to Terminate (as defined hereinafter), if so issued, the JVC shall have a further period of 2 months to achieve the Target Rating, and if the same is reached within the said period of 2 months, and additional liquidated damages as provided in Article 9.1.3 have also been paid for such 2 month period, then AAI shall withdraw the

relevant Notice of Intention to Terminate and this JVC Event of Default shall be deemed to have been cured;

- (h) Continued breach of obligations under Development Standards and Requirements for a period of 6 months following the date that JVC first becomes liable to pay liquidated damages in respect thereof under the provisions of Article 9.1.4. Provided however, notwithstanding anything contained herein (including without limitation Article 17.3 hereof), after the issue of the Notice of Intention to Terminate (as defined hereinafter), if so issued, the JVC shall have a further period of 2 months to achieve the relevant development standard, and if the same is achieved, within the said period of 2 months, and additional damages of 2.5 % of the monthly Revenue (prior to default) also been paid for such 2 month period, then AAI shall withdraw the relevant Notice of Intention to Terminate and this JVC Event of Default shall be deemed to have been cured;
- (i) JVC, directly or indirectly, undertakes or performs either itself or through concession, sub-concession, agency, lease, license or otherwise, any activity other than activities provided for/ envisaged hereunder, and such breach is not remedied within 30 days of receipt of written notice from the AAI specifying such breach and requiring the JVC to remedy the same;
- (j) failure by the JVC to make reasonable best efforts to approach counterparties to existing contracts of the AAI relating to the Airport to get the same novated/ transferred to itself in the manner described in Article 5.2 hereof and such breach is not remedied within 15 days of receipt of written notice from the AAI specifying such breach and requiring the JVC to remedy the same;
- (k) material default by the JVC under any provisions of the Financing Documents, except to the extent that the Lenders are: (a) willing to excuse such default as certified by a written notice to the AAI; or (b) give the JVC an opportunity to cure it;
- (l) failure of JVC to maintain insurance(s) in respect of the Airport in accordance with Article 8.5.6, which failure is not remedied within a period of 60 days from the date of such failure;
- (m) failure by the JVC to make any payment due hereunder within 30 days of the due date in respect thereof;
- (n) any breach of the terms of Article 8.5.7 hereof, which breach is not remedied within a period of 60 days from the date of such breach;
- (o) More than two (2) interruptions in any given 24 month period leading to assumption of control of the Airport by the AAI in accordance with Article 14.2 hereof;

- (p) Non-adherence, violation, non-compliance, or breach of the Master Plan or any Major Development Plan, which breach is not remedied within a period of 60 days from the date of such breach;
- (q) Failure to engage experts listed in Schedule 15 hereof at the Airport, which failure is not remedied within a period of 60 days from the date of such failure;
- (r) Any transfer of shares or voting rights in any entity or change in Operator in violation of Article 2.5;
- (s) The JVC is ordered to be wound up by a court; the JVC files a petition for voluntary winding up; or levy of an execution or restraint on the JVC's assets; or appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of JVC by a court of competent jurisdiction;
- (t) The maximum liability for liquidated damages of 10% payable for delay in commencement or completion of any Mandatory Capital Project as set forth in Article 8.2 hereof is reached and the said default is unremedied. Provided however, notwithstanding anything contained herein (including without limitation Article 17.3 hereof), after the issue of the Notice of Intention to Terminate (as defined hereinafter), if so issued, the JVC shall have a further period of 2 months to commence or complete, as the case may be, the relevant Mandatory Capital Project, and if the same is commenced or completed, as the case may be, within the said period of 2 months, and additional damages of 0.5 % of the estimated capital cost of such Mandatory Capital Project for each week (or part thereof) of delay has also been paid for such 2 month period notwithstanding the maximum liability for liquidated damages, then AAI shall withdraw the relevant Notice of Intention to Terminate and this JVC Event of Default shall be deemed to have been cured;
- (u) The maximum liability for liquidated damages of Rupees 25 Crores payable for delay in submission of Master Plan as set forth in Article 8.3.6 hereof is reached and the said default is unremedied. Provided however, notwithstanding anything contained herein (including without limitation Article 17.3 hereof), after the issue of the Notice of Intention to Terminate (as defined hereinafter), if so issued, the JVC shall have a further period of 2 months to submit the Master Plan, and if the same is submitted, within the said period of 2 months, and additional damages of Rs. 25,00,000/- (Rupees Twenty Five Lakhs) for each day of delay has also been paid for such 2 month period notwithstanding the maximum liability for liquidated damages, then AAI shall withdraw the relevant Notice of Intention to Terminate and this JVC Event of Default shall be deemed to have been cured;
- (v) The maximum liability for liquidated damages of 10% payable for delay in commencement of or construction of any facility mentioned in the Master Plan as set forth in Article 8.3.8 hereof is reached and the said default is

unremedied. Provided however, notwithstanding anything contained herein (including without limitation Article 17.3 hereof), after the issue of the Notice of Intention to Terminate (as defined hereinafter), if so issued, the JVC shall have a further period of 2 months to commence or compete, as the case may be, the relevant capital project, and if the same is commenced or completed within the said period of 2 months, and additional damages of 0.5 % of the estimated capital cost of such capital project for each week (or part thereof) of delay has also been paid for such 2 month period notwithstanding the maximum liability for liquidated damages, then AAI shall withdraw the relevant Notice of Intention to Terminate and this JVC Event of Default shall be deemed to have been cured; and

- (w) Failure to replenish the Performance Bond to its full amount within three (3) months after encashment of the entire Performance Bond pursuant to Article 8.6 (d) hereof.

17.3 Consequences of Default

17.3.1 Termination Notice

- (a) In the event of a JVC Default Event occurring AAI shall have the right to submit a notice of its intention to terminate this Agreement (“**Notice of Intention to Terminate**”). Immediately upon the issue by AAI of the Notice of Intention to Terminate, the Lenders shall have the right to nominate an Entity to replace the JVC and perform the JVC's obligations hereunder (the "**Substitute Entity**"). The JVC shall procure that Lenders shall notify AAI about whether they are exercising their right of substitution within sixty (60) days of receipt of Notice of Intention to Terminate, or the Lenders’ Notice of Default (as defined in the Substitution Agreement). Any such Substitute Entity shall have the legal, financial and technical capability reasonably necessary to perform the obligations of the JVC in accordance with the terms of this Agreement.
- (b) Any such Substitute Entity shall be nominated in accordance with the procedure as set out in the Substitution Agreement.
- (c) In the event:
 - (i) Lenders have chosen not to exercise their right of substitution, or
 - (ii) a Substitute Entity has not been nominated by the Lenders within time period set forth in the Substitution Agreement; or
 - (iii) a nominated Substitute Entity/ alternate Substitute Entity has not been approved by AAI within the time period set forth in the Substitution Agreement; or
 - (iv) a selected Substitute Entity has not been able to remedy the breach of the JVC leading to the Notice of Intention to Terminate within time period set forth in the Substitution Agreement.

then AAI or any entity designated by it shall have the right, but shall not be required, to issue a notice to JVC terminating this Agreement. In the event of AAI exercising such right of termination, AAI shall

- (i) acquire all of JVC's rights, title and interests in and to the Transfer Assets in the manner set out in Article 19, on payment within 6 months of Transfer Date of 90% of Debt in respect of the Transfer Assets as recorded in the books of the JVC, as determined in accordance with Article 19.6.
- (ii) have the right but not the obligation to acquire all of JVC's rights, title and interests in and to all or any of the Non-Transfer Assets in the manner set out in Article 19, on payment within 6 months of Transfer Date of Discounted Fair Value (Lower of Book Value as recorded in the books of the JVC and the Net Present Value) of such Non-Transfer Assets, as determined in accordance with Article 19.6.

17.3.2 In the event of a AAI Default Event occurring, JVC shall have the right to notify AAI that such an event has occurred and (if it is capable of remedy) requiring the remedy of the same within a cure period of six (6) months. If, following the end of the period stated in such notice the event giving rise to the AAI Default Event has not been remedied, JVC shall have the right, but shall not be required, to submit a notice of its intention to terminate this Agreement, within 30 days of which, JVC shall have the right, but shall not be required, to issue a notice to AAI terminating this Agreement. In the event of JVC exercising such right of termination, AAI shall:

- (a) acquire all of JVC's rights, title and interests in and to the Transfer Assets in the manner set out in Article 19, on payment within 6 months of Transfer Date,
 - (i) 100% of the Debt relatable to Transfer Assets, as determined in accordance with Article 19.6; and,
 - (ii) 120% of the subscribed and paid-up value of the Equity share capital of the JVC relatable to the Transfer Assets, as determined in accordance with Article 19.6.
- (b) have the right but not the obligation to acquire all of JVC's rights, title and interests in and to all or any of the Non-Transfer Assets in the manner set out in Article 19, on payment within 6 months of Transfer Date of Fair Market Value of such Non-Transfer Assets, as determined in accordance with Article 19.6.

CHAPTER XVIII TERM, EXPIRY & TRANSFER

18.1 Term and Expiry

- (a) Unless terminated earlier in accordance with Article 17.3 or Article 16.1.5, or by mutual agreement between the Parties in writing, this Agreement shall continue in full force and effect from commencement of the Effective Date (except for Chapters 1, 3, 7, 15, 17 and Articles 4.3, 5.2(b)(i), 5.4, 8.3.5, 8.4.2, 8.5.9, 11.1.1, 13.1(b), 20.3.7 which will be binding on the Parties as from the date of execution hereof) until the 30th anniversary of the Effective Date.
- (b) Prior to the expiry of 30 years from Effective Date, JVC shall have the right to extend the Term hereof by a written notice for an additional term of 30 years on the same terms and conditions as contained herein subject to the following:
 - (i) No JVC Event of Default, has occurred during the preceding five (5) years of the 25th year from the Effective Date; and
 - (ii) such right of extension being exercised prior to the 25th anniversary from the Effective Date, but not earlier than six (6) months from the 25th anniversary from the Effective Date.

Provided however, if JVC Event of Default or any other default by JVC triggering levy of liquidated damages occurs at any time from time of exercise by JVC of right of extension until 30th anniversary of the Effective Date then JVC right of extension of an additional term of 30 years shall lapse unless otherwise agreed by AAI.

- (c) In the event this Agreement is not extended by an additional period of 30 years in the manner provided hereinabove, then the Agreement shall expire on the 30th anniversary of the Effective Date and AAI or its nominee shall acquire all of JVC's rights, title and interests in and to the Transfer Assets in the manner set forth in Article 19 on payment within 6 (six) months of Transfer Date to JVC of:
 - (i) 120% of the subscribed and paid-up value of the Equity share capital of the JVC relating to the Transfer Assets, as determined in accordance with Article 19.6; and
 - (ii) 100% of the Debt relating to Transfer Assets, as determined in accordance with Article 19.6.

In addition, AAI shall have the right but not the obligation to acquire all of JVC's rights, title and interests in and to all or any of the Non-Transfer Assets in the manner set out in Article 19, on payment within 6(six)

months of Transfer Date the Net Present Value of such Non-Transfer Assets, as determined in accordance with Article 19.6.

- (d) In the event this Agreement is extended by an additional period of 30 years in the manner provided hereinabove, and this Agreement is not terminated prior thereto, then the Agreement shall expire on the 60th anniversary of the Effective Date and AAI or its nominee shall acquire all of JVC's rights, title and interests in and to the Transfer Assets in the manner set forth in Article 19 on payment within 6 (six) months of Transfer Date to JVC of 100% of the Debt relating to Transfer Assets as determined in accordance with Article 19.6.

In addition, AAI shall have the right but not the obligation to acquire all of JVC's rights, title and interests in and to all or any of the Non-Transfer Assets in the manner set out in Article 19, on payment within 6 (six) months of Transfer Date the Net Present Value of such Non-Transfer Assets, as determined in accordance with Article 19.6.

- (e) The total duration of the validity of this Agreement from the Effective Date for an initial period of 30 years, and if extended by an additional period of 30 years, then such 60 years, unless terminated earlier in accordance with the terms hereof, shall be the Term hereof.

CHAPTER XIX TRANSFER PROVISIONS

19.1 Transfer of Transfer Assets

19.1.1 Upon termination of this Agreement and consequent obligation of AAI to acquire the Transfer Assets under Articles 17.3 and 16.1.5 hereof, or expiry of the Term, the JVC shall ensure that on the Transfer Date the interest of JVC in:

- (i) all movable property, stocks, materials, vehicles and spares relating to Transfer Assets shall be transferred to AAI or its nominee, clear of any Encumbrances and with good title;
- (ii) all immovable property, assets, structures, buildings, edifices, court- areas, ways, walls, compounds relating to Transfer Assets shall be transferred to AAI or its nominee, clear of any Encumbrances and with good title (other than any encroachments existing on the date hereof, except to the extent such encroachments have been removed after Effective Date);
- (iii) the rights and obligations under or pursuant to all contracts relating to Transfer Assets and other arrangements entered into in accordance with the provisions of this Agreement between JVC and any third party shall (in consideration of AAI's assumption of the obligations under or pursuant to the contracts and other arrangements) be vested in AAI or its nominee, clear of any Encumbrance and with good title; and
- (iv) the rights and obligations under or pursuant to all other contracts and arrangements, assets, property and rights relating to Transfer Assets shall (in consideration of AAI's assumption of the obligations under or pursuant to the contracts, arrangements, assets, property and rights) be vested in AAI or its nominee, clear of any Encumbrance and with good title .
- (v) Notwithstanding anything contained in Article 19.1.1 (ii) and (iii), prior to any transfer of the Airport, AAI shall have the right to conduct a due diligence of the contracts and agreements, the rights and obligations of which it is assuming and shall not be bound to assume the rights and obligations of contracts that, in the sole opinion of AAI are unreasonably onerous, and would be considered onerous at the time that the contracts were entered into. In relation to all such contracts that are not transferred to AAI, no third Entity, including the counter-party of such contract shall have any right, license title, interest, benefit, claim or demand against or over any Transfer Asset and such Transfer Asset shall be transferred to AAI or its nominee, clear of any Encumbrance and with good title.

19.1.2 Furthermore, notwithstanding anything contained in this Article 19.1, no liability (accrued or contingent) of JVC or relating to the Airport arising on account of actions or inactions prior to the Transfer Date shall be assumed or transferred to AAI or its nominees. AAI or its nominees shall only be liable for liabilities in relation to the Airport arising pursuant to the Transfer Date. In the event of any such liability being assumed or transferred to AAI or its nominee or any

Encumbrance existing on any of the Transfer Assets, the quantum of such liability and/or amount corresponding to such Encumbrance, shall be reduced from the amount payable by AAI to JVC in respect of the transfer of Transfer Assets.

19.1.3 Without prejudice to the foregoing, JVC agrees to indemnify and keep indemnified the AAI from and against all actions, proceedings, losses, damages, liabilities, claims, costs and expenses whatsoever which may be sustained or suffered by the AAI as a result of any actions or omissions of the JVC prior to the transfer of the Transfer Assets. It is expressly understood by the Parties that this Article shall survive the termination or expiry of this Agreement.

19.2 Transfer of Non-Transfer Assets

19.2.1 On exercise of the right (at its sole discretion) of AAI to acquire any or all the Non-Transfer Assets under Articles 17.3 and 16.1.5 hereof or expiry of the Term, the JVC shall ensure that on or before the Transfer Date the interest of JVC in:

- (i) all movable property, stocks, materials, vehicles and spares relating to such Non-Transfer Assets as are selected by AAI shall be transferred to AAI or its nominee, clear of any Encumbrances and with good title ;
- (ii) all immovable property, assets, structures, buildings, edifices, court- areas, ways, walls, compounds relating to such Non-Transfer Assets as are selected by AAI shall be transferred to AAI or its nominee, clear of any Encumbrances and with good title (other than any encroachments existing on the date hereof except to the extent such encroachments have been removed after Effective Date);
- (iii) the rights and obligations under or pursuant to all contracts relating to such Non-Transfer Assets as are selected by AAI and other arrangements entered into in accordance with the provisions of this Agreement between JVC and any third party shall (in consideration of AAI's assumption of the obligations under or pursuant to the contracts and other arrangements) be vested in AAI or its nominee, clear of any Encumbrance and with good title ; and
- (iv) the rights and obligations under or pursuant to all other contracts and arrangements, assets, property and rights relating to such Non-Transfer Assets as are selected by AAI shall (in consideration of AAI's assumption of the obligations under or pursuant to the contracts, arrangements, assets, property and rights) be vested in AAI or its nominee, clear of any Encumbrance and with good title .
- (v) Notwithstanding anything contained in Article 19.2.1 (ii) and (iii), prior to any transfer of the Airport, AAI shall have the right to conduct a due diligence of the contracts and agreements, the rights and obligations of which it is assuming and shall not be bound to assume the rights and obligations of contracts that, in the sole opinion of AAI are unreasonably onerous, and would be considered onerous at the time that the contracts were entered into. In relation to all such contracts that are not transferred to AAI, no third Entity, including the counter-party of such contract shall

have any right, license title, interest, benefit, claim or demand against or over any Non-Transfer Asset.

- 19.2.2 Furthermore, notwithstanding anything contained in this Article, no liability (accrued or contingent) of JVC or relating to the Airport arising on account of actions or inactions prior to the Transfer Date shall be assumed or transferred to AAI or its nominees. AAI or its nominees shall only be liable for liabilities in relation to the Airport arising pursuant to the Transfer Date. In the event of any such liability being assumed or transferred to AAI or its nominee or any Encumbrance existing on any Non-Transfer Assets, the quantum of such liability and/or amount corresponding to such Encumbrance, shall be reduced from the amount payable by AAI to JVC in respect of the transfer of any Non-Transfer Assets.
- 19.2.3 Without prejudice to the foregoing, JVC agrees to indemnify and keep indemnified the AAI from and against all actions, proceedings, losses, damages, liabilities, claims, costs and expenses whatsoever which may be sustained or suffered by the AAI as a result of any actions or omissions of the JVC prior to the transfer of any Non-Transfer Assets. It is expressly understood by the Parties that this Article shall survive the termination or expiry of this Agreement.
- 19.2.4 It is expressly clarified that in the event the AAI elects not to purchase from the JVC any and/or all Non-Transfer Assets, then the Parties shall enter into a lease deed ("**Lease Agreement**") in relation to such Non-Transfer Assets and the underlying land together with all assets, buildings, fixtures, all or any singular rights, liberties, privileges, easements and appurtenances whatsoever to the such Non-Transfer Assets on such commercial terms and conditions as may be mutually agreeable. *Provided however*, the terms and conditions of the Lease Agreement shall not be inferior to terms and conditions for leases entered into for comparable immovable property. Any stamp duty, registration charges or other fees, taxes or charges of any kind whatsoever pertaining to the Lease Agreement and execution thereof shall be borne by the JVC. *Provided further*, in the event the Parties do not, for whatsoever reason, agree on the terms and conditions of such Lease Agreement within six (6) months of the expiry or early termination of this Agreement, the JVC shall have the right to remove the relevant Non-Transfer Assets and hereby undertakes to vacate the underlying land upon which the relevant Non-Transfer Assets are built and such Non-Transfer Assets (as not removed) shall thereafter accrue to the underlying land with all rights thereto or benefits therefrom accruing to the AAI.

19.3

- 19.3.1 JVC shall in accordance with Good Industry Practice ensure that all property, assets, rights and other items (constituting Transfer Assets and such Non-Transfer Assets as are selected by AAI, as the case may be) which are vested in or transferred to AAI shall be in good working order and in a good state of repair and that the Airport is transferred to AAI as a going concern in good operating order. For this purpose, the Parties shall appoint an Independent Engineer to conduct an

audit of the assets being transferred. In the event any of assets which are vested in or transferred to AAI are not fit for purpose/ in a good state of repair/ as would be expected of an international world class airport having the proposed Target Rating as set forth in this Agreement, as certified by such Independent Engineer, then the cost or capital expenditure required to be incurred to bring it to good state of repair of all such assets shall be payable by the JVC to the AAI, and the same may be deducted from any transfer payment payable by AAI to JVC.

- 19.3.2 In order to procure the foregoing, in addition to complying with the provisions of Article 8.5.7 hereof, JVC shall procure that in the event any third Entity has any proprietary interest in any Transfer Asset and/ or Non-Transfer Asset (the “**Owner Entity**”), the arrangements/ agreements entered into by the JVC or another third Entity with such Owner Entity explicitly recognise the right of AAI to acquire the said Transfer Asset and/or Non-Transfer Asset as the case may be, in accordance with the terms hereof, and contain an undertaking from such Owner Entity to transfer the relevant Transfer Asset and/or Non-Transfer Asset as the case may be, to AAI in accordance with the terms hereof.

Notwithstanding the foregoing, in the event AAI acquires any working capital assets pursuant to the terms hereof, and the value thereof is not included in the transfer payment of the relevant asset relating to such working capital asset being acquired, then AAI shall pay for such working capital asset on the basis of valuation by the independent valuer appointed in accordance with Article 19.6.

19.4 Pre-termination obligations

Expiry or termination of this Agreement shall be without prejudice to all rights and obligations then having accrued to AAI and/or JVC (or which may thereafter accrue in respect of any act or omission prior to such expiry or termination) and without prejudice to those provisions which expressly provide for continuing obligations or which are required to give effect to such expiry or termination or the consequences of such expiry or termination.

19.5 Other rights of termination

The Parties’ rights to terminate this Agreement shall be limited to those expressly set out in this Agreement.

19.6 Payment of Transfer Amounts

- (a) Following any exercise of the right of AAI to acquire the Transfer Assets and/ or the Non-Transfer Assets, as the case may be, for any reason whatsoever, in the manner provided herein, commencing from Transfer Date, AAI shall procure an audit of the books of JVC by an independent valuer, mutually selected by the Parties from a panel of five chartered accountancy firms proposed by the President of the Institute of Chartered Accountants of India, to determine, the Debt, the subscribed and paid-up Equity capital of the JVC, Net Present Value, the Discounted Fair Value, as the case may be, of the relevant assets that are being transferred. The Fair Market Value of the Non-Transfer Assets will be determined by two

valuers, one each to be appointed by the AAI and JVC, out of an agreed panel of valuers selected as per criteria laid down in Schedule 30 of this Agreement. The methodology of the valuation shall be determination of market value of the entire asset less the value of land prevailing as on the Transfer Date and the net amount so arrived at shall be deemed to be the Fair Market Value of the Non Transfer Asset. Provided however, damages and/or default compensation (if any) payable by the JVC shall not be considered for capitalization in the JVC's books while computing the transfer amounts.

- (b) While determining the Fair Market Value, Net Present Value, as the case may be, of the relevant assets being transferred, as the case may be, the independent valuer(s) shall ensure that appropriate deductions are made to provide for any residual value attributed to the Existing Assets. It is clarified that any upgradation and /or modernization made to any Existing Asset by the JVC will not, to the extent of such upgradation and / or modernization as reflected in the books of the JVC, be deducted under this Article 19.6.
- (c) Following such audit, and the determination of the relevant transfer payment by the independent valuer(s), the AAI shall make the relevant transfer payment ("**Transfer Payments**") to the JVC. The Transfer Payments shall be made as soon as possible after the audit, but at any rate, within 6 (six) months from the Transfer Date.

19.7 Transfer costs and taxes, if applicable, for the transfer of the Airport consequent to termination of this Agreement shall be borne by:

- (a) the JVC in the event of termination due to a JVC Event of Default or Force Majeure; and
- (b) the AAI in the event of termination due to an AAI Event of Default or following expiry hereof.

19.8 It is clarified that any payment for transfer of Transfer Assets and/or Non-Transfer Assets to be made by AAI under this Agreement, shall be reduced by and adjusted for, (i) any amounts due and payable by the JVC to the AAI; (ii) any insurance monies received by JVC or due and payable to JVC in respect of claims (for the relevant Transfer Assets/ Non-Transfer Assets being transferred) made and received or receivable since the occurrence of the AAI Event of Default/ JVC's Event of Default/ event of Force Majeure which led to termination of this Agreement, as the case may be; and (iii) any sums of money that would have been received as insurance proceeds in respect of claims that could have been made since the occurrence of the AAI Event of Default/ JVC's Event of Default/ event of Force Majeure which led to termination of this Agreement, as the case may be (for the relevant Transfer Assets/ Non-Transfer Assets being transferred) had the JVC obtained the insurances required under Article 8.5.6 hereof. Provided however that subject to the Escrow Agreement, any receivables under political risk insurance, if taken, shall be first applied for settling the dues of the Lenders.

CHAPTER XX GENERAL

20.1 Indemnification

- 20.1.1 The JVC hereby agrees and undertakes that from the Effective Date and during the Term and thereafter, it shall indemnify and keep indemnified and otherwise save harmless, AAI, its agents and employees, from and against all claims, demands made against and / or loss caused and / or damages suffered and / or cost, charges / expenses incurred or put to and / or penalty levied and / or any claim due to injury to or death of any person and / or loss or damage caused or suffered to property owned or belonging to AAI, its agents and employees or third party as a result of any acts, deeds or thing done or omitted to be done by JVC or as a result of failure on the part of JVC to perform any of its obligations under this Agreement or on the JVC committing breach of any of the terms and conditions of this Agreement or on the failure of the JVC to perform any of its statutory duty and / or obligations or failure or negligence on the part of JVC to comply with any statutory provisions or as a consequence of any notice, show cause notice, action, suit or proceedings, given, initiated, filed or commenced by any third party or Government Authority or as a result of any failure or negligence or default of JVC or its contractor(s) and / or sub-contractors and / or invitees as the case may be, in connection with or arising out of this Agreement and / or arising out of or in connection with JVC's use and occupation of Airport Site and / or Airport and/or the provision of Airport Services.
- 20.1.2 It is expressly understood by the Parties that this Article shall survive the termination or expiry hereof.
- 20.1.3 AAI hereby agrees and undertakes that during the Term it shall indemnify and keep indemnified and otherwise save harmless, JVC its agents and employees, from and against all claims, demands made against and / or loss caused and / or damages suffered and / or cost, charges / expenses incurred or put to and / or penalty levied and / or any claim due to any actions or omission of AAI in relation to the Legacy Matters prior to Effective Date, including pre transfer environment conditions as identified in the Environment Audit and Report including liabilities that may be identified subsequently. Provided however that the AAI shall not be liable for any claim which is less than Rs 10 million and their aggregate liability for all valid claims agreed or determined (excluding related interest and enforcement costs) shall equal or exceed Rs 100 million in which case the AAI shall be liable for the entire amount.
- 20.1.4 It is hereby expressly agreed that AAI shall not be liable to indemnify JVC, its agents or employees, in respect of any claims, demands made against and / or loss caused and / or damages suffered and / or cost, charges / expenses incurred or put to and / or penalty levied and / or any claim due to any actions or omission of AAI other than gross negligence and wilful default by AAI, its employees, agents and sub-contractors in relation to the Airport after the Effective Date.

20.2 Procedure in Case of Third Party Claims

- 20.2.1 In the event of any demand or claim by any third Entity against a Party hereof, which claim or demand would be payable by a Party at first instance (the “Payee”), but would sought to be claimed from the other Party hereof (the “Indemnifier”) pursuant to Article 20.1 above, then the Payee shall without undue delay from becoming aware of the matter notify the Indemnifier of such matter in writing, describing the potential claim in reasonable detail and, to the extent possible, state the estimated amount of such claim.
- 20.2.2 Furthermore, the Payee shall make available to the Indemnifier a copy of the third party claim or demand and give the Indemnifier the opportunity to defend the Payee against such claim, employing their own counsel at their sole costs, expense and risk. The Indemnifier, at its own cost, shall have the right to defend the claim by all appropriate proceedings and shall have the sole right to direct and control such defence. In particular, without limitation, the Indemnifier may (i) participate in and direct all negotiations and correspondence with the third party, (ii) appoint and instruct counsel acting, if necessary, in the name of the Payee (with all costs and expenses to be borne by the Indemnifier), and (iii) require that the claim be litigated or settled in accordance with the Indemnifier's instructions. The Indemnifier shall conduct such proceedings in good faith and take into account the interest of the Payee. As long as the Indemnifier is defending a claim, the Payee shall provide or cause to be provided to the Indemnifier or its representatives any information reasonably requested by it and/or them relating to such claim, and Payee shall otherwise cooperate with the Indemnifier and its representatives in good faith in order to contest effectively such claim. The Indemnifier shall inform the Payee in writing without undue delay of all developments and events relating to such claim, and the Payee shall be entitled, at its expense, to employ its own counsel and to attend all conferences, meetings and proceedings relating to such claim.
- 20.2.3 If the Indemnifier does not assume control of a defence of a specific claim, the Payee may assume full control of such defence and such proceedings. If requested by the Payee, the Indemnifier shall cooperate in good faith with the Payee in order to contest effectively such claim. The Indemnifier shall be entitled, at its expense, to employ its own counsel and to attend all conferences, meetings and proceedings relating to such claim.
- 20.2.4 In no event shall the Payee be entitled to acknowledge or settle a claim or permit any such acknowledgement or settlement without the Indemnifier's prior written consent, insofar as an indemnification is sought in respect of such claim from the Indemnifier.

20.3 Miscellaneous

20.3.1 Amendments

No amendment or waiver of any provision of this Agreement, nor consent to any departure by any of the Parties therefrom, shall in any event be effective unless the same shall be in writing and signed by the Parties hereto and then such waiver

or consent shall be effective only in the specific instance and for the specific purpose for which it is given.

20.3.2 Agreement to Override Other Agreements; Conflicts

- (a) This Agreement supersedes all previous agreements or arrangements between the Parties, including any memoranda of understanding entered into in respect of the contents hereof and represents the entire understanding between the Parties in relation thereto.
- (b) In the event of a conflict between the terms of this Agreement and those of any other Project Agreement, the terms of this Agreement shall prevail.

20.3.3 No Waiver; Remedies

No failure on the part of any Party to exercise, and no delay in exercising, any right, power or privilege hereunder shall operate as a waiver thereof or a consent thereto; nor shall any single or partial exercise of any such right, power or privilege preclude any other of further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are cumulative and not exclusive of any remedies provided by applicable law.

20.3.4 Severance of Terms

If any provisions of this Agreement are declared to be invalid, unenforceable or illegal by any competent arbitral tribunal or court, such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of this Agreement which shall continue in full force and effect and in such event, the Parties shall endeavour in good faith to forthwith agree upon a legally enforceable substitute provision as will most closely correspond to the legal and economic contents of the unenforceable provision.

20.3.5 Language

All notices, certificates, correspondence or other communications under or in connection with this Agreement, any other Project Agreement or the Project shall be in English

20.3.6 Notices

Any notice to be given hereunder shall be in writing and shall either be delivered personally or sent by registered post, telex, facsimile transmission, electronic mail or other means of telecommunication in permanent written form. The addresses and numbers for service of notice shall be given to the parties at their respective addresses set forth below:

In case of JVC:

Mumbai International Airport Pvt. Ltd.,
CSI Airport, Mumbai.

Attention: Mr. G.V. Sanjay Reddy
Fax No: +91-40-2790 2665

In case of AAI:

Airports Authority of India,
Rajiv Gandhi Bhawan,
New Delhi 110 003.

Attention: Chairman
Fax No: +91-11-24641088

or such other address, telex number, or facsimile number as may be notified by that Party to any other Party from time to time, and shall be deemed to have been made or delivered (i) in the case of any communication made by letter, when delivered by hand, by recognized international courier or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number. In case any Party changes its address, communication numbers, or directed attention as set forth above, it shall notify the other Parties in writing prior to the adoption thereof.

20.3.7 Governing Law

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

20.3.8 Original Document

This Agreement is made in two (2) original copies, each having the same contents and the Parties have read and thoroughly understand the contents hereof and have hereby affixed their respective signatures and seals before witnesses.

20.3.9 Confidentiality

Neither the JVC nor the AAI shall, unless otherwise agreed (which agreement may be on such general or specific terms as the parties may determine), disclose to any third party (other than its directors, officers, employees, consultants, lenders, agents, or the selectee under the Substitution Agreement, to the extent required or incidental to the performance of its obligations under the Project Agreements) any information which is the property of the other party to this Agreement or which otherwise relates to its business, secrets, dealings, transactions or affairs unless, and to the extent that, such disclosure:

- (a) is reasonably required for the exercise or performance by either Party of its rights or obligations under this Agreement; or
- (b) is required pursuant to any relevant statutory or regulatory requirements or duties or any relevant terms of the Applicable Laws or in the public interest; or

- (c) relates to information which is already in the public domain, other than as a result of breach of this Article by the party seeking to make such disclosure;

provided that, in the case of any disclosure in accordance herewith, the Party disclosing such information shall, so far as reasonably practicable, impose on the third party receiving such information such obligations as may be appropriate to maintain its confidentiality.

Notwithstanding the foregoing, copies of this Agreement may be made available by the JVC to any third Entity in exchange of reasonable copying and related out-of-pocket expenses.

20.3.10 Assignment

- (i) By JVC

Save and except otherwise permitted by this Agreement, the JVC shall not assign, transfer, mortgage, charge, sub-let, deal with, sub-contract, sub-license or otherwise grant rights in or over all or any of the rights, or all or any of its obligations or liabilities under this Agreement.

- (ii) By AAI

Without thereby implying any restriction on the AAI otherwise assigning, transferring, dealing with or granting rights in or over all or any of its rights or obligations under this Agreement, it is expressly recognized that, without requiring the consent of the JVC:

- (i) the AAI may assign the benefit of or create any other encumbrance upon all or any of its rights hereunder; and
- (ii) the AAI may assign and transfer all or any of its rights and obligations under this Agreement subject to the AAI guaranteeing to procure full and complete observance and performance of all such obligations by the assignee (such guarantee to be in a form reasonably acceptable to the JVC).

20.3.11 Waiver of Immunity

AAI hereby agrees that the execution, delivery and performance by it of this Agreement constitute private and commercial acts rather than public or governmental acts and accordingly, no immunity from proceedings brought against it or its assets in relation to this Agreement shall be claimed on the ground that the execution, delivery and performance by it of this Agreement constitute public or governmental acts.

20.3.12 Change in Law

- (a) It is expressly clarified that any event or occurrence after the last date of submission of a binding offer 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. 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. Parties expressly acknowledge that 'change in law' relief, *if any*, is contained and dealt with under the terms of the State Support Agreement and no relief on account thereof is available under this Agreement.
- (b) Notwithstanding the foregoing, Parties hereby expressly confirm that this document is entered into on the basis and assumption that the Airport and the JVC are not qualified to avail the benefits available under Section 10(23)(g) and Section 80 IA of the Indian Income Tax Act, 1961 (each of the benefits under Section 10(23)(g) and Section 80(IA) of the Indian Income Tax Act, 1961 are individually referred to as "Benefit" and collectively as the "Benefits"), and that the Benefits are not available to them. Accordingly, in the event at any time one or both of the Benefits do become available, or are found to have been available, and as a result of which, the JVC incurs an increase in net after tax return or other financial gain or benefit, the JVC shall notify AAI and pay to AAI an amount that would put the JVC in the same financial position it would have, had the Benefits not been available as aforesaid.

20.3.13 Time is of the Essence

Time shall be of the essence of 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.

20.3.14 Parties hereby acknowledge that the liquidated damages stipulated herein represent a genuine pre-estimate of the damages that would be suffered by the AAI as a result of the breach of the JVC to which the said liquidated damages relate.

20.3.15 In consideration of the grant of the rights hereunder to JVC, AAI shall have the right to nominate one (1) Director on the Board of the JVC at all times, who shall not be liable to retire by rotation.

20.3.16 Name

JVC shall throughout the Term retain (consistent with Applicable Laws) Chattrapati Shivaji International Airport as the name of the Airport. The name of the Airport shall be modified and / or changed, as instructed by AAI only.

The JVC may, with the consent of the AAI, which consent shall not be unreasonably withheld, display its name and sign at an appropriate place at the Airport.

20.3.17 Total Liability

Notwithstanding anything contained herein the total liability of the AAI under this Agreement (including environmental liability or liability resulting from future litigations arising from Legacy Matters)) shall not exceed Rs. 50 Crores (Rupees Fifty Crores) (the “**Total Liability Cap**”). Provided however, the Total Liability Cap shall not include: (i) payment for transfer of Transfer Assets and/or Non-Transfer Assets; (ii) liability in relation to any litigation relating to Legacy Matters already commenced prior to Effective Date; and / or (iii) any contractual liability (present or future) of the AAI in relation to the Legacy Matters.

20.3.18 Survival

Articles 1, 15, 19, 20.3 (except sub-clauses 20.3.9, 20.3.12, 20.3.16, 20.3.19) shall continue to bind the Parties notwithstanding the termination or expiry of this Agreement.

20.3.19 AAI hereby agrees that prior to issuing any “No-Objection Certificate”, for any construction in the vicinity of the Airport, it shall consult with the JVC regarding whether the JVC has any objection to such construction. AAI hereby agrees not to issue any “No-Objection Certificate” for any construction in the vicinity of the Airport, which has been objected to by the JVC. Provided however that the JVC shall not have the right to object to any construction that does not impact the ability of the JVC to carry on its operations or its ability to comply with its Master Plan and ultimate vision of the Airport and complies with the relevant ICAO Standards.

20.3.20 The liquidated damages payable by JVC to AAI under this Agreement shall be paid on demand without demur.

20.3.21 Parties recognise that under the terms of the State Support Agreement, the GOI has agreed to furnish a guarantee to the JVC guaranteeing certain Transfer Payments according and subject to the terms thereof. The form of the said guarantee requires the JVC to furnish to the GOI, along with demands thereunder, a certificate from the JVC and signed by the AAI stating that the claimed amount remains unpaid from AAI, is correctly computed and is undisputed. AAI hereby undertakes not to unreasonably withhold counter-signing such certificate.

IN WITNESS WHEREOF this Agreement has been executed by the duly authorized representatives of the Parties hereto on the day and year first above written.

For and on behalf of Airports Authority of India: Signed by _____	Witnessed by:
For and on behalf of Mumbai International Airport Private Limited: Signed by _____	Witnessed by:

SCHEDULE 1 DEVELOPMENT STANDARDS AND REQUIREMENTS

The design of all airport facilities is to comply with all appropriate technical requirements, including the following:

DEVELOPMENT PLANNING PRINCIPLES

General:

- Move to common user terminals
- Use of swing gates to economise on number of gates
- Incorporate reservation for rail link
- Maximum aeronautical capacity for the airport area
- All facilities capable of 24 hour operations
- All plans incorporate mandatory capital projects

Airfield:

- Runways and taxiways must be designed to ICAO Code F standards
- Ability to close the cross runway to accommodate terminal development
- Assess a close spaced parallel runway, south of Runway 0927
- Aprons must be based on the type of service and projected long-term critical aircraft size

Terminals:

- Common user terminals
- Minimise office accommodation within terminals
- Separate international and domestic terminal processes with linkage and island concourse
- Provide international standard range of retail and other passenger services
- Facilities to be designed to IATA level of service standard C for the 30th busy hour in the design year. The design year shall be subject to detailed analysis in the Master Plan and for the purposes of the first Master Plan shall be as provided for in the Mandatory Capital Projects
- Terminal design must be capable of incremental expansion with minimum impact on current operations
- Terminal planning criteria to be in accordance with recommendations contained in the IATA Airport Development Reference Manual – 9th Edition, January 2004 and as amended from time to time

Surface Access:

- Existing access roads to international and domestic terminals to be retained and expanded for growth in traffic
- A separate access road is to be provided to each of the passenger terminals and the cargo / aviation support areas
- Protect for a future public transit link

DEVELOPMENT STANDARDS

1. DGCA Guidelines for issue of an Aerodrome Licence:

Director General of Civil Aviation (DGCA) Aeronautical Information Circular No. 22/1992 provides standards that must be complied with in order that an aerodrome shall receive an aerodrome licence.

2. Layout of Aerodrome and Provisions of essential facilitation prescribed under ICAO Annex 14 – Aerodromes:

Volume 1 Aerodrome Design and Operations – Fourth Edition, 2004

International Civil Aviation Organisation (ICAO) – International Standards and Recommended Practices, Aerodromes, Annex 14 to the Convention on International Civil Aviation. Volume 1 Aerodrome Design and Operations – Fourth Edition, 2004.

3. ICAO Aerodrome Design Manual (Doc 9157)

4. Airport Services Manual (Doc 9137)

5. Fire Safety

Conform to US National Fire Protection Association (NFPA) standard on Airport Terminal Buildings, Fuelling Ramp drainage and loading Walkways.

6. IATA Airport Development Reference Manual: Design of Airport Facilities

Conform with best practice as set out in International Air Transport Association (IATA) Airport Development Reference Manual, 9th Edition, January 2004

7. National Building Code (India)

Confirm to the National Building Code (NBC), which sets out safety and durability aspects to be incorporated into building structure.

8. Indian Standard Codes

Confirm to the relevant code for the specific aspect of development. The Indian Standard Codes are a comprehensive range of Standards and practices as per Bureau of Indian Standards, to be adopted in all aspects of design and construction in India.

9. Statutory Agency Requirements

Meet all requirements of the statutory agencies, including Directorate General of Civil Aviation (DGCA), Bureau of Civil Aviation Security, Ministry of Defense, Customs and Immigration authorities, Ministry of Environment & Forests, Pollution Control Board.

10. Applicable Laws:

Adhere to all conditions, regulations, measures and all requirements of whatever kind imposed by local bye-laws and other applicable Central, State and Local Government laws.

11. 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 Asian region (as ranked on AETRA or analogous rating) of a similar scale and size.

SCHEDULE 2

OPERATIONS AND MAINTENANCE STANDARDS AND REQUIREMENTS

The operation and maintenance of the Airport will at all times be in compliance with the following:

- (i) Ensure that the runway, taxiway, apron and approach are operated and are maintained in accordance with the relevant provisions contained in the relevant ICAO Annexes and Documents as appropriate for aircraft operation at the Airport and are available for aircraft operation;
- (ii) Ensure that the strips, shoulders, stop way and Runway End Safety Area (“RESA”) for runway and strips and shoulders for taxiways and isolation bays etc. are operated and maintained in accordance with the relevant provisions contained in the relevant ICAO Annexes and Documents as appropriate for aircraft operation;
- (iii) 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 relevant provisions contained in the relevant ICAO Annexes and Documents;
- (iv) Ensure that the appropriate category of rescue and fire fighting services shall be made available and maintained in accordance with the relevant provisions contained in the relevant ICAO Annexes and Documents;
- (v) Ensure that appropriate arrangements are in place at the Airport to prevent bird/animal nuisance in and around the operational area;
- (vi) Ensure that suitable contingency arrangements are in place at the Airport to deal with the following events:
 - removal of disabled aircraft from the runway;
 - bomb threat to aircraft or the Airport;
 - aircraft accidents in and around the vicinity of the Airport;
 - non-scheduled aircraft forced to land at the Airport;
 - fires at the Airport;
 - natural calamities and disasters;
 - strikes at the Airport;
 - unlawful interference with civil aviation.
- (vii) 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;
- (viii) Provide AAI with such access to the Airport for its personnel, vehicles and agents as AAI reasonably requires for the performance of the AAI Services;

- (ix) Provide AAI with a continuous supply of electrical power and water sufficient to enable it to perform the AAI Services and AAI shall reimburse JVC the costs it incurs in procuring such services;
- (x) 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 JVC of its additional requirements and the Parties shall meet to discuss and seek to reach agreement regarding the additional standby supply required by AAI;
- (xi) Provides AAI and/or its personnel with such information as they reasonably require for the performance of the AAI Services;
- (xii) Make the office accommodation and the facility available at all times to AAI personnel and agents of AAI deployed at the Airport in the provision of the AAI Services wherever and whenever required, at terms and conditions applicable to GOI agencies;
- (xiii) 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;
- (xiv) 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 JVC equipment/facility to AAI in the provision of AAI Services as soon as they become aware of such failure or defect;
- (xv) The JVC shall at all times maintain and upgrade the JVC equipment in the provision of AAI Services in accordance with ICAO Annexes and Documents.

SCHEDULE 3
OBJECTIVE SERVICE QUALITY REQUIREMENTS

Performance Area	Performance Measure	Target	Target to be achieved within number of years from the Effective Date of the OMDA
Transfer Process	Minimum connect times	Domestic/International: 60 minutes International/ International: 45 minutes	3 years
Terminal Services	Handling of complaints	100% of complaints responded to within 2 working days	1 year
	Response to phone calls	5% of calls answered within 20 seconds	1 year
	Availability of Flight Information	98% available	1.5 years
	Automated services	98% available	1.5 years
	Lifts, escalators etc.	98% available	2 years
	Repair completion time	95% of high priority complaints within 4 hours, 95% of others within 24 hours	1 year
	Baggage trolleys	100% availability	1 year
	Cleanliness	Achieve a satisfactory cleanliness rating for 95% of all inspections	1 year
	Availability of wheel chairs	100% of time within 5 minutes	0.5 year
	Assistance for the disabled	100% of time within 5 minutes	1 year
Check in	Maximum queuing time	5 minutes for business class 20 minutes for economy	2 years
Security check	Waiting time in queue	95% of passengers wait less than 10 minutes	2 years
CIQ	Checking time in queue	95% of passengers wait less than 20 minutes 95% of passengers wait less than 10 minutes	2 years 5 years
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.	5 years 3 years

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Passenger arrival process (International)	Time taken from aircraft arrival to kerbside	95% of passengers take less than 45 minutes	5 years
Passenger boarding bridges	% passengers served by boarding bridges	International - 90 % of annual passengers Domestic - 90 % of annual passengers travelling on A/C B737/A320 or larger unless not required by Airlines.	5 years
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.	5 years
Car parking	Average time taken to find parking space	95% of drivers take less than 5 minutes	5 years
	Average time to depart airport from parking space	95% of drivers take less than 5 minutes	5 years
Taxis	Maximum waiting time	95% of passengers wait less than 5 minutes	1 year
		95% of passengers wait less than 3 minutes	5 years
Gate Lounges	Seating availability	Seats for 80% of gate lounge population	5 years
Cargo Services	Average dwell time	For imports, maximum processing time of 24 hours	2 years
		For exports, maximum processing time of 24 hours	2 years

SCHEDULE 4
SUBJECTIVE SERVICE QUALITY REQUIREMENTS

The items set out below are assessed as being under the reasonable control or influence of the JVC and will be used to compute the rating achieved as set out in Section 9.1.3:

<p>1. Navigational Items</p> <ul style="list-style-type: none">- Ease of finding way through the airport / Sign posting- Flight Information Screens- Walking distances <p>2. Connectivity Items</p> <ul style="list-style-type: none">- Ease of making connections with other flights- Ground transportation to / from airports. <p>3. Service Facilities</p> <ul style="list-style-type: none">- Availability of baggage carts- Restaurant / eating facilities- Shopping facilities- Business facilities- Washrooms- Parking facilities <p>4. Value for money</p> <ul style="list-style-type: none">- Restaurant / eating facilities- Shopping facilities- Parking facilities	<p>5. Service Delivery</p> <ul style="list-style-type: none">- Courtesy, helpfulness of airport staff- Comfortable waiting / gate areas- Speed of baggage delivery service <p>6. Environmental factors</p> <ul style="list-style-type: none">- Cleanliness of terminal- Ambience of the airport <p>7. Airline factors</p> <ul style="list-style-type: none">- Waiting time at check-in- Efficiency of check-in- Courtesy, helpfulness of check-in staff- Business / Executive lounges <p>The rating of the Airport as per IATA/ ACI AETRA Passenger survey for the purposes of the Subjective Service Quality Requirements shall be a number between one (1) to five (5) arrived at on the basis of the abovementioned 7 (seven) parameters.</p>
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SCHEDULE 5 AERONAUTICAL SERVICES

“Aeronautical Services” means the provision of the following facilities and services:

1. provision of flight operation assistance and crew support systems;
2. ensuring the safe and secure operation of the Airport, excluding national security interest;
3. the movement and parking of aircraft and control facilities;
4. general maintenance and upkeep of the Airport;
5. the maintenance facilities and the control of them and hangarage of aircraft;
6. flight information display screens;
7. rescue and fire fighting services;
8. management and administration of personnel employed at the Airport;
9. the movement of staff and passengers and their inter-change between all modes of transport at the Airport;
10. operation and maintenance of passenger boarding and disembarking systems, including vehicles to perform remote boarding; and
11. any other services deemed to be necessary for the safe and efficient operation of the Airport.

A more detailed list of the above facilities and services would include the following:

12. Aerodrome control services
13. Airfield
14. Airfield lighting
15. Air Taxi Services
16. Airside and landside access roads and forecourts including writing, traffic signals, signage and monitoring
17. Common hydrant infrastructure for aircraft fuelling services by authorised providers
18. Apron and aircraft parking area
19. Apron control and allocation of aircraft stands
20. Arrivals concourses and meeting areas
21. Baggage systems including outbound and reclaim
22. Bird scaring
23. Check-in concourses
24. Cleaning, heating, lighting and air conditioning public areas
25. Customs and immigration halls
26. Emergency services
27. Facilities for the disabled and other special needs people
28. Fire service
29. Flight information and public-address systems
30. Foul and surface water drainage
31. Guidance systems and marshalling
32. Information desks
33. Inter-terminal transit systems
34. Lifts, escalators and passenger conveyors
35. Loading bridges
36. Lost property

37. Passenger and hand baggage search
38. Piers and gate rooms
39. Policing and general security
40. Prayer Rooms
41. Infrastructure/ Facilities for Post Offices
42. Infrastructure/ Facilities for Public telephones
43. Infrastructure/ Facilities for Banks
44. Infrastructure/ Facilities for Bureaux de Change
45. Runways
46. Signage
47. Staff search
48. Taxiways
49. Toilets and nursing mothers rooms
50. Waste and refuse treatment and disposal
51. X-Ray service for carry on and checked-in luggage
52. VIP / special lounges

SCHEDULE 6 NON-AERONAUTICAL SERVICES

“**Non-Aeronautical Services**” shall mean the following facilities and services (including Part I and Part II):

Part I

1. Aircraft cleaning services
2. Airline Lounges
3. Cargo handling
4. Cargo terminals
5. General aviation services (other than those used for commercial air transport services ferrying passengers or cargo or a combination of both)
6. Ground handling services
7. Hangars
8. Heavy maintenance services for aircrafts
9. Observation terrace

Part II

10. Banks / ATM*
11. Bureaux de Change*
12. Business Centre*
13. Conference Centre*
14. Duty free sales
15. Flight catering services
16. Freight consolidators/forwarders or agents
17. General retail shops*
18. Hotels and Motels
19. Hotel reservation services
20. Line maintenance services
21. Locker rental
22. Logistic Centers*
23. Messenger services
24. Porter service
25. Restaurants, bars and other refreshment facilities
26. Special Assistance Services
27. Tourist information services
28. Travel agency
29. Vehicle fuelling services
30. Vehicle rental
31. Vehicle parking
32. Vending machines
33. Warehouses*
34. Welcoming services
35. Other activities related to passenger services at the Airport, if the same is a Non-Aeronautical Asset.

* These activities/ services can only be undertaken/ provided, if the same are located within the terminal complex/cargo complex and are primarily meant for catering the needs of passengers, air traffic services and air transport services.

SCHEDULE 7
MANDATORY CAPITAL PROJECTS

Mumbai Airport

Mandatory Capital Projects to be completed within 2 years and by year 31/03/2010

S. No	Name of Project	Date of commencement	Completion Period//Date
1.	New high speed exit taxiways From Runway 09/27.	Not later than 15 months from the date of signing of OMDA.	24 months
2.	Intl. Cargo Terminal.	-do-	-do-
3.	Int'l car park expansion.	-do-	24 months
4.	New International terminal access road (develop existing road system).	-do-	-do-
5.	Realign domestic terminal access road.	-do-	24 months
6.	Realign Taxiway B1 to Code F offset dimension from Runway 09/27.	-do-	-do-
7.	Modify international stand-off positions.	Not later than 15 months from the date of signing of OMDA.	24 months
8.	Domestic apron expansion.	-do-	-do-
9.	International terminal expansion	-do-	31 st March 2010
10.	New domestic terminal.	-do-	-do-
11.	International Apron expansion.	-do-	-do-
12.	New domestic terminal car park.	-do-	-do-

Works in Progress/Planned to be completed by JVC			
13.	International remote parking bays (4 nos). Estimated cost Rs.17.11 Crores	June 2004	January 2006
14.	International remote parking bays (3 nos.). Estimated cost Rs.17.05 Crores	June 2005	September 2006
15.	Link taxiway to new hangar area. Estimated cost Rs.9.46 Crores	June 2004	February 2006

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16.	Part Parallel Taxiway to Rwy 14/32. Estimated cost Rs.17.26 Crores	August 2004	March 2006
17	Extension and Modification of terminal 1 B. Estimated cost Rs.85.66 Crores	December 2004	Sept'2005
18.	Resurfacing of Secondary Runway.	Date to be indicated by the bidders	Within 24 months from the date of signing of OMDA..
19	Modification to existing Bridge.	-do-	-do-
20	Crash Fire Tenders.	-do-	-do-
21.	Extend taxiway B3 to Runway 27 end	-do-	-do-
22	Rapid exit taxiways.	-do-	-do-
23	Provision of in-line X-ray baggage scanning system.	-do-	-do-
24	Additional remote domestic parking bays to provide for peak stand demand prior to completion of major terminal development.	-do-	-do-
25	Modification and extension of terminal 2-B including widening of flyover of terminal-II and modification of car park, provision of walkways, escalators etc.	-do-	-do-
26	Upgrade general aesthetics of all terminals.	-do-	-do-
27	Upgrade signage within all terminals.	-do-	-do-
28	Upgrade flight information and PA system.	-do-	-do-
29	Improve passenger amenities and services within all terminals.	-do-	-do-
30	Upgrade retail offering within all terminals.	-do-	-do-
31	Public information displays in all terminals.	-do-	-do-
32	T1 (A/B) and T2 (A/B/C) traffic improvement scheme.	-do-	-do-

SCHEDULE 8
AIRPORT OPERATOR AGREEMENT (OPERATION AND MANAGEMENT)
PRINCIPLES

Form of Airport Operator Agreement (AOA)

The Joint Venture Company is required to enter into an AOA with the Airport Operator (AO), who is a member of the consortium (nominated if more than one AO are in the consortium) which contractually sets out the role, responsibilities, accountabilities and financial arrangements between the AO and the JVC.

It is not the intention of AAI to unduly constrain or dictate the form of the agreement to be entered into between the two parties. However, AAI has certain concerns that it wishes to ensure and addressed in the AOA entered into between the two parties. These are set out in a series of broad principles alongwith details (as mentioned below) which it requires the AOA to adhere to.

A BROAD PRINCIPLES OF AOA

The AOA must necessarily include, inter-alia, the following scope of services for the AO:

1. Operation and maintenance of aeronautical and non-aeronautical assets
2. Operation and management of terminals including passenger facilities
3. Maintenance and operation of airport utilities
4. Compliance with safety requirements

Keeping in view the above broad principles, the AOA will ensure that the AO undertakes the operation, maintenance and management of the airport to meet the requisite performance standards so as to ensure performance by the JVC of its obligations (in particular, satisfying the Objective Service Quality Requirements and Subjective Service Quality Requirements as described under the OMDA). In other words, the level and quality of performance standards for the services should be at least as high as the level and quality of performance standards that the JVC is obligated to maintain under the OMDA. In doing so, the AO will also recommend appropriate policy formulation for the overall management, operation and development of the airport. Besides this, the AO will also ensure transfer of know how to JVC through training programmes and such other appropriate measures.

B OTHER PRINCIPLES

Term of AOA

The term of the AOA must be for a minimum term of seven (7) years from the Effective Date of OMDA with any change of AO subject to the approval of the AAI.

Scope of Services provided

The AOA must clearly and completely set out the services to be provided by the AO to the JVC. At the least, the services to be provided by the AO must necessarily cover the following:

1. Commitment of experienced and skilled group of senior staff (including number & disciplines) for the preparation of Master Plan
2. Review the Master Plan and, where appropriate suggest alternatives, or the re-timing of projects, that will satisfy growth in air travel demand, and respond to stakeholder interests and concerns. Support JVC in revisions and updates to the Master Plan in response to changes in the airports' environment and satisfy the requirements of all regulatory agencies.
3. Commitment of experienced and skilled group of senior staff (including number & disciplines) with experience in multiple runway configuration and airside development, experience in major terminal development involving combined international and domestic terminal complexes and experience in airport planning of similar sized airports with similar traffic mix.
4. Commitment of experienced and skilled group of senior staff for Operational and Management of the airport in various critical airport related functions including without limitation the following :
 - Aeronautical operations
 - Terminal operations
 - Cargo operations
 - Terminal retail
 - Car parking
 - Slot management
 - Environmental management
 - Stakeholder relations
 - Traffic and route development
5. Implementation of interim measures to provide temporary additional capacity and improve level of service both in terminals and airfields
6. Implementing immediate improvement strategy with initiatives in respect of both management and capital expenditure nature, which can be

undertaken to speedily deliver demonstrable improvements in performance particularly in service quality to airlines, passengers and cargo operators

7. Implementation of solutions to maximize capacity for airfield and terminal on a constrained site
8. Implementation of solutions to prolong life of airport assets
9. Implementation of development plan with no significant impact on day-to-day airfield operations
10. Implementation of Transition Plan to the extent it relates to operation and management of the airport
11. Implementation of Stakeholder Management Strategy which would include identifying the key stakeholders, their relevant issues and management of those issues
12. Implementation of Environment Management Plan
13. Implementation of business plan to improve passenger and cargo flows and service quality and subsequently link to implementation of major airport developments
14. Assistance in implementation of HR Plan with special emphasis on task of integrating AAI employees into the JVC in the first three years. In this regard, the AO will assist in evolving a proper senior management structure for the JVC with appropriate job descriptions for such personnel. The AO will also assist in recruitment of such senior managers as required and will identify and implement appropriate training policies/programmes.
15. Institute a system for the continuous review of each major aspect of airports' operation. The AO will examine the results of such reviews, recommend changes and report the same to JVC.
16. The major aspects of the aforesaid review and update will include :
 - Conforming of operating manual in accordance with the requirements of DGCA and also to ensure that the airport is operated in accordance with the standards specified under the OMDA.
 - Airport maintenance manual.
 - Safety manual, implementation of programmes updates (crash, fire & rescue services, emergency communication systems etc.)
 - Operational performance including customer service standards and where appropriate the AO should recommend initiatives and

programmes to JVC to improve passenger processing and efficiency of airside operation.

17. Assist the JVC as may be necessary in the negotiation of agreements between JVC and airport tenants, maintenance contractors and other service providers.
18. Assist in effective design development, contract document preparation and tendering of facilities and infrastructure projects.
19. Provide operational management support for important development programmes such that airport operations continue to function properly and efficiently during facility and infrastructure development work

Reporting Requirements

The AO and the JVC will establish suitable reporting arrangements by which the AO can, on a regular basis, report on its performance against agreed performance measures and on its discharge of its responsibilities. In this context, the AO will present a summary report of assessment, monitoring and services provided to the JVC for each year of operation. This report shall be available at the 31st of March at the latest following each year of operation. In addition to its regular reporting the AO will report on an exceptions basis immediately any relevant, material matter arises which are of significance to the airport.

Agreement on Provision of Additional Consultancy Services

Each year the JVC and the AO must agree on the additional consultancy services (over and above what is stated under para 2 above) that will be provided by the AO. This agreement will set out the nature of the services, the personnel who will work on the task, the estimated cost involved, the required outputs and the targeted outcomes. At suitable times during the year and at the end of the year there will be a review of performance against the agreement.

Financial remuneration

The fundamental principle is that the main financial return to the AO may be derived from its equity participation. However, it is recognized that in undertaking its functions in an efficient and effective manner that some part of its remuneration will come from the AOA.

The financial returns to the AO through the AOA should occur on two basis and be subject to the approach set out below:

- Return for the provision of services

Any service provided should be on a fee for service basis and not on a fixed fee. Further any additional services as stated in para 4 provided by AO should be the subject of the annual agreement between the JVC and the AO, which

sets out such services and fees. These services should be remunerated on the basis of agreed rate.

- **Performance based fee**

A second, performance based fee can be provided for, which must be linked to measurable performance and outcomes achieved. The fee may be expressed as a percentage of any one parameter such as profit, EBIT, EBITDA or revenue, provided however that in such event the AO must comply with the requirement to have generated demonstrable value add.

There must also be a clear linkage between the performance based fee and the outcomes achieved for service quality.

Default and Termination Provisions

The AOA should set out what constitutes events of default under the Agreement and what is the basis for termination of the agreement. In the event that there is or is likely to occur, in the reasonable opinion and assessment of the JVC an event of default or a termination event, this must be fully communicated without delay to AAI. Default should lead to suitable financial penalties.

Intellectual Property

The AO makes fully available all intellectual property that it may have relevant to the operation, management and development of airports without any charge.

Any intellectual property developed at the airport will become the property of the JVC who will provide the AO with a non exclusive license to use that intellectual property.

Assignment

Assignment of the role of AO can only occur with the express approval of the JVC, such approval not to be given without the concurrence of the AAI.

Performance Guarantee

The AOA should contain an express provision requiring the AO to submit an unconditional and irrevocable performance bank guarantee from a scheduled commercial bank enforceable and encashable at New Delhi of Rs. 3000,000,000 (Rupees Three Hundred Crore) in favour of the JVC (but encashable by AAI) valid for the duration of the AOA.

SCHEDULE 9
FORM OF SUBSTITUTION AGREEMENT

Substitution Agreement

between

AIRPORTS AUTHORITY OF INDIA

and

[JV COMPANY]

and

LENDERS AGENT

SUBSTITUTION AGREEMENT

THIS SUBSTITUTION AGREEMENT (this “**Agreement**”) is made at Mumbai on this the _____ day of _____ 2006.

BY AND BETWEEN

1. The **Airports Authority of India** acting through its Chairman (hereinafter referred to as the “**AAI**”, which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns) of the FIRST PART; and
2. [_____], a company incorporated under the Companies Act, 1956 having its registered office at [_____] (hereinafter referred to as the “**JVC**”, which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) of the SECOND PART.

AND

3. [_____] having its registered office at _____ in its capacity as Lenders Agent acting for and on behalf of the Lenders listed in Schedule 1 hereto and such Lenders’ successors and assigns in terms of the Financing Documents (hereinafter referred to as the “**Lenders Agent**”, which expression shall, unless repugnant to the context or meaning thereof, include the trustee or the trustees for the time being) of the THIRD PART.

(AAI, the JVC and the Lenders Agent are hereinafter collectively referred to as the “**Parties**” and individually are hereinafter referred to as “**Party**”).

WHEREAS

- (A) The AAI and the JVC have entered into an Operation, Management and Development Agreement dated [_____] (the “**OMDA**”) pursuant to which the JVC is obligated to operate, maintain, develop, design, construct, upgrade, modernise, finance and manage the Airport on the terms and subject to the conditions set forth therein.
- (B) With a view to help facilitate obtaining of financing for development of Transfer Assets at the Airport by the JVC so as to enable the JVC to operate, maintain, develop, design, construct, upgrade, modernise, finance and manage the Transfer Assets at the Airport pursuant to and in accordance with the OMDA, the Parties have agreed that on certain defaults by the JVC, the Lenders shall have the right to substitute the JVC by a Selectee on the terms, and subject to the conditions and covenants mentioned herein below.

NOW THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement the Parties agree as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

For the purpose of this Agreement, the following terms shall have the meaning hereinafter respectively assigned to them:

“Financing Documents” means the documents executed by the JVC for raising Debt, from time to time.

“Financing Event of Default” means occurrence of any of the following events:

- (i) A default in payment by the JVC to all or any of the Lenders under the Financing Documents of any six installments (in case the installments are payable monthly) and two installment (in case the installments are payable quarterly), either of principal or interest or both, or any other amounts, due and payable by it in accordance with the Financing Documents.
- (ii) Any event of default under or breach of any of the terms of any of the Financing Documents which in the sole opinion of the Lenders Agent is material or major and which may seriously affect the ability of the JVC to meet its payment obligations to the Lenders under the Financing Documents.

“JVC Event of Default” shall have the meaning assigned thereto in the OMDA.

“Lenders” shall mean the lenders listed in Schedule 1 hereto and such Lenders’ successors and assigns in terms of the Financing Documents.

“Lenders Certificate” shall have the meaning ascribed thereto in Article 2.2(b).

“Lenders Dues” means the aggregate of all monies owed by the JVC to the Lenders under the Financing Documents and all accrued interest, additional interest, liquidated damages, commitment fees, commission, prepayment premium, costs, charges and other monies.

“Lenders Notice of Default” shall have the meaning ascribed thereto in Article 2.2(a).

“New Entity” means an entity proposed by the Lenders in a Proposal.

“Notice of Intention to Terminate” shall have the meaning assigned thereto in the OMDA.

“Proposal” shall have the meaning ascribed thereto in Article 3.1(iii).

“Selectee” means, subject to Article 3.3, a New Entity proposed by the Lenders pursuant to this Agreement and approved by AAI in accordance with this Agreement for substituting the JVC under the OMDA.

“**Substitution**” is the process of replacement of a Selectee in place of the JVC by undertaking the following activities:

- (i) grant to the Selectee the right to operate, maintain, develop, design, construct, upgrade, modernise, finance and manage the Airport under and in accordance with on the terms and conditions set forth in the OMDA for the remainder of the Term, by the novation of the OMDA in favour of the Selectee;
- (ii) grant to the Selectee a leasehold interest over the Airport Site together with all assets, buildings, fixtures, runways, all or any singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Airport Site for the remainder of the Term by the novation of the Lease Deed in favour of the Selectee;
- (iii) novation of the CNS-ATM Agreement, the State Government Support Agreement, the State Support Agreement, contracts and any other agreements needing to be novated for the purpose of operating the Airport in favour of the Selectee; and
- (iv) the execution of a new Substitution Agreement with the Selectee for the residual period of Term on the same terms and conditions as hereof;
- (v) transfer by the JVC of all assets owned by the JVC to the Selectee;
- (vi) grant by the AAI to the Selectee of all approvals, clearances and permissions within the AAI’s power and necessary for operating the Airport in accordance with the OMDA, provided duly completed application in accordance with Applicable Law is submitted to the AAI.

“**Substitution Notice**” means the notice given by the Lenders Agent pursuant to Article 2.2 (d) of this Agreement.

1.2 The words and expressions beginning with or in capital letters used in this Agreement not defined herein and defined in the OMDA, shall have, unless repugnant to the context, the meaning respectively assigned to them in the OMDA.

1.3 **Interpretation**

In this Agreement, unless the context otherwise requires, the interpretation rules as mentioned in Article 1.2 of the OMDA shall apply.

ARTICLE 2 SUBSTITUTION OF THE JVC BY A SELECTEE

2.1 In accordance with the terms hereof and upon the occurrence of the events specified herein, AAI hereby irrevocably agrees to substitute the JVC by a Selectee (selected by the Lenders and approved by AAI in accordance with the

provisions of this Agreement) by way of Substitution for the purpose of securing the payment of the Lenders Dues.

- 2.2 (a) The Lenders Agent may notify by a notice in writing to the JVC, with a copy thereof simultaneously to AAI, about the occurrence of a Financing Event of Default and requiring the JVC to remedy and cure such default within 30 (thirty) days from the date of delivery of such notice (the “**Lenders’ Notice of Default**”). The Lenders’ Notice of Default shall be accompanied by the Lenders Certificate (as defined hereinafter). Provided however that in the event the Lenders Agent elects to issue a Lenders Notice of Default, than a copy thereof shall be given to AAI.
- (b) The “**Lenders Certificate**” is a certificate under the hands of an authorised officer of the Lenders Agent certifying —
- (i) the occurrence of an Financing Event of Default; and
 - (ii) the value of Lenders Dues.

The Lenders Certificate shall be conclusive evidence of the occurrence of such Financing Event of Default in so far as the AAI is concerned. Such Lenders Certificate shall be final, conclusive and binding upon the AAI for the purposes of occurrence of Financing Event of Default only, but not in relation to the Lenders Dues or quantum of Debt.

- (c) In the event of a JVC Event of Default leading to issuance of Notice of Intention to Terminate by AAI under the OMDA, the AAI shall immediately upon issue of such notice give a copy of the same to the Lenders’ Agent.
- (d) The Lenders shall be entitled to nominate a third party for the purposes of Substitution:
- (i) If after sixty (60) days from the date of delivery of the Lenders’ Notice of Default, the Financing Event of Default has not been cured, or remedied or revoked in accordance with the Financing Documents; or
 - (ii) Immediately upon issue of Notice of Intention to Terminate by the AAI to the JVC.

The Lenders shall notify to AAI about whether they are exercising their right of substitution within sixty (60) days of receipt of Notice of Intention to Terminate, or issuance of the Lenders’ Notice of Default, as the case may be.

In such event, the Lenders Agent may, without prejudice to any other right or remedy available to the Lenders under the Financing Document, notify AAI and the JVC on behalf of all the Lenders about the Lenders decision to invite, negotiate and procure offers, either through private negotiations or public auction or process of tendering from third parties for the purposes of Substitution, subject to the prior written approval of such third

party by AAI, which approval the AAI may refuse or delay only on the grounds set out in Article 2.3 below (the “**Substitution Notice**”).

2.3 The Lenders Agent and AAI shall apply the following criteria in the selection of a third party for the purposes of Substitution and the AAI shall be entitled to refuse or delay its approval only in the event that it is not satisfied, acting reasonably, that the following criteria will be satisfied by the third party following Substitution:

- (i) the third party shall be capable of discharging the duties, obligations and liabilities of the JVC under the OMDA and shall have appropriate financial and legal capability;
- (ii) the third party shall provide security/ comfort to the satisfaction of Lenders for repayment of the Lenders Dues;
- (iii) the third party shall have the capability and shall unconditionally consent to assume the liability for the payment and discharge of dues of the JVC to AAI under and in accordance with the OMDA;
- (iv) the third party shall have the experience and technical capability parameters as set forth in the OMDA or prescribed by AAI during the process of selection of the JVC or at any time thereafter in respect of the JVC;
- (v) the third party shall have not been in material breach of any agreement between the third party and AAI;
- (vi) the third party satisfies the relevant security and probity clearance requirements set forth by AAI during the competitive bidding procedure undertaken by AAI for the purposes of the selection of the private participants in the JVC, or other analogous applicable requirements under Applicable Law, if any; and
- (vii) any other appropriate circumstance, whereby continuity in the performance of the JVC’s obligations under the OMDA is maintained and the security in favour of Lenders under the Financing Documents is preserved.
- (viii) considering its political sensitivities, the GOI approves the third party.

ARTICLE 3 MODALITIES FOR SUBSTITUTION

3.1 The following modalities shall be applicable to any replacement of the JVC by the Selectee pursuant to this Agreement:

- (i) The Lenders Agent may invite, negotiate or procure offers either through private negotiations or public auction or process of tender or otherwise for the purposes of Substitution;

- (ii) The Lenders Agent shall on behalf of the Lenders propose to AAI pursuant to sub-clause (iii) below, the name of a New Entity for acceptance and shall apply as necessary to AAI for undertaking Substitution.
- (iii) The Lenders Agent on behalf of the Lenders shall be entitled, within a period of one hundred and eighty (180) days from the date of delivery to AAI of the Substitution Notice pursuant to Article 2.2 (d) above, to select and propose to AAI for its approval a New Entity (the “**Proposal**”). The Proposal of the Lenders Agent pursuant to this sub-clause (iii) shall contain the particulars and information in respect of the New Entity, the Lenders Dues and other data and information, all as prescribed in Schedule 2 hereto. Without prejudice to the foregoing, the Lenders Agent agrees and undertakes to provide to AAI such further and other information and such clarifications in respect of any data, particulars or information furnished by the Lenders Agent (the “**Additional Information**”) as AAI may reasonably require provided that such request(s) is/ are made by AAI within 30 days of receipt of the Proposal/ Additional Information. AAI shall convey its approval or otherwise of such Proposal, within 30 (thirty) days of the later of (a) the date of receipt of the Proposal by AAI, or (b) the date when last of the Additional Information is received by AAI. Provided however that if within 30 (thirty) days of receipt of the Proposal, or the Additional Information as the case may be the AAI has not responded thereto, with its approval/ disapproval or with a request for further information, then the Proposal and the New Entity shall be deemed to have been approved. AAI shall be under an obligation to give reasons for rejection of any Proposal. Provided however that the AAI may only withhold its approval of the Proposal on grounds that the New Entity does not meet any of the criteria specified in Article 2.3 (i) – (vii). It is expressly agreed that the Proposal shall be accompanied by an unconditional undertaking of the New Entity that it shall upon approval by AAI of the Proposal execute necessary documentation to effectuate the Substitution and shall be liable for and shall assume, discharge and pay the Lenders Dues in such manner as may be acceptable to the Lenders. Upon approval of the Proposal the New Entity proposed shall become the Selectee hereunder.

Provided however that in the event the AAI does not approve of the Proposal, then *subject to Articles 3.3 and 3.4 below*, the Lenders Agent shall, within 30 (thirty) days of receipt of AAI’s disapproval, use its reasonable endeavours to present another Proposal in respect of another New Entity and the procedure maintained in this Article 3.1(iii) shall be repeated until the expiry of the 120 days period in Article 3.3 below.

- (iv) AAI shall, upon its satisfaction of the eligibility of the Selectee, on request by the Lenders Agent and in accordance with the provisions of this Agreement and subject to the provisions of sub-clause (v) below proceed to undertake the Substitution.

- (v) The Substitution shall be subject to the Selectee obtaining requisite Indian Government approvals, clearances and permission necessary for operating the Airport under and in accordance with the OMDA and grant to the AAI of shareholding in the Selectee in accordance with Article 3.8 hereof.
 - (vi) The decision of the Lenders and AAI in the selection of the Selectee shall be final and binding on the JVC and shall be deemed to have been made with the concurrence of the JVC but without prejudice to the JVC's rights under the Project Agreements and under Applicable Law. The JVC hereby expressly waives all rights to object to or challenge such selection of the Selectee on any ground whatsoever.
 - (vii) All actions of the Lenders Agent hereunder shall be deemed to be on and behalf of, expressly authorized by, the Lenders, and be binding upon them. The Lenders Agent hereby confirms that he is authorised to receive payment of compensation, payment to cure default and any other payments, consideration for transfer in accordance with the Substitution Notice and the Financing Documents and give valid discharge on behalf of all Lenders.
- 3.2 The JVC hereby irrevocably agrees and waives any right to challenge the Lender's decision to apply to AAI for Substitution as aforesaid and neither the JVC nor AAI shall be entitled to prevent the Lenders Agent from proceeding to seek such a Substitution of the JVC by Selectee as hereinbefore provided.
- 3.3 Notwithstanding anything contained in Article 3.1 above, where no suitable New Entity as acceptable to AAI can be found by the Lenders Agent within a period of one hundred and twenty (120) days from receipt of the first Proposal under Article 3.1, then AAI shall have the right to propose a nominee for the purposes of Substitution.
- 3.4 (i) If AAI proposes to substitute the JVC by any other person ("**AAI Nominee**"), it shall take into account the criteria specified in Article 2.3 and the Lender's Dues while considering offers from such persons and shall include a suitable condition as agreed to by the Lenders Agent on behalf of the Lenders for payment or take over of such dues by such AAI Nominee to the extent agreed by the Lenders Agent in the event of a Substitution by such AAI Nominee. The AAI Nominee shall similarly be bound to execute all necessary documentation to effectuate Substitution.
- (ii) Notwithstanding anything contained in Article 3.3 and this Article 3.4, AAI shall not be required to take over at any time during the currency of or, upon termination or expiry of the OMDA for any reason whatsoever, the liabilities representing the Lender's Dues, save and except to the extent of Transfer Payments due and payable upon such termination/ expiry under the OMDA. In such an event AAI's obligation shall be limited to assumption of such liabilities and payments of dues as AAI has agreed to under the OMDA.

- 3.5 Nothing contained herein shall mean or be interpreted as provision of any guarantee or surety by AAI and it is expressly agreed that AAI has not provided any surety, guarantee or counter guarantee, whether directly or indirectly, for the recovery of any portion of the Lenders Dues.
- 3.6 In the event of a Substitution, an additional cure period of one hundred and eight (180) days shall be provided to enable the Selectee/AAI Nominee to cure any breach or default subsisting on the day of such Substitution.

It is clarified that if the nature of the default would take a longer time to remedy, the Selectee must agree on an appropriate timetable and remedy program with AAI. The remedy period will then be extended to match that timetable.

- 3.7 If the Selectee fails to cure such breach or default or make such payment of the Lenders Dues within such period, then the Lenders Agent shall have the right by providing a notice to require AAI to terminate the OMDA and require the termination value to be determined under Article 17.3.1 (c) of the OMDA
- 3.8 The Parties herein expressly agree to execute such agreements as may be necessary to give effect to the Substitution as contemplated herein. The Selectee shall further expressly undertake to grant to the AAI a right to acquire / subscribe to the same percentage shareholding in the Selectee (if it is selected in the manner provided herein) as the AAI has in the JVC on the date of Substitution, if so desired by AAI, on such terms and condition as set forth in the Shareholders Agreement.

ARTICLE 4 RIGHTS OF AAI

- 4.1 The Lenders' Agent and the JVC expressly agree that upon the issuance of a Lenders' Notice of Default or Notice of Intention to Terminate and the applicable cure period for the same has expired without the notice/s being withdrawn/cured, notwithstanding the process of Substitution having been initiated as provided in Article 2 herein, the AAI shall have the right but not the obligation to take over the operation and maintenance of the Airport and operate and maintain the same in accordance with Good Industry Practice, at the risk and cost of the JVC until operation pursuant to Substitution under this Agreement or curing of such event of default, whichever is earlier.
- 4.2 The Lenders' Agent recognizes that AAI shall be entitled to issue a Notice of Intention to Terminate in accordance with the terms of the OMDA.
- 4.3 The Parties hereby expressly agree that nothing contained in this Agreement shall restrict the ability of AAI to exercise any of its rights under any of the Project Agreements.

ARTICLE 5 LENDERS RIGHT TO RECEIVE TERMINATION PAYMENTS

- 5.1 AAI and JVC hereby agree, and confirm that without prejudice to any other right or remedy, AAI shall deposit all Transfer Payments under the OMDA into the Escrow Account and the Lenders shall be entitled to receive the same without any further reference to or consent of the JVC towards the satisfaction of and to the extent of the Lenders Dues. The Lenders and AAI shall be entitled to appropriation amongst themselves in the proportion of amounts due to them as Lenders Dues and under the OMDA respectively any consideration received for the Substitution as hereinabove provided from the Selectee. Any excess amounts after the payment for amounts due to the Lenders and AAI shall be paid to the JVC.
- 5.2 The JVC hereby nominates, constitutes and appoints the Lenders Agent as its constituted attorney for doing all acts, deeds and things as may be required to be done for the substitution of the JVC by the Selectee pursuant hereto and for receiving consideration for discharge of the Lenders' Dues pursuant to Article 5.1 above.
- 5.3 The JVC hereby expressly authorises payment of sums by AAI on account of Transfer Payments into the Escrow Account and the Lenders Agent to draw the same therefrom for and on behalf of the Lenders notwithstanding the pendency of any dispute or objection or claim that the JVC may have against the Lenders and/or AAI. The deposit by AAI into the Escrow Account and payment to the Lenders directly or through the Lenders Agent in accordance with this Agreement, made or caused to be made by AAI shall constitute a valid discharge of its obligation of the payment thereof to the JVC. All such payments shall stand charged to the Lenders under the Financing Documents and shall be receivable by the Lenders Agent from the Escrow Account on behalf of the Lenders to the exclusion of any receiver or liquidator appointed.

ARTICLE 6 GENERAL

6.1 Intentionally Omitted

- 6.2 The Parties hereto expressly represent and warrant that they are duly empowered to sign and execute this Agreement and the Lenders Agent is duly and fully authorised by each of the Lenders to enter into this Agreement on their behalf.
- 6.3 Notices under this Agreement shall be sent to the Addresses first hereinabove mentioned. Any change in the address of any Party shall be duly notified by a registered post acknowledgement due and delivered to the other Parties.
- 6.4 The expressions "AAI", the "JVC", the "Lenders" and the "Lenders Agent" herein used shall unless there be anything repugnant to the subject or context include their respective successors, legal representatives, administrators and permitted assigns.
- 6.5 This Agreement shall not be affected by reorganisation of any Lender, Lenders Agent or AAI and the successor in interest of such Lender, Lenders Agent or AAI shall have the benefit of this Agreement.

- 6.6 No amendment, variation or modification to this Agreement shall be valid and effectual unless made in writing and executed by the duly authorised representatives of all the Parties hereto.
- 6.7 All stamp duties or other imposts and charges as are applicable on this Agreement or on amendment of the OMDA or execution of new OMDA for the purpose of Substitution as aforesaid shall be borne by and be to the account of the Selectee. In the event of the Lenders making such payment for the time being, it shall be deemed to be a part of the Lenders Dues.
- 6.8 The Parties hereby expressly agree that for the purpose of giving full and proper effect to this Agreement, the OMDA and this Agreement shall be read together and construed harmoniously. The terms of the OMDA shall prevail in the event of any inconsistency with this Agreement.
- 6.9 The consultation, recommendation or approval of the Lenders Agent under this Agreement shall always be taken as consultation, recommendation or approval of every concerned Lender and each such Lender shall be bound by the same and hereby waives its right to question or dispute the same.
- 6.10 As between the JVC and the Lenders, this Agreement shall be in addition to and shall not be in derogation of the terms of the Financing Documents.
- 6.11 It shall not be necessary for the Lenders or the Lenders Agent to enforce or exhaust any other remedy available to them before invoking the provisions of this Agreement.
- 6.12 This Agreement shall be governed by and construed in accordance with Indian law and, subject to Article 6.13 below, the courts at New Delhi shall have jurisdiction over all matters arising out of or relating to this Agreement
- 6.13 All Disputes arising under this Agreement, shall be referred to a tribunal comprising three (3) arbitrators under the (Indian) Arbitration and Conciliation Act, 1996. Each of the respondents and the claimants shall appoint one (1) arbitrator and the two (2) arbitrators thus appointed shall choose the third arbitrator who will act as a presiding arbitrator of the tribunal (together forming the “**Arbitral Tribunal**”). The decision(s) of the Arbitral Tribunal, shall be final and binding on the Parties. The venue of arbitration shall be New Delhi. This Article 6.13 shall survive the termination or expiry of this Agreement. The governing law of the arbitration shall be the substantive laws of India.

IN WITNESS WHEREOF THE PARTIES HERETO HAVE SET THEIR HANDS
HEREUNTO ON THE DAY, MONTH AND YEAR HEREINABOVE MENTIONED:

SIGNED AND DELIVERED ON BEHALF OF
AIRPORTS AUTHORITY OF INDIA

BY: _____

Name:

Title:

SIGNED AND DELIVERED ON BEHALF OF
_____ LIMITED

BY: _____

Name:

Title:

SIGNED AND DELIVERED ON BEHALF OF
LENDERS AGENT

BY: _____

Name:

Title:

SCHEDULE 1
LENDERS

[List to be provided as per the Financing Documents when signed]

SCHEDULE 2
INFORMATION AND DETAILS IN RESPECT OF THE SELECTEE

[insert]

SCHEDULE 10
TRANSITION PLAN

SCHEDULE 11 INSURANCE LIST

1. Insurance to be effected from the Effective Date
 - 1.1 Subject to Applicable Law, JVC must at its own cost and expense ensure that the insurances specified in this paragraph are effected from the Effective Date and are maintained in full force for the remainder of the Term.
 - (a) Insurances in respect of “**all risks**” as customarily covered by such insurance policies for physical loss or damage to the Airport (including all assets thereon, including but not limited to Aeronautical Assets, Non-Aeronautical Assets and Existing Assets) and all or any structures (including temporary structures), plant (including hired in plant) and equipment including computer equipment and vehicles on the Airport, to their full rebuilding or replacement cost (including allowance for professional fees and removal of debris costs), increased from time to time as necessary to maintain such full rebuilding or replacement cost.
 - (b) **Business interruption insurance** to indemnify JVC in respect of JVC’s revenues for a period of not less than six (6) months if any of the property insured under paragraph 1.1.1 is lost or destroyed or damaged by any of the risks insured under paragraph 1.1.1 which causes interruption to or interference with Aeronautical Services or Non-Aeronautical Services.
 - (c) Insurance in respect of any **legal liability of JVC** and any of its agents, servants, employees and contractors, any third party, aircraft operator, user of the Airport or otherwise, or liability of such persons in respect of loss or damage arising out of the construction, maintenance, operation and/or management of the Airport, including death or bodily injury or disease, loss of or damage to property, including resultant loss of use, to such amounts as would be effected by a prudent operator of airports of the size and with characteristics comparable to the Airport and in each case which does not self-insure (except for any customary deductibles).
 - (d) Any legal liability of JVC in respect of loss or damage as a result of the death and/or personal injury suffered by an employee of JVC or any person for whom JVC is responsible.
 - 1.2 All insurances effected and maintained pursuant to this Schedule 11 are to include provision for self insurance by deductibles equivalent to the minimum deductibles which are customary from time to time and may include and such exclusions or exceptions which are customary to that type of policy and size of risk covered by the policy from time to time.

2 Additional Insurances

- 2.1 JVC must ensure that each policy taken out pursuant to paragraphs 1.1.1 to 1.1.4 is increased or decreased from time to time to such amounts (and with such deductibles) as would be effected by a prudent operator of airports of the size and with characteristics comparable to the Airport, and in each case which does not self-insure (except for any customary deductibles) and stipulates other requirements or amendments to insurances, wider cover for insurances or additional insurances as become customary.
- 2.2 Without prejudice to the other provisions of this Schedule, JVC must, throughout the Term:
- 2.2.1 from time to time effect and maintain in full force those insurances which it is required to have by any Applicable Law or by the terms of any contract entered into by it in respect of the Airport; and
- 2.2.2 use best efforts to effect and maintain in full force those insurances which it is required to have by the terms of any other contract to which it is at any time a party.
- 2.3 JVC must at any time effect such other insurances in addition to or supplementing those referred to elsewhere in this Schedule as it may think fit. JVC must notify AAI of any such additional or supplementary insurances.

SCHEDULE 12
CONTRACTING PROCEDURES

- No shareholder of the JVC (nor any of its Group Entities) that has an interest in the contract can be involved in the design of the contract, or the contracting process or decision-making.
- Where a shareholder of the JVC (or any of its Group Entities) 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 Group Entity of the JVC or any of its shareholders. JVC shall agree to the appropriate terms of reference and the selection procedure of the independent probity auditor as laid down by AAI.

SCHEDULE 13
ESCROW ACCOUNT AGREEMENT

Between

[•]

as the Company

and

AIRPORTS AUTHORITY OF INDIA

and

[•]

as Escrow Bank

ESCROW ACCOUNT AGREEMENT

THIS ESCROW ACCOUNT AGREEMENT (the "**Agreement**") is made at New Delhi on _____, by and amongst:

1. [•], [a company incorporated in India under the Companies Act, 1956 / a banking company registered under the Banking Regulation Act, 1949], with its registered office at [•] (hereinafter referred to as the "**Escrow Bank**" which expression shall, unless it be repugnant to the subject or context thereof, include its successors and permitted assigns) of the FIRST PART;
2. [•], a company incorporated under the Companies Act, 1956 and having its registered office at [•] (hereinafter referred to as the "**Company**" or the "**JVC**", which expression shall, unless it be repugnant to the subject or context thereof, include its successors and permitted assigns) of the SECOND PART; and
3. The Airports Authority of India, constituted under the Airports Authority of India Act, 1994, having its principal office at _____, acting through its Chairman (hereinafter referred to as "**AAI**", which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns) of the THIRD PART.

The Escrow Bank, the Company and AAI are hereinafter collectively referred to as the "**Parties**" and individually as the "**Party**".

WHEREAS:

- (a) AAI is an authority established under the Airports Authority of India Act, 1994, responsible for the development, management, operation and maintenance of airports in India.
- (b) The Company is a joint venture between AAI and certain private entities, established, *inter-alia* with the objectives of promoting, establishing, developing, designing, managing, financing, operating and maintaining the Airport (as defined herein).
- (c) AAI and the Company have entered into an Operation, Management and Development Agreement dated [] (hereinafter referred to as "**OMDA**"), whereby AAI has granted to the Company the right to undertake the Project (as defined hereunder), and the Company has agreed to undertake the Project on the terms and conditions contained therein.
- (d) Under the terms of the OMDA, it has been stipulated that all Receivables (as defined hereunder) of the Company shall be deposited by the Company into an escrow account and disseminated therefrom in a particular priority order.

- (e) This Agreement sets forth the detailed mandates, terms and conditions and operating procedures for such escrow account.

NOW, THEREFORE, in consideration of the premises contained herein, the Parties hereto agree as follows:

1. Definitions

- 1.1 For the purposes of this Agreement, unless the context otherwise requires, capitalised terms shall have the meaning set forth hereunder.

“AAI Fee” for any Month, shall mean the amounts payable by the JVC to the AAI under the terms of the OMDA, as certified by the AAI in a certificate to be submitted by the AAI to the Escrow Bank by the 1st of the preceding Month and as revised by AAI during the course of the preceding Month. Provided however for the first month after Effective Date, the applicable AAI Fee shall be as provided by AAI to the Escrow Bank simultaneously with the execution hereof.

“Authorised Investments” means investment in securities rated at least AAA by CRISIL or with equivalent ratings by CARE/ICRA or fixed deposits in banks with at least a AAA rating by CRISIL or equivalent rating by ICRA/CARE

“Beneficial Parties” means collectively the Company, and AAI and **“Beneficial Party”** refers individually to each of them;

“Business Day” means any day of the week (excluding Saturdays, Sundays and public holidays) on which banks in New Delhi are generally open for business;

“Dispute” shall mean any dispute, difference, question or controversy between the Parties arising out of, in connection with or in relation to this Agreement.

“Event of Default” shall mean an event of default of the JVC under the OMDA, as certified by the AAI in a written notice in this regard to the Escrow Bank.

“Month” shall mean a calendar month.

“Priority Cash-flow Application” shall have the meaning ascribed to the term in Section 3.5(B)(a) hereunder;

“Project” means the operation, maintenance, development, design, construction, upgradation, modernization, financing and management of the Airport;

“Receivables” means any and all cash flows and cash realizations of the JVC accruing from or in relation to the Airport from any source, including all proceeds from any draw-downs under its loan agreements, any equity funding received by the JVC, refund of taxes, any and all monies due or to become due to the JVC from any source including from any performance bonds, letters of credit and instruments of a similar nature and proceeds from any insurance contracts;

“Statutory Dues” for any Month, shall mean the Tax liability of the JVC for such Month, as certified by a third party tax consultant in a certificate to be procured and submitted by the Company to the Escrow Bank by the 1st day of the preceding Month, and as revised by such third party tax consultant during the course of the preceding Month.

“Tax” shall mean the taxes, duties, charges, cess, levies and other such analogous payments due under Applicable Law.

Other capitalised terms used herein (and not defined herein) but defined under the OMDA shall have the meaning ascribed to the term under the OMDA.

- 1.2 In this Agreement, unless the context otherwise requires, the rules of interpretation and construction as mentioned in Article 1.2 of the OMDA shall apply.

2. Establishment of Escrow Account and Declaration of Trust

2.1 Establishment of the Accounts

The Company and the Escrow Bank confirm that the Escrow Bank has established, in the name of the Company at the Escrow Bank’s New Delhi branch, an account titled the **“Escrow Account”**. The Escrow Account shall have the following sub accounts, maintained, controlled and operated by the Escrow Bank for the purposes of this Agreement, namely:

- (a) a sub account maintained, controlled and operated by the Escrow Bank, titled the **“Receivables Account”**;
- (b) a sub account maintained, controlled and operated by the Escrow Bank, titled the **“Proceeds Account”** which shall have the following sub accounts:
 - (i) a sub-account maintained, controlled and operated by the Escrow Bank, titled the **“Statutory Dues Account**;
 - (ii) a sub-account maintained, controlled and operated by the Escrow Bank, titled the **“AAI Fee Account**; and
 - (iii) a sub-account maintained, controlled and operated by the Escrow Bank, titled the **“Surplus Account”**.

2.2 Declaration of Trust

The Company hereby settles in trust with the Escrow Bank a sum of Rs 100 (Rupees Hundred) for the benefit of the Beneficial Parties. The Company further declares that all the legal right, title and interest in and to the trust, the Receivables, the Escrow Account, the monies therein and the Authorised Investments including any document of title in relation thereto made from the Escrow Account shall be vested in the Escrow Bank and held for the benefit of the Beneficial Parties in accordance with the terms of this Agreement and their respective interests are provided for herein. The Escrow Bank hereby accepts the abovementioned amount of Rs. 100 in the trust hereby declared upon the terms

and conditions set forth in this Agreement and acknowledges that any amounts deposited in the Escrow Account from time to time shall be held in trust for the benefit of the Beneficial Parties in accordance with the terms and conditions of this Agreement. No Entity other than the Beneficial Parties shall have any rights hereunder as the beneficiaries of or as third party beneficiaries under this Agreement.

2.3 General Right of Withdrawal

The Escrow Bank shall not make any transfer or withdrawal other than in accordance with this Agreement, unless the Escrow Bank has received the prior written instructions of the Beneficial Parties authorising such use.

3. The Escrow Account

The Escrow Account shall comprise of the following sub-accounts:

3.1 Receivables Account

(A) Deposits to the Receivables Account

The Company hereby undertakes that it shall deposit into the Receivables Account all its Receivables immediately upon receipt thereof.

(B) Withdrawals from the Receivables Account

Immediately on receipt of monies into the Receivables Account, the Escrow Bank shall withdraw such monies and deposit the same into the Proceeds Account.

3.2 Proceeds Account

The Proceeds Account shall be established by the Escrow Bank at its New Delhi branch in the name of the Company.

(A) Deposits into the Proceeds Account

(i) The Escrow Bank shall in accordance with Section 3.1 of this Agreement, immediately on such deposit, transfer monies deposited in the Receivables Account, into the Proceeds Account.

(B) Withdrawals from the Proceeds Account

(a) As long as there is no Event of Default, on any date, the Escrow Bank shall withdraw amounts deposited in the Proceeds Account only towards the following purposes and in the following order of priority (hereinafter the **“Priority Cash-flow Application”**):

(i) to pay amounts into the Statutory Dues Account such that by no later than the last day of any Month the amounts so transferred in that Month are equal to the monthly Statutory Dues for the following Month.

- (ii) to pay amounts into the AAI Fee Account such that by no later than the last day of any Month the amounts so transferred in that Month are equal to the monthly AAI Fee for the following Month.
 - (iii) To pay amounts other than AAI Fee, if any, payable by the JVC to AAI under the OMDA, as notified in writing by AAI to the Escrow Bank.
 - (iv) to pay any and all balance amounts into the Surplus Account.
- (b) It is hereby expressly clarified that if, in any Month, the funds available in the Proceeds Account for transfer to any sub-account in accordance with Section 3.2(B)(a) are insufficient to pay the amount required to be paid in each of the sub-accounts in accordance with Section 3.2(B)(a), then the Escrow Bank shall transfer funds to the relevant sub-account in accordance with the Priority Cash-flow Application.

3.3 Statutory Dues Account

The Statutory Dues Account shall be established by the Escrow Bank at New Delhi in the name of the Company.

(A) Withdrawals from the Statutory Dues Account

On the deposit of any amounts in the Statutory Dues Account in accordance with Section 3.2(B)(a)(i), the Escrow Bank shall withdraw amounts from the Statutory Dues Account as are required by the Company to make payments of Statutory Dues as required under Applicable Law.

3.4 AAI Fee Account

The AAI Fee Account shall be established by the Escrow Bank at New Delhi in the name of Company.

(A) Withdrawals from the AAI Fee Account

On the deposit of any amounts in the AAI Fee Account in accordance with Section 3.2(B)(a)(ii), the Escrow Bank shall withdraw amounts from the AAI Fee Account as are required by the AAI

3.5 Surplus Account

The Surplus Account shall be established by the Escrow Bank in the name of the Company.

(A) Withdrawals from the Surplus Account

The Escrow Bank shall pay, from time to time, to the Company, within three (3) days of receiving directions in this regard from the Company,

such amounts from the Surplus Account as the Company may direct. Provided however, in the event of the Escrow Bank receiving directions from the Lenders or their agent/ trustee, then the Escrow Bank shall follow the instructions of the Lenders (or their agents/ trustee) in relation to the Surplus Account and amounts therein.

4. Authorised Investments

4.1 Power to Invest

- (i) So long as the Escrow Bank is not notified of an Event of Default, the Escrow Bank shall, from the amounts standing to the credit of the Escrow Account (and any sub-accounts thereunder), invest in Authorised Investments as provided in this Agreement (“**Permitted Investment**”) and in each case with respect to those amounts next anticipated to be transferred or withdrawn, the Permitted Investment in relation thereof, shall have a scheduled maturity no later than such next anticipated cash withdrawal or transfer from such Account in accordance with this Agreement.
- (ii) Upon the occurrence and during the continuance of an Event of Default, investment of such funds and reinvestment shall be made in Authorised Investments with the consent of AAI.
- (iii) Section 20 of the Indian Trusts Act, 1882 shall not apply to investments of amounts in the Escrow Account in Authorised Investments.

5. Escrow Bank provisions

5.1 Escrow Bank and the Beneficial Parties

- (a) The Beneficial Parties hereby appoint the Escrow Bank for benefit of the Beneficial Parties in connection herewith, and authorise the Escrow Bank to exercise such rights, powers, authorities and discretions as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretions as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.
- (b) The JVC hereby agree to pay to the Escrow Bank, fees of Rs. [] per [] as consideration for acting as the Escrow Bank hereunder.

5.2 Obligations of the Escrow Bank

The Escrow Bank:

- (a) undertakes to perform only such duties as are specifically set forth to be performed in this Agreement, in accordance with the terms and conditions contained herein, and further undertakes to act in good faith and without negligence;

- (b) 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 Company upon a certificate signed by or on behalf of the Company;
- (c) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or documents believed by it to be authentic;
- (d) shall, within five (5) Business Days after receipt, deliver a copy to AAI of any notice or document received by the Escrow Bank (in its capacity as the Escrow Bank) from the Company or any other Entity;
- (e) Shall, within five (5) Business Days after receipt, deliver a copy to the Company of any notice or document received by the Escrow Bank (in its capacity as the Escrow Bank) from AAI or any Entity in connection herewith; and
- (f) Shall within seven (7) Business Days prior to any date on which any payment is due to a Beneficial Party in accordance with the terms and conditions of this Agreement, provide notice to AAI of any anticipated shortfall in the Escrow Account (or any account thereunder) for making any payments due in accordance with the terms and conditions of this Agreement.

6. Term and Termination

- 6.1 This Agreement shall, unless terminated earlier by the mutual consent of the Parties or otherwise in accordance with the provisions of this Section by written notice from the Beneficial Parties to the Escrow Bank, remain in full force and effect for the duration of the OMDA.
- 6.2 AAI may, after consultation with the Company, at any time may remove the Escrow Bank, with or without cause, and appoint a successor Escrow Bank by written notice of such action to the Company, the Escrow Bank and the successor Escrow Bank.

Provided however that AAI shall not be required to consult with the Company (as required above) if an Event of Default has occurred and is subsisting.
- 6.3 If, at any time, the Escrow Bank or any of its associates, shall become a Beneficial Party and after such time there is an Event of Default, the Escrow Bank shall resign as Escrow Bank immediately upon the occurrence of such Event of Default, if in the sole judgement of the other Beneficial Parties (which, for this purpose, shall not include the Escrow Bank), there shall be, or be reasonably likely that there will arise, any conflict in or impediment to the Escrow Bank's performance as Escrow Bank under this Agreement.
- 6.4 The Escrow Bank shall be entitled to terminate its services under this Agreement if the Company/AAI fails to comply with any of its material obligations owed to

the Escrow Bank under this Agreement and fails to remedy the failure within sixty (60) days after receipt of notice thereof from the Escrow Bank to the Company, provided however, AAI has arranged for the appointment of a successor Escrow Bank and arrangements are made for the transfer of amounts deposited in the Escrow Account (including any sub-accounts thereof) to new accounts established with successor Escrow Bank.

- 6.5 (i) Any successor Escrow Bank appointed as provided in accordance with this Section 6 shall execute, acknowledge and deliver to, and for the benefit of, the Beneficial Parties and to its predecessor Escrow Bank an instrument accepting such appointment, and thereupon the resignation or removal of the predecessor Escrow Bank shall become effective and such successor Escrow Bank, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, as if it was originally named as Escrow Bank;
- (ii) provided that on the written request of the Beneficial Parties or of the successor Escrow Bank, the Escrow Bank ceasing to act shall take such steps or actions as are required of it by the Beneficial Parties, including without limitation the execution and delivery of an instrument or instruments transferring and assigning to such successor Escrow Bank (without obligation to indemnify such successor) all the rights and powers of the Escrow Bank so ceasing to act, delivery to the Beneficial Parties all documents, instruments, etc. relating to its obligations under this Agreement.
- (iii) Upon the reasonable request of any such successor Escrow Bank, the Beneficial Parties shall execute any and all instruments in writing in order more fully and certainly to vest in and confer to such successor Escrow Bank all such rights and powers.
- 6.6 Any corporation into which the Escrow Bank may be merged or converted or with which it may be consolidated or any corporation resulting from any merger, conversion or consolidation to which the Escrow Bank shall be a party, or any corporation succeeding to the corporate Escrow Bank's rights or business or either, shall, subject to approval of AAI, be the successor of the Escrow Bank with all rights, benefits, obligations and duties as were originally available and provided for to the transferor Escrow Bank in relation to the merger, conversion or consolidation proceedings or process.
- 6.7 Books and Records
- 6.7.1 The Escrow Bank shall be responsible for maintaining a correct and complete record of all transactions, deposits, withdrawals or transfer of funds relating to the Escrow Account (and all sub-accounts thereof).
- 6.7.2 AAI shall have unrestricted access to review such books and records of the Escrow Bank in relation to the Escrow Account subject to restrictions in law. The Company irrevocably grants AAI access to review the books and records of the Escrow Account and irrevocably waives any right of confidentiality, which may exist in respect of such books and records.

6.8 Determination of Amount and Events

- (a) The Escrow Bank shall be entitled to rely as to the following matters exclusively upon the following documents (insofar as the same are delivered to the Escrow Bank):
 - (i) with respect to occurrences of Events of Default, the relevant notice of AAI of an Event of Default.
- (b) The Escrow Bank may with the consent of AAI for all purposes rely on a certificate, signed by an authorised officer of the Company as to any fact or matter, the manner of ascertainment of which, is not specifically provided for herein.

6.9 Statement of Authorised Investments

Upon the request of AAI, and in any event, not later than five (5) Business Days after the end of any calendar Month, the Escrow Bank shall deliver to the Beneficial Parties a schedule of investments acquired or disposed of during that Month in such detail as AAI may reasonably require.

6.10 Confidentiality

The Escrow Bank agrees to keep all information (“Information”) (including the terms and conditions of this Agreement and/or any and all of the Project Agreements) made available (whether before or after the date of this Agreement) by any of the Parties to the Escrow Bank concerning the Company or the Project, confidential, and hereby undertakes and covenants not to communicate any Information, or allow any Information to be communicated to any third party unless:

- (a) in connection with any proceedings arising out of or in connection with this Agreement to the extent that such party may consider it necessary to protect its interest or the interests of the Escrow Bank; or
- (b) required to do so by an order of a court of competent jurisdiction whether or not in pursuance of any procedure for discovering documents; or
- (c) pursuant to any Applicable Law in accordance with which such party is required to act; or
- (d) to its auditors for the purposes of enabling the auditors to complete an audit of the Escrow Bank or to its legal advisers when seeking bona fide legal advice in connection with this Agreement; or
- (e) in circumstances where the relevant Information has been published or announced by the Company and/or any other Beneficial Party in conditions free from confidentiality or has otherwise entered the public domain without default on the part of the relevant Party; or

- (f) the Information was obtained by such Escrow Bank from an independent or third party source who was not in breach of any confidentiality obligations with the Beneficial Parties.

6.11 Not Acting in Individual Capacity

In accepting the trusts hereby created, the Escrow Bank acts solely in its capacity as a Escrow Bank and not in its individual capacity and all Entities having any claim against the Escrow Bank by reason of the transactions contemplated by the Project Agreements shall look only to the Company for payment or satisfaction thereof, save and except as provided in this Agreement, other than as a result of its wilful misconduct or gross negligence.

6.12 Indemnity

The Company shall indemnify the Escrow Bank for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, claims or disbursements of any kind or nature whatsoever which may be imposed upon, incurred by or asserted against the Escrow Bank in any way in connection with or arising out of the negotiation, preservation or enforcement of any rights under, or in carrying out its duties under this Agreement (other than those incurred on account of gross negligence or willful default on the part of the Escrow Bank).

7. Representations and warranties of the Escrow Bank and the Company

Each of the Escrow Bank and the Company represent and warrant that it is duly organised and validly existing under the laws of India with power to enter into this Agreement and to exercise its rights and perform its obligations hereunder and has taken all corporate and other actions required for the execution of this Agreement and the performance of its obligations hereunder. The Escrow Bank represents and warrants that it shall hold all funds in the Escrow Account in trust for the benefit of the Beneficial Parties in accordance with the provisions of this Agreement and further represents and warrants that it has obtained all approvals, permits and other clearances required for the execution of this Agreement and the performance of its obligations hereunder.

8. Miscellaneous

8.1 Restriction on Assignment

Save as provided in Section 6, the Company and the Escrow Bank, shall not assign or transfer any part of their respective rights or obligations under this Agreement without the prior consent of AAI. It is expressly agreed between the Parties that nothing in this Section 8.1 shall prevent AAI from assigning, novating or transferring its rights, benefits and obligations under this Agreement to any Entity.

8.2 Notices

8.2.1 All notices shall be sent to a Party hereto at its address and contact number specified in Schedule A appended hereto, or at such other address and contact number as is designated by such Party in a written notice to the other Parties hereto.

8.2.2 All such notices and communications shall be effective (i) if sent by telex, when sent (with the correct answerback), (ii) if sent by telecopier, when sent (on receipt of a confirmation to the correct telecopier number), (iii) if sent by person, when delivered, (iv) if sent by courier, (a) one Business Day after deposit with an overnight courier if for inland delivery and (b) five Business Days after deposit with an international courier if for overseas delivery and (c) if sent by registered letter when the registered letter would, in the ordinary course of post, be delivered whether actually delivered or not.

8.2.3 An original of each notice and communication sent by telex or telecopy shall be dispatched by person, overnight courier (if for inland delivery) or international courier (if for overseas delivery) and, if such person or courier service is not available, by registered airmail (or, if for inland delivery, registered first class mail) with postage prepaid, *provided* that the effective date of any such notice shall be determined in accordance with Section 8.2.2, as the case may be, without regard to the dispatch of such original.

8.3 No Waivers; Remedies

No failure on the part of any Party to exercise, and no delay in exercising, any right, power or privilege hereunder shall operate as a waiver thereof or a consent thereto; nor shall any single or partial exercise of any such right, power or privilege preclude any other of further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are cumulative and not exclusive of any remedies provided by Applicable Law.

8.4 Severability

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of prohibition or unenforceability but that shall not invalidate the remaining provisions of this Agreement or affect such provision in any other jurisdiction.

8.5 Amendments or Waiver

No amendment or waiver of any provision of this Agreement, nor consent to any departure by any of the Parties therefrom, shall in any event be effective unless the same shall be in writing and signed by the Parties hereto and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

8.6 Governing Law

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

8.7 Dispute Settlement

8.7.1 The Parties shall use their respective reasonable endeavours to settle any Dispute amicably. If a Dispute is not resolved within thirty (30) days after written notice of a Dispute by one Party (or a group or Parties) (the “**Claimant(s)**”) to the other Party (or group of Parties) (the “**Respondent(s)**”) then the provisions of Section 8.7.2 to Section 8.7.7 shall apply.

8.7.2 Any and all Disputes arising out of, or in relation to, this Agreement or the interpretation or construction of any provisions herein, which are not settled amicably by the Parties pursuant to Section 8.8.1 hereinabove, shall be finally settled, as per the provisions set out herein, by arbitration in accordance with the Arbitration and Conciliation Act, 1996.

8.7.3 Any Dispute shall be referred to an arbitral tribunal consisting of three (3) arbitrators (hereinafter “**Arbitral Tribunal**”). The Claimant(s) and the Respondent(s) shall each appoint one (1) arbitrator to the Arbitral Tribunal and the two arbitrators thus appointed shall choose the third arbitrator, who shall also act as the presiding arbitrator of the Arbitral Tribunal.

8.7.4 The decision(s) of the Arbitral Tribunal, supported by reasons for such decision shall be final and binding on the Parties.

8.7.5 The venue of arbitration shall be New Delhi.

8.7.6 The governing law of the arbitration shall be the substantive laws of India.

8.7.7 This Article 8.7 shall survive the termination or expiry of this Agreement.

8.8 Regulatory Approvals

The Company shall procure and shall thereafter maintain and comply with all regulatory approvals required for it to establish and operate the Escrow Account.

8.9 Notification of Balances

Within seven (7) days following the end of each calendar Month, the Escrow Bank shall notify AAI of the respective balances in the Escrow Account (including balances in each of the sub-accounts thereunder) as on the last Business Day (of the Month).

8.10 Additional Rights

Any rights conferred on the Parties pursuant to this Agreement shall be in addition to and not in substitution for or in derogation of any other rights and remedies which the Parties may at any time have under the Project Agreements or otherwise.

IN WITNESS WHEREOF the Company has caused its Common Seal to be affixed hereto and to a duplicate hereof on the date first above written and the Escrow Bank and AAI have caused the same to be executed by the hand of an authorised official.

The signature of the authorised representative of the [COMPANY] has been affixed pursuant to the resolution of its Board of Directors dated the _____ day _____, which has hereunto been affixed in the presence of Shri _____, and Shri _____, Directors who have signed these presents in token thereof and countersigned by _____, the authorised officer / Company Secretary

SIGNED AND DELIVERED by
[ESCROW BANK] by the hand of

its authorised official.

SIGNED AND DELIVERED by AAI by
the _____ hand _____ of

authorised official.

SCHEDULE A
NOTICE TO PARTIES

THE COMPANY

Name of Party:

Address:

Tele No:

Fax No:

Attention:

ESCROW BANK

Name of Party:

Address:

Tele No:

Fax No:

Attention:

AAI

Name of Party: **AIRPORTS AUTHORITY OF INDIA**

Address:

Tele No:

Fax No:

Attention:

SCHEDULE 14
INITIAL DEVELOPMENT PLAN

SCHEDULE 15
LIST OF EXPERTS¹

1. G. V. Sanjay Reddy;
2. RamaMurty Yadavalli;
3. C. Venkata Ramana;
4. Cornelius Muller;
5. Francois Swanepoel;
6. Henk de Lange;
7. Robert Edwin Gurr; and
8. Akshaye Babu.

¹ As suitably substituted by JVC with relevant experts from time to time.

SCHEDULE 16
ESSENTIAL SERVICES

- Toilets;
- Trolleys;
- Passenger Baggage Handling; and
- Drinking water.

SCHEDULE 17
FORM OF BID BOND

B.G. No. _____ dated _____
_____.

This Deed of Guarantee ("Bid Bond") executed at _____ by _____ (Name of Bank) having its Head/Registered office at _____ (hereinafter referred to as "the Guarantor") which expression shall unless it be repugnant to the subject or context thereof include its executors, administrators, successors and assigns;

In favour of

The Airports Authority of India (hereinafter called "AAI"), having its office at _____, which expression shall unless it be repugnant to the subject or context thereof include its executors, administrators, successors and assigns:

Whereas M/s. _____, a [Entity]² [registered under provisions of the Companies Act, 1956 having its registered office]³ at _____ (hereinafter called "the Applicant") which expression shall unless it be repugnant to the subject or context thereof include its executors, administrators, successors and assigns, has bid for the Restructuring and Modernisation of the Chhatrapati Shivaji International Airport (hereinafter referred to as "the Project")

Whereas in terms of the Request for Proposal Document dated April 01, 2005 (hereinafter referred to as "RFP Document") the Applicant is required to furnish to the AAI an unconditional and irrevocable bank guarantee for an amount of Rs. 50 Crores (Rs 500,000,000 only) or Rs. 500 crores (Rs. 5000,000,000 only), as the case may be, as Bid Bond and the Guarantor has at the request of the Applicant agreed to provide such Guarantee being these presents:

Now this deed witnesseth that in consideration of the premises, We, _____ the Guarantor hereby declare, undertake and agree as follows:

- a) We as primary obligor shall unconditionally and irrevocably pay to the AAI, without demur, an amount not exceeding Rs. 50 Crores (Rupees 500,000,000 only) or Rs. 500 crores (Rs. 5000,000,000 only), as the case may be, within 5 days of receipt of a written demand from the AAI stating that the Bid Bond has been invoked and forfeited upon the Applicant being declared and notified by AAI as a Successful Bidder and the Applicant not fulfilling the requirements as per terms of the RFP Document. Any such demand made on us by the AAI shall be conclusive and absolute as regards to the invocation and the forfeiture of the Bid Bond and

² Type of Entity as appropriate

³ Registration details

the amount due and payable under this Guarantee. We expressly acknowledge that this Guarantee may be invoked multiple times.

- b) The above payment shall be made by us without any reference to the Applicant or any other person and irrespective of whether the claim of the AAI is disputed by the Applicant or not.
- c) This Guarantee shall remain in full force for a period of _____⁴ months from (date) _____ or for such extended period as may be mutually agreed between the AAI and the Applicant and shall continue to be enforceable till all amounts under this Guarantee are paid.
- d) In order to give full effect to this Guarantee, the AAI shall be entitled to treat the Guarantor as the principal debtor and the obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the RFP Document or other documents or by extension of time of performance of any obligations by the Applicant or any postponement for any time of the powers exercisable by the AAI against the Applicant or forbear or enforce any of the terms and conditions relating to non-compliance of the RFP Document by the Applicant and we shall not be relieved from our obligations by reason of any variation or extension being granted to the Applicant or forbearance or omission on the part of the AAI or any indulgence by the AAI to the Applicant to give such matter or thing whatsoever which under the law relating to sureties would but for this provision have effect of so relieving us.
- e) This Guarantee shall be irrevocable and shall remain in full force and effect until all our obligations under this Guarantee are duly discharged.
- f) Any payment made hereunder shall be made free and clear of and without deduction for, or on account of, any present or future charges, fees, commissions, deductions or whatsoever and by whom ever imposed.
- g) The Guarantor has power and authority to validly execute and issue this Guarantee and the undersigned is duly authorised to execute and deliver this Guarantee pursuant to the power granted under _____ and its obligations under this Guarantee will be legally valid and binding and enforceable against it.
- h) Notices.

Any demand certificate, notice or any other communication under this Guarantee shall be (i) in writing and (ii) faxed or sent by person, or overnight courier at the following addresses:

[insert]

All such Demand Certificates, notices and communications shall be effective (i) if sent by fax, when sent (with the correct answerback), (ii) if sent by person, when delivered, (iii) if sent by courier one (1) Business Day after deposit with an

⁴ Bidder to ensure that the Bid Bond is valid for the Bid Period as per the RFP

overnight courier, and (iv) if sent by registered letter when the registered letter would, in the ordinary course of post, be delivered whether actually delivered or not.

- i) This Guarantee is subject to the laws of India. Any suit, action, or other proceedings arising out of this Guarantee or the subject matter hereof shall be subject to the exclusive jurisdiction of courts of New Delhi, India. .

In Witness whereof the Guarantor has set its hands hereunto on the day, month and year first hereinabove written.

Signed and Delivered by _____
Bank by the hand of Shri _____
Its _____ and authorised official.

SCHEDULE 18
FORM OF PERFORMANCE BOND

Dated [•]

To
AAI
[•]

Subject: Performance Bank Guarantee

This PERFORMANCE BANK GUARANTEE (hereinafter the “**Guarantee**”) is made at [New Delhi] on the [•] day of [•] 2005

WHEREAS

- A. JVC, a company incorporated under the Companies Act, 1956 having its registered office at [•] (hereinafter referred to as the “**JVC**”, which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) has entered into an Operations, Management and Development Agreement dated [•] (hereinafter such agreement, as amended and supplemented, referred to as the “**OMDA**”) with Airports Authority of India (hereinafter referred to as “**AAI**”, which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns) for undertaking the project of operating, maintaining, developing, designing, constructing, upgrading, modernising, financing and managing the Airport.
- B. As per the terms and conditions of the OMDA, the JVC is obliged to furnish to AAI an irrevocable, unconditional and automatic revolving bank guarantee from a scheduled commercial bank in India, of a value and validity as set forth hereunder.
- C. [•] having its registered office at [•] and a branch office at [New Delhi], India, (hereinafter referred to as the “**Bank**”, which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include its successors), being a schedule commercial bank in India, has at the request of the JVC, agreed to issue this performance bank guarantee, in accordance with the terms and conditions set forth hereunder, in favour of AAI.

NOW THEREFORE, the Bank hereby undertakes the pecuniary responsibility of the JVC to the AAI for the due performance of the OMDA and hereby issues in favour of the AAI this irrevocable and unconditional performance and payment bank guarantee (hereinafter referred to as the “**Guarantee**”) on behalf of the JVC.

1. The Bank for the purpose hereof unconditionally and irrevocably undertakes to pay to the AAI without any demur, reservation, caveat, protest or recourse;

immediately on receipt of first written demand from the AAI, a sum or sums (by way of one or more claims) without the AAI needing to prove or to show to the Bank grounds or reasons for such demand for the sum specified therein and notwithstanding any dispute or difference between the AAI and the JVC in respect of the performance of the OMDA or moneys payable by JVC to the AAI or any matter whatsoever.

2. The Bank acknowledges that this Guarantee may be invoked more than once and each one of such demands by the AAI of the amounts payable by the Bank to the AAI shall be final, binding and conclusive evidence in respect of the amounts payable by the JVC to the AAI.
3. The Bank hereby waives the necessity for the AAI from demanding the aforesaid amount or any part thereof from the JVC and also waives any right that the Bank may have of first requiring the AAI to pursue its legal remedies against the JVC, before presenting any written demand to the Bank for payment under this Guarantee.
4. The Bank further unconditionally agrees with the AAI that the AAI shall be at liberty, without the Bank's consent and without affecting in any manner the Bank's obligation under this Guarantee, from time to time to:
 - (i) vary and/or modify any of the terms and conditions of the OMDA,
 - (ii) extend and / or postpone the time for performance of the obligations of the JVC under the OMDA, or
 - (iii) forbear or enforce any of the rights exercisable by the AAI against the JVC under the terms and conditions of the OMDA.

and the Bank shall not be relieved from its liability by reason of any such act or omission on the part of the AAI or any indulgence by the AAI to the JVC or other thing whatsoever which under the law relating to sureties would, but for this provision, have the effect of relieving the Bank of its obligations under this Guarantee.

5. The Bank's obligations under this Guarantee shall not be reduced by reason of any partial performance of the OMDA. The Bank's obligations shall not be reduced by the failure by AAI to timely pay or perform any of its obligations under the OMDA.
6. Any payment made hereunder shall be made free and clear of and without deduction for, or on account of, any present or future charges, fees, commissions, deductions whatsoever and by whom ever imposed.
7. This Guarantee shall be a continuing bank guarantee and shall not be discharged by the change in constitution of any member of the JVC and the Guarantee shall not be affected or discharged by the liquidation, winding up, bankruptcy, reorganization, dissolution or insolvency of the JVC or any member of the JVC or any other circumstances whatsoever.

8. This Guarantee shall have a minimum validity of at least twelve (12) months and shall be rolled over and renewed at least three (3) months prior to its expiry so as to keep it valid until the expiry or early termination of the OMDA, whichever is earlier. Provided however that in the event the Bank does not renew the Guarantee three (3) months prior to its expiry in the manner provided above, the AAI shall, irrespective of due performance of other terms of the OMDA by the JVC, have the right to encash the entire amount of the Guarantee in one or more demands. This Guarantee shall remain valid and subsisting until released by AAI in writing.
9. This Guarantee shall be in addition to and not in substitution or in derogation of any other security held by the AAI to secure the performance of the obligations of the JVC under the OMDA.
10. The Bank agrees that the AAI at its option shall be entitled to enforce this Guarantee against the Bank, as a principal debtor in the first instance without proceeding at the first instance against the JVC or any other security/ guarantee that AAI may have.
11. The quantum of the Guarantee shall be Rs. 500,00,00,000/- (Rupees Five Hundred Crores only)⁵ during the first five (5) years after the Effective Date of the OMDA (such amount being the “**Full Amount**” of the Guarantee). In the event any portion of the Guarantee is en-cashed pursuant hereto, then immediately following such encashment, the Bank shall replenish the Guarantee to its Full Amount. In the event the Guarantee is not replenished to its Full Amount within three (3) months of its encashment in any part, the AAI shall have the right to en-cash the entire Guarantee.
12. This Guarantee is subject to the laws of India. Any suit, action, or other proceedings arising out of this Guarantee or the subject matter hereof shall be subject to the exclusive jurisdiction of courts of New Delhi, India.
13. Capitalised terms not otherwise defined herein shall have their respective meanings given to such terms as set forth in the OMDA.
14. The Bank has power and authority to validly to execute and issue this Guarantee and the undersigned is duly authorised to execute and deliver this Guarantee pursuant to the power granted under _____ and its obligations under this Guarantee will be legally valid and binding and enforceable against the Bank.
15. Notices.

Any demand certificate, notice or any other communication under this Guarantee shall be (i) in writing and (ii) faxed or sent by person, or overnight courier at the following addresses:

[insert]

⁵ escalating as provided in the OMDA.

All such Demand Certificates, notices and communications shall be effective (i) if sent by fax, when sent (with the correct answerback), (ii) if sent by person, when delivered, (iii) if sent by courier one (1) Business Day after deposit with an overnight courier, and (iv) if sent by registered letter when the registered letter would, in the ordinary course of post, be delivered whether actually delivered or not.

In witness whereof the Bank, through its authorized officer, has set its hand and stamp on this ____ day of ____ 2005.

In presence of (1)

(2)

SCHEDULE 19*

***INTENTIONALLY OMITTED**

SCHEDULE 20
DISCLAIMER CERTIFICATE

[to be given by the JVC and each Consortium Member in favour of AAI]

This **Disclaimer Certificate** is made on this _____ day of _____, 2005

By:

1. [•], a company incorporated under the Companies Act, 1956 and having its registered office at [•] (the “**JVC**”); and
2. Each of the Entities listed in Annexure I hereof (collectively the “**Consortium Members**” and individually a “**Consortium Member**”).

In favour of:

3. The Airports Authority of India, constituted under the Airports Authority of India Act, 1994, having its principal office at _____, acting through its Chairman (the “**AAI**”).

WHEREAS:

- A. AAI is an authority established under the Airports Authority of India Act, 1994, responsible for the development, operation and maintenance of airports in India.
- B. The JVC is a joint venture between AAI and the Consortium Members, established, *inter-alia* with the objectives of promoting, establishing, developing, financing, operating and maintaining the Chhatrapati Shivaji International Airport (the “**Airport**”).
- C. AAI and the JVC have entered into an Operation, Management and Development Agreement dated [] (hereinafter referred to as “**OMDA**”).

NOW, THEREFORE for good and valuable consideration, the receipt, sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the JVC and each Consortium Member hereby confirms, declares and acknowledges the following:

1. that it has read and understood the terms of the OMDA individually and collectively.
2. **That** capitalised terms not defined herein but defined in the OMDA shall, unless the context otherwise requires, have the meaning assigned thereto in the OMDA.
3. That it has:-
 - (a) inspected the Airport, and the Airport Site including the terminals and all buildings thereat and its surroundings;

- (b) satisfied itself as to the nature of the climatic, hydrological and general physical conditions of the Airport, the nature of the ground and subsoil, the form and nature of the Airport, and the nature of the design, work and materials, workmanship, technical know-how and managerial skills necessary for the performance of the JVC's obligations under the OMDA presently and during its currency.
 - (c) satisfied themselves 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 the OMDA;
 - (d) obtained all necessary information as to the risks, contingencies and all other circumstances which may influence or affect it or the JVC and its rights and obligations under the OMDA.
- (ii) The Consortium Members expressly acknowledge that they have taken all due diligence shall have no recourse against the AAI in the event of any mistake made or misapprehension harboured by any of them in relation to any of the foregoing provisions of Article 3 (i) above and the AAI's liability in respect thereof, if any, is waived.
- 4. Each of the Consortium Members and the JVC acknowledges that prior to the execution of the OMDA, they have, after a complete and careful examination, made an independent evaluation of the Airport as a whole and each of its facilities, buildings, assets, machinery, equipment, personnel and know-how and have 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 the JVC in the course of the performance of its obligations under the OMDA and the extent and manner of modernisation required now or from time to time during the currency of the OMDA.
- 5. Each of the Consortium Members and the JVC acknowledges and hereby accepts the difficulties, upgradations, inputs, costs, time, resources, risks and hazards associated with the performance of the JVC's obligations the OMDA and hereby agrees that AAI shall not be liable for the same in any manner whatsoever to JVC, other than as expressly provided in the OMDA.
- 6. The Consortium Members and the JVC bind themselves that they shall not be entitled to make any claim against the AAI or any Government Authority whether for rescission, in damages or otherwise on the grounds of any misunderstanding or misapprehension in respect of incorrect or insufficient information given to them by any Entity, whether or not in the employ of the AAI or any Government Authority, nor, unless expressly provided otherwise in the OMDA, shall the JVC be relieved from any obligations or risks imposed on or undertaken by it under the OMDA on any such ground or on the ground that it did not or could not foresee any matter which may, in fact, affect or have affected the performance of its obligations under the OMDA.
- 7. Subject to the provisions of the OMDA, the JVC and the Consortium Members declare that the JVC shall be fully and exclusively responsible for, and shall bear

the financial, technical, commercial, legal and other risks in relation to the design, financing, modernization, construction, completion, commissioning, maintenance, operation, management and development of the Airport and all its other rights and obligations under or pursuant to the OMDA regardless of whatever risks, contingencies, circumstances and/or hazards may be encountered (foreseen or not foreseen) and notwithstanding any change(s) in any of such risks, contingencies, circumstances and/or hazards on exceptional grounds or otherwise and whether foreseen or not foreseen and none of the JVC or any Consortium Member shall have any right whether express or implied to bring any claim against, or to recover any compensation or other amount from, the AAI, GOI and/or any of their agencies other than in respect of those matters in respect of which express provision is made in the OMDA.

IN WITNESS WHEREOF, each of the Consortium Members and the JVC have caused their respective duly authorized representatives to execute this Disclaimer Certificate on the day and year first above written.

SIGNED AND DELIVERED

ANNEXURE-I
CONSORTIUM MEMBERS

SCHEDULE 21 DUTIES OF INDEPENDENT ENGINEER

The scope of duties of Independent Engineer is:

- (a) to review all designs, drawings, specifications and procurement documents to assess compliance with:
 - (i) Finalised Major Development Plan (if applicable)
 - (ii) Development Standards and Requirements as detailed in Schedule 1 and with the finalised Major Development Plan
- (b) to review 'benchmarking' exercise carried out by JVC for the project specifications and cost against national and international airport projects of similar scope and nature so as to avoid padding of costs and/ or gold plating.
- (c) to review development reports submitted by the JVC to assess compliance of works undertaken in relation to the Development Standards and Requirements as detailed in Schedule 1 and with the approved Major Development Plan. In this regard, the Independent Engineer shall ensure that
 - (i) owners requirements, Master Plan requirements, specifications and design parameters in any agreement or agreed through OMDA mechanism have been fully addressed/ complied with.
 - (ii) Quantity are reasonable
 - (iii) Reasonable and fair time for completion of projects (excepting Mandatory Capital Projects/ Stage-I projects) has been given
- (d) to review the award of any contract in relation to any and all aspects of design, construction, completion, commission and development of the Airport or any other commercial contract to any Group Entities of the JVC.
- (e) to perform any other duties as would be deemed necessary and specified in his appointment letter.

SCHEDULE 22
FORM OF BANK GUARANTEE (EQUITY COMMITMENT)
(To be provided by the consortium members, as appropriate and relevant)

B.G. No. _____ dated _____.

This Deed of Guarantee (“Equity Bank Guarantee” or “Guarantee”) executed at _____ by _____ (Name of Bank) having its Head/Registered office at _____ (hereinafter referred to as “the Guarantor”) which expression shall unless it be repugnant to the subject or context thereof include its executors, administrators, successors and assigns;

In favour of

The [JVC] (hereinafter called “JVC”), having its office at _____, which expression shall unless it be repugnant to the subject or context thereof include its executors, administrators, successors and assigns:

Whereas M/s. _____, a [Entity]⁶ [registered under provisions of the Companies Act, 1956 having its registered office]⁷ at _____ (hereinafter called “the Applicant”) which expression shall unless it be repugnant to the subject or context thereof include its executors, administrators, successors and assigns, has bid for the Restructuring and Modernisation of the Chhatrapati Shivaji International Airport (hereinafter referred to as “the Project”)

Whereas in terms of the Request for Proposal Document dated 1st April, 2005 (hereinafter referred to as “RFP Document”) and subsequent clarifications thereto the Applicant is required to furnish to the AAI unconditional and irrevocable bank guarantee for an amount of Rs. [_____] ⁸ Crores (Rs _____ ⁹ only), as Equity Bank Guarantee and the Guarantor has at the request of the Applicant agreed to provide such Guarantee being these presents:

Now this deed witnesseth that in consideration of the premises, We, _____ (the “Guarantor”) hereby declare, undertake and agree as follows:

- (a) We as primary obligor unconditionally and irrevocably undertake to pay to the AAI/ JVC without demur reservation caveat, protest or recourse, an amount not

⁶ Type of Entity as appropriate

⁷ Registration details

⁸ Insert amount as applicable. This would be the higher of Rs. 500 Crores or the amount required for equity in the first seven years after Effective Date, as set forth in the financing plan as submitted by the Successful Bidders per of the RFP requirement (as updated for, inter alia, the actual Annual Fee payable, traffic forecasts, and tariff structure).

⁹ Insert amount in words as applicable

exceeding Rs. [_____] ¹⁰ Crores (Rs _____ ¹¹ only), within 5 days of receipt of a written demand (such demand to be made by JVC or the Airports Authority of India (the "AAI") (it being expressly understood and agreed that AAI shall have the right and authority to invoke and make demands under this Guarantee for and on behalf of JVC) only after expiry of the last date of receipt of equity subscription as per the terms of the equity issue by the JVC) from the JVC or the AAI stating that the Equity Bank Guarantee has been invoked (without the AAI or the JVC needing to prove or to share grounds or reasons for such demand) and forfeited upon the Applicant not subscribing to its share of equity capital call being made by the JVC on any date post the Effective Date of the OMDA. Any such demand made on us by the AAI or the JVC shall be final, binding and conclusive evidence and absolute as regards to the invocation and the forfeiture of the Equity Bank Guarantee and the amount due and payable under this Equity Bank Guarantee. We expressly acknowledge that this Equity Bank Guarantee may be invoked more than once.

- (b) The above payment shall be made by us without any reference to the Applicant or any other person and irrespective of whether the claim of the JVC or AAI is disputed by the Applicant or not. It is clarified that multiple draw downs may be made by the JVC/ AAI hereunder.
- (c) This Equity Bank Guarantee shall have a minimum validity of at least twelve (12) months and shall be rolled over and renewed at least three (3) months prior to its expiry so as to keep it valid until released by AAI in writing. Provided however that in the event this Equity Bank Guarantee is not renewed three (3) months prior to its expiry in the manner provided above, AAI or JVC shall have the right to encash the entire amount of this Guarantee. This Equity Bank Guarantee shall remain in full force for a period of 1 year ¹² from (date) _____ ¹³ or for such extended period as may be mutually agreed between the AAI and the Applicant and shall continue to be enforceable till all amounts under this Guarantee are paid.
- (d) The value of this Equity Bank Guarantee may be progressively reduced correspondingly as any amounts are infused by the Applicant into the JVC as equity.
- (e) In order to give full effect to this Equity Bank Guarantee, the JVC / AAI shall be entitled to treat the Guarantor as the principal debtor and the obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the RFP Document or other documents or by extension of time of performance of any obligations by the Applicant or any postponement for any time of the powers exercisable by the JVC / AAI against the Applicant or forebear once to or enforce any of the terms and conditions relating to non-compliance of the RFP Document by the Applicant and we shall not be relieved from our obligations by reason of

¹⁰ Insert amount as applicable

¹¹ Insert amount in words as applicable

¹² Annual guarantee rolled over for a period of upto 7 years from the Effective Date or upto the date of equity capitalization, whichever is later. The rolling over to happen one month prior to expiry of period of guarantee

¹³ Insert Bid Date

any variation or extension being granted to the Applicant or forbearance or omission on the part of the AAI / JVC or any indulgence by the AAI or JVC to the Applicant to give such matter or thing whatsoever which under the law relating to sureties would but for this provision have effect of so relieving us.

- (f) Any payment made hereunder shall be made free and clear of and without deduction for, or on account of, any present or future charges, fees, commissions, deductions whatsoever and by whom ever imposed.
- (g) This Guarantee shall be irrevocable and shall remain in full force and effect until all our obligations under this Guarantee are duly discharged.
- (h) The Guarantor has power and authority to validly to execute and issue this Guarantee and the undersigned is duly authorised to execute and deliver this Guarantee pursuant to the power granted under _____ and its obligations under this Guarantee will be legally valid and binding and enforceable against it.
- (i) Notices.

Any demand certificate, notice or any other communication under this Guarantee shall be (i) in writing and (ii) faxed or sent by person, or overnight courier at the following addresses:

[insert]

All such Demand Certificates, notices and communications shall be effective (i) if sent by fax, when sent (with the correct answerback), (ii) if sent by person, when delivered, (iii) if sent by courier one (1) Business Day after deposit with an overnight courier, and (iv) if sent by registered letter when the registered letter would, in the ordinary course of post, be delivered whether actually delivered or not.

- (j) This Guarantee is subject to the laws of India. Any suit, action, or other proceedings arising out of this Guarantee or the subject matter hereof shall be subject to the exclusive jurisdiction of courts of New Delhi, India.

In Witness whereof the Guarantor has set its hands hereunto on the day, month and year first hereinabove written.

Signed and Delivered by _____
Bank by the hand of Shri _____
Its _____ and authorised official.

SCHEDULE 23
DETAILS OF OPERATION SUPPORT COSTS

(FOR CSI AIRPORT)

The estimated operation support cost for CSI Airport, Mumbai for three years is as under:

Year	Operation Support Cost
2006-07	Rs. 95 Crores
2007-08	Rs. 118 Crores
2008-09	Rs. 126 Crores

The above estimates are based on the current pay scales and allowances and do not include:

1. Revision of pay and allowances due from 01.01.2007.
2. Taxes like Fringe Benefits tax implemented by Finance Act 2005, Service Tax etc.
3. Effect on any employee welfare scheme which may be implemented by AAI during the operation support period.

SCHEDULE 24
LIST OF CLEARANCES

JVC is required to obtain the following Clearances:

- Custodianship for Import/Export and Transshipment goods and Cargo
- Registration under Contract Labour Act
- Any and all other clearances as required to commence operation.

SCHEDULE 25
DEMISED PREMISES

(Map Demarcating Demised Premises Enclosed)

SCHEDULE 26
ENCROACHMENTS

(MAP SHOWING ENCROACHMENTS)

SCHEDULE 27
CARVED OUT ASSETS

Details of the Carved out Assets

Mumbai Airport

S. No.	Assets/Leases	Area of Land (Sq Metres)
1.	New ATC Tower	12,045.50
2.	The NAD staff colony of AAI	2,02,919.44
3.	Lease of land to Hotel Leela Venture	27,000.00
4.	All retail fuel outlets which are outside the airport operational boundary.	2,032.61
5.	Convention Centre	64,749.60

SCHEDULE 28
EXISTING LEASES

LIST OF EXISTING LEASES: Chhatrapati Shivaji International Airport

Land lease arrangements

Land allotted to foreign and domestic private airlines

S. No.	Name of Agency	Area (m²)	Purpose	Agreement Period
1	M/s. Jet Airways	451+(1400 proposed)	Parking of ramp equipment	05-12-96 to 04-12-97
		10524	Maintenance of ground support equipment and engineering facilities	15-12-99 to 14-12-04
		391	Paved area for cargo shed	01-12-00 to 01-12-01
		4390	Parking space	30-06-99 to 29-06-02
		1261	Parking space for ramp equipment	11-03-99 to 28-02-02
		237.45	Bellman hangar	10-12-98 to 09-12-01
		1136	Open area at old airport	14-08-98 to 13-08-01
		554	Open area at old airport	14-08-98 to 13-08-01
		11850	Construction of hangar	15-10-01 to 14-10-11
		1889	Open area at old airport	01-12-00 to 30-11-01
2	M/s Sahara Airways	953	Parking space for ramp equipment	From 15-09-99 on temporary basis
3	M/s. Visa Airways	120	For porta cabin	17-01-02 to 28-09-03
4	M/s. Air Deccan	422	Open paved land for ground support parking	30-12-03 to 29-12-06
5	M/s. Cathay Pacific	1000	Open paved land for ground support parking	01-04-01 to 31-03-04
		300	ULD parking	04-04-91 to 31-03-03
6	M/s Air France	300	Open paved land for ground support parking	18-04-91 to 13-09-93
7	M/s Gulf Air	200	Open paved land for ground support parking	15-04-91 to 31-03-03
8	M/s Lufthansa Airways	250	Open paved land for ground support parking	11-04-91 to 31-03-00
9	M/s Kuwait Airways	800	Open paved land for ground support parking	04-04-91 to 31-03-99

1.1.1

1.1.2 Land allotted to Air India and Indian Airlines

Sr. No.	Name of Agency	Area (m²)	Purpose	Agreement Due date
1	Air India	342563	Offices, hangars and roads	N.A.
		3600	Old airport additional land for apron / hangar	10-04-00 to 09-04-10
		78646	1st Housing Colony	14-05-55 to 15-05-90

Mumbai International Airport Private Limited
Operation, Management and Development Agreement

Sr. No.	Name of Agency	Area (m ²)	Purpose	Agreement Due date
		43839	2 nd Housing Colony	22-02-64 to 23-02-99
		17400	Ramp operation office and workshop for first line maintenance	01-06-79 to 01-07-84
		8365	Cargo Warehouse at NITC	02-11-82 to 02-11-87
		8600	Additional area cargo warehouse at NITC	03-11-83 to 02-11-88
		9996	Transport workshop and GSD parking at NITC	03-10-83 to 12-10-89
		27000	Land for cab/cat and cabin stores	31-05-82 to 30-05-87
		24000	Wing hangar and annex engineering complex NITC	01-01-81 to 01-01-86
		1260	ROFS offices at NITC	15-05-80 to 15-05-85
		943	Car parking near ROFS building at NITC	14-02-82 to 31-05-85
		1177	Car parking behind ROFS building at NITC	09-04-84 to 08-04-89
		3680	Construction of electrical sub-station a Terminal 2	09-04-84 to 09-04-89
		3680	Centralized kitchen at T2	16-02-84 to 15-02-89
		8763	Expansion of GSD facilities on the north side of transport workshop	01-07-88 to 30-06-93
		5000	Additional land for wing hangar at T2	09-04-84 to 09-04-89
		7350	West side of 747 wing hangar at T2	26-08-85 to 25-08-90
		5820	Land on the west side of wing hangar at T2	07-07-88 to 18-12-94
		5900	Land on the north side hanger at T2	18-11-93 to 17-11-98
		5353	Land on the west side hangar at T2	01-04-90 to 31-03-95
		17100	Land for aircraft parking and run up adjacent to wing	01-12-88 to 31-11-93
		102.8	Snacketeria and rest room under flyover at T2	03-02-81 to 21-10-86
		156	Additional land under flyover for construction of transport movement office at T2	13-11-85 to 12-11-90
		8480	Land along with remote parking bays for parking of ULDs dollies & trollies	02-04-85 to 01-04-93
		4000	Parking of ground support equipment at T2	05-12-80 to 05-12-85
		1855	Parking of Air India vehicles in front of Module II CSIA	09-03-86 to 08-03-81
		1426	CMC building near AAI canteen at Terminal 1B	01-07-83 to 01-07-88
		200	Paved land at T2	04-04-91 to 03-04-96
2	Indian Airlines	26184.3	Undeveloped land area in NEC	Up to 27-08-94
		1743.5	Developed land at new engineering complex	26-01-92 to 25-01-02

Mumbai International Airport Private Limited
Operation, Management and Development Agreement

Sr. No.	Name of Agency	Area (m ²)	Purpose	Agreement Due date
		11312.5	Engine run up bay	26-01-92 to 25-01-02
		16998.67	Undeveloped land other side at connecting Runway 14 - 32	27-08-94 to 25-01-22
		277.16	Developed land for construction of movement control block near base engineering building	01-04-78 to 14-01-85
		2699.70	Developed land at cargo warehouse	01-04-78 to 14-01-85
		19156.70	Transport hanger	01-04-1986 to 01-04-16
		550.0	Access to transport hangar	01-04-1986 to 01-04-16
		73987.73	1 st IAC staff quarter	01-06-64 to 07-01-99
		439.80	IAC sports club	01-12-70 to 31-07-80
		19389.00	2 nd IAC staff quarter	03-12-82 to 02-12-92
		1464.65	Developed land for parking space for Airbus ground support equipment	03-03-78 to 23-01-95
		1415.00	Ground support department canteen	21-07-92 to 23-07-95
		7483.00	Parking ground support and ULD equipment	From 06-11-00
		185.0	Unauthorized parking of ground support equipment	N.A.
		11283.67	Developed land near NDTC	N.A.
		800.00	Paved land near line maintenance building for parking and ground support equipment	From 1991
		51743	Land at NEC	28-08-84 to 27-08-93

1.1.3

1.1.4 *Land allotted for hangar construction*

Sr. No.	Name of Agency	Area (m ²)	Purpose	Agreement Period
1	Taj	3172.00	Construction of hangar on BOT basis	11-11-03 to 10-11-18
2	Essar	2646.00	Construction of hangar on BOT basis	22-04-04 to 21-04-19
3	Reliance	2701.00	Construction of hangar on BOT basis	12-03-04 to 11-03-19

1.1.5

1.1.6 *Land for other agencies*

Sr. No.	Name of Agency	Area in Sq.M.	Purpose	Agreement Period
1	Sahar Hospitality Pvt. Ltd.	30047.12	Land for hotel	5-6-03 to 4-6-31
2	Chefair (HCI)	14000	Flight kitchen	01-01-01 to 31-12-29
3	Oberoi	22000	Flight kitchen	1-12-82 to 31-12-12
4	A.S. Irani	290	Cafeteria	01-04-02 to 31-03-05
5	Ambassador	15000	Flight kitchen	20-5-87 to 20-5-17
		5658	Flight kitchen	12-01-83 to 20-05-87
6	Bharat Hotel	700	For approach to hotel	15-03-01 to 14-03-05

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7	Lloyd Steel Industries	3105	As per arbitration award	06-10-94 to 05-10-95
8	Taj Air Caterers	2955	As per arbitration award	03-01-05 to 02-01-06
9	Sahar Police Stn	1858	Police station	10-10-82 to 10-10-12
10	Globe Ground	2000	For ground support parking	19-06-02 to 18-06-03
11	DGCA	556	Quarters at Chakala	27-11-92 to 26-11-02
12	MTNL	650	RLU exchange	08-03-89 to 07-03-94
13	BDDS	3605	For office and residence	23-07-92 to 22-07-22
14	Cambatta	2440	Ground support parking near CCR	21-07-95 to 30-09-98
		3520	Ground support parking near Cargo	From 13-02-02
15	P&T	5800	Post and telegraph sorting office	22-05-87 to 21-05-17
		423	Post and telegraph sorting office	06-02-84 to 17-02-99
		4557	Post and telegraph sorting office	17-02-69 to 16-02-99
		575	Post and telegraph sorting office	24-02-94 to 16-02-99
16	Blue Dart	768 + 760.8	Offices and ground support parking	08-10-99 to 30-06-04
17	Indian Navy	21998	Construction of hangar	04-03-92 to 03-03-22
18	Mahanagar Gas	806	Laying cable through AAI land	10-2-02 to 9-2-05
19	Indian Air Force	14164.5	For hangar on nominal charge of Re 1 per sq.m. per annum	16-06-84 to 15-06-14
		22562	Exchange of land	From 01-02-83
		22953	Exchange of land	From 09-07-84
20	Indian Oil Corporation	2700	Retail outlets (Terminal 2 near Ambassador flight kitchen) M/s Intel	19-05-82 to 18-05-92
		371.75	Land adjacent to bays 15 and 16	21-09-79 to 20-09-81
		1170	Petrol pump opposite Centaur Hotel	01-09-81 to 31-08-86
		2600	Petrol pump opposite BSES at Sahar	13-08-90 to 12-08-95
		7748.32	Aviation related services	01-09-86 to 31-08-91
		38890	Retail outlets fuel station	28-02-80 to 27-02-10
21	H.P.C.L.	22488	Retail outlets fuel station	19-08-91 to 18-08-01
22	B.P.C.L.	2937.59	Aviation related services	01-01-87 to 21-12-89
		700	Parking of tankers	01-10-91 to 01-10-01
		1925	Aviation fuel services	22-12-84 to 21-12-89

1.1.7

1.1.8 Land for Government Departments

Sr. No.	Name of Agency	Area in Sq. M	Purpose	Agreement Period
1.	BEST	30	Proposed BEST chowky	20-05-00 to 19-05-02
2.	Reliance Energy	5000	Receiving station Sahar	21-12-79 to 21-12-09
		2185	Receiving station opposite Sahara Hospitality Private Limited	02-06-92 to 02-06-02
3.	BCAS	104	Dog kennel	From 06-06-86

SCHEDULE 29*

***INTENTIONALLY OMITTED**

SCHEDULE 30
SELECTION OF PANEL OF INDEPENDENT VALUERS

- 1 Selection of Independent Valuer
 - 1.1 The AAI shall invite bids from Valuers registered under the Wealth Tax Act, and consulting engineering firms or bodies corporate to undertake and perform the valuation of Transfer Assets to determine Fair Market Value thereof. The provisions of Part II of the Standard Bidding Documents for Consultancy Assignments: Time Based (Volume V) issued by the Ministry of Finance, GOI in July, 1997 shall apply, *mutatis mutandis*, for invitation of bids and evaluation thereof.
 - 1.2 Pursuant to the technical and financial evaluation of the bids received, the AAI shall shortlist eligible firms. The order of priority as among the shortlisted firms shall be determined on the basis of financial bids and the lowest financial bid shall rank first; provided that the firms ranked second, third, fourth and fifth on the basis of their financial bids shall be given an opportunity by the AAI to match the lowest financial bid and in the event that they or such of them as agree to match the lowest financial bid, and if any of the said short listed eligible firms does not agree to match the financial bid of the firm ranked first, the next in order of priority e.g. sixth and so on shall be given the opportunity to match the financial bid of the firm ranked first. The four firms which match the financial bid of the firm ranked first shall be deemed to constitute the panel of approved Independent Valuers.
 - 1.3 Based on the criteria specified in Paragraph 1.2 of this Schedule 30, a panel of five firms shall be constituted.
 - 1.4 The AAI shall convey the details of the aforesaid panel of firms to the JVC for scrutiny and comments, if any. The JVC shall be entitled to scrutinise the relevant records of the AAI to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and shall send its comments, if any, to the AAI within 15 (fifteen) days of receiving the details of the aforesaid panel. Upon receipt of such comments, if any, the AAI shall, after considering all relevant factors, finalise and constitute a panel of 3 (three) firms, and convey its decision to the JVC.

- 2 Fee and expenses

The Independent Valuers shall be paid the fees and expenses as setforth in the lowest financial bid of eligible firms on the basis of which the panel is constituted and not any other basis. The fees and expenses of the Independent Valuers shall be payable by AAI by deduction from the proceeds of the consideration payable for the Transfer Assets pursuant to the Agreement.

3 Constitution of fresh panel

Not later than six months before the expiry of the Term of the Agreement or upon its earlier Termination, whichever is earlier, the AAI shall prepare a panel of firms in accordance with the criteria set forth in this Schedule 30; provided that the AAI may at any time prepare a fresh panel with prior written consent of the JVC.

4 Appointment of Government entity as Independent Valuers.

Notwithstanding anything to the contrary contained in this Schedule, the AAI may in its discretion appoint a Government-owned entity on the panel of Independent Valuers provided that such entity shall be a body corporate having as its primary function the provision of consulting, advisory and supervisory services for civil construction projects.