

**Development, Operation and Maintenance
of Greenfield Heliport on Public Private
Partnership Model in Noida, Uttar
Pradesh, India**

DRAFT CONCESSION AGREEMENT

[.....] 20..

Draft Concession Agreement

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Part I
Preliminary

CONCESSION AGREEMENT

THIS Concession Agreement (the “**Agreement**”) is entered into on this the [_____] day of [_____] 20.. at [_____]

BETWEEN

1. **NEW OKHLA INDUSTRIAL DEVELOPMENT AUTHORITY** represented by its Chairman (the “**Authority**”) constituted under the U.P. Industrial Area Development Act, 1976, and having its principal offices at Noida, UP (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of the One Part;

AND

2. {.....LIMITED}[§], a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at [.....], (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part.

The Authority and the Concessionaire shall be collectively referred to as “**Parties**” and individually as a “**Party**”

WHEREAS:

- (A) The Authority is the nodal agency responsible for development and administration of Noida in the State of Uttar Pradesh (“**Noida**”) and it intends to develop an independent facility for Helicopter operations in Noida through public private partnership (“**PPP**”) basis in accordance with the terms and conditions set forth in this Agreement. The Heliport would provide a location for the voluntary basing of helicopter operators for providing commercial services. The development of the Heliport is intended to support business, tourism, medical, security, support services and emergency services.
- (B) As a part of this endeavour, Authority is tasked with the development, operation and maintenance of a greenfield Heliport in Noida (the “**Project**”) through PPP on Design, Build, Finance, Operate and Transfer (the “**DBFOT**”) basis, and had, therefore, invited Bids through circulation of the Request for Qualification cum Proposal dated **** (the “**Request for Qualification cum Proposal**” or “**RFQ-cum-RFP**”) prescribing technical and commercial terms and conditions to identify a Selected Bidder to whom the Project would be awarded.
- (C) The Authority had procured the in-principle approval from GoI (hereinafter referred to as the “**In-Principle Approval**”) for the establishment of a heliport for public use at Noida (hereinafter referred to as the “**Heliport**”), subject to the terms and conditions stipulated in the In-Principle Approval.

[§] The provisions in curly parenthesis and the blank spaces shall be retained in the draft Concession Agreement and shall be suitably modified/ filled after completion of the bid process to reflect the particulars relating to the selected bidder.

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- (D) The Authority had accordingly invited proposals by its RFQ-cum-RFP for selection of bidder for construction, operation and maintenance of the Heliport on DBFOT basis and had shortlisted certain bidders including, *inter alia*, the {the Selected Bidder/ consortium comprising and (collectively the "**Consortium**") withas its lead member (the "**Lead Member**")}.
- (E) After evaluation of the bids received, the Authority had accepted the bid of the {selected bidder/ Consortium} and issued its Letter of Award No..... dated (hereinafter called the "**LOA**") to the {Selected Bidder/ Consortium} requiring, *inter alia*, the execution of this Concession Agreement within (...) days of the date of issue thereof.
- (F) {The Selected Bidder/ Consortium has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 2013, and has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder/ Consortium under the LOA,} including the obligation to enter into this Concession Agreement pursuant to the LOA for executing the Project.
- (G) {By its letter dated, the Concessionaire has also joined in the said request of the Selected Bidder/ Consortium to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder/ Consortium including the obligation to enter into this Concession Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the Selected Bidder / Consortium for the purposes hereof}.
- (H) The Authority has agreed to the said request of the {Selected Bidder/ Consortium and the} Concessionaire, and has accordingly agreed to enter into this Concession Agreement with the Concessionaire for execution of the Project on DBFOT basis, subject to and on the terms and conditions set forth hereinafter.

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

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 53) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
 - (b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
 - (c) references to a **"person"** and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
 - (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
 - (e) the words **"include"** and **"including"** are to be construed without limitation and shall be deemed to be followed by **"without limitation"** or **"but not limited to"** whether or not they are followed by such phrases;
 - (f) references to **"construction"** or **"building"** include unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation installation, processing, fabrication, testing, commissioning and other activities incidental to the construction and **"construct"** or **"build"** shall be construed accordingly;
 - (g) references to **"development"** include, unless the context otherwise requires construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and **"develop"** shall be construed accordingly;
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- (h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (i) any reference to "hour" shall mean a period of 60 (sixty) minutes commencing either on the hour or on the half hour of the clock, which by way of illustration means 5.00 (five), 6.00 (six), 7.00 (seven) and so on being hours on the hour of the clock and 5.30 (five thirty), 6.30 (six thirty), 7.30 (seven thirty) and so on being hours on the half hour of the clock;
- (j) any reference to day shall mean a reference to a calendar day;
- (k) references to a "**business day**" shall be construed as a reference to a day (other than a Sunday) on which banks in the State are generally open for business;
- (l) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (m) any reference to a "**quarter**" shall mean a reference to a period of 3 (three) months commencing from April 1, July 1, October 1 and January 1, as the case may be;
- (n) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (o) any reference to any period commencing "**from**" a specified day or date and "**till**" or "**until**" a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (p) the words importing singular shall include plural and vice versa;
- (q) references to any gender shall include the other and the neutral gender;
- (r) "**lakh**" means a hundred thousand (100,000) and "**crore**" means ten million (10,000,000);
- (s) "**indebtedness**" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (t) references to the "**winding-up**", "**dissolution**", "**insolvency**", or "**reorganisation**" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is or was incorporated or in which such company or corporation is or was carrying on business including
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the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;

- (u) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
 - (v) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Independent Engineer, as the case may be, in this behalf and not otherwise;
 - (w) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
 - (x) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;
 - (y) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on *per diem* basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "**Damages**"); and
 - (z) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.
- 1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to the Authority and/ or the Independent Engineer shall be provided free of cost and in three copies, and if the Authority and/or the Independent Engineer is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.
- 1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

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- 1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

1.3 Measurements and arithmetic conventions

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

1.4 Priority of agreements, clauses and schedules

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

- (a) this Agreement; and
- (b) all other agreements and documents forming part hereof or referred to herein;
i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) above.

- 1.4.2 Subject to the provisions of Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
 - (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail
 - (c) between any two Schedules, the Schedule relevant to the issue shall prevail;
 - (d) between the written description on the Standards, the latter shall prevail; Drawings and the Specifications and Standards, the latter shall prevail;
 - (e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
 - (f) between any value written in numerals and that in words, the latter shall prevail.
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Part II
The Concession

ARTICLE 2

SCOPE OF THE PROJECT

2.1 Scope of the Project

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

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

ARTICLE 3

GRANT OF CONCESSION

3.1 The Concession

- 3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Permits, the Authority hereby grants to the Concessionaire the concession set forth herein including the exclusive right, licence and authority to construct, operate and maintain the Project (the "**Concession**") for a period of 30 (thirty) years commencing from the Appointed Date, and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.
- 3.1.2 Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire to:
- (a) Right of Way, access and licence to the Site for the purpose of and to the extent conferred by the provisions of this Agreement;
 - (b) finance and construct the Heliport;
 - (c) operate, manage and maintain the Heliport and regulate the use thereof by third parties;
 - (d) demand, collect and appropriate Fee from Users liable for payment of Fee for using the Heliport or any part thereof and refuse entry of any User if the Fee due is not paid;
 - (e) perform and fulfil all of the Concessionaire's obligations under and in accordance with this Agreement and Applicable Law;
 - (f) save as otherwise expressly provided in this Agreement, bear and pay all costs, expenses and to the performance of the obligation charges in connection with or incidental of the Concessionaire under this Agreement; and
 - (g) neither assign, transfer or sublet or create any lien or Encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Heliport nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement.

ARTICLE 4

CONDITIONS PRECEDENT

4.1 Conditions Precedent

- 4.1.1 Save and except as expressly provided in Articles 4, 5, 6, 7, 8, 9, 10, 29, 39, 40, 42, 45, 49 and 52, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the "**Conditions Precedent**"). Provided, however, that a Party may grant waiver from satisfaction of any Condition Precedent by the other Party in accordance with the provisions of Clauses 4.1.2 or 4.1.3, as the case may be, and to the extent of such waiver, that Condition Precedent shall be deemed to be fulfilled for the purposes of this Clause 4.1.1.
- 4.1.2 The Concessionaire may, upon providing the Performance Security to the Authority in accordance with Article 9, at any time after 90 (ninety) days from the date of this Agreement or on an earlier day acceptable to the Authority, by notice require or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 120 (one hundred and twenty) days of the notice, or such longer period not exceeding an additional 60 (sixty) days, and the Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:
- (a) procured for the Concessionaire the Right of Way to the Site in accordance with the provisions of Clause 10.3.1 and 10.3.2;
 - (b) procured all Applicable Permits relating to environmental protection and conservation in respect of at least 90% (ninety per cent) of the land required for the Project and forming part of the Site; and
 - (c) procured forest clearance for and in respect of at least 90% (ninety per cent) of the land required for the Project and forming part of the Site, save and except permission for cutting trees.
- 4.1.3 The Conditions Precedent required to be satisfied by the Concessionaire within a period of 180 (one hundred and eighty) days from the date of this Agreement shall be deemed to have been fulfilled when the Concessionaire shall have:
- (a) provided Performance Security to the Authority in accordance with Article 9;
 - (b) executed and procured execution of the Escrow Agreement in the form provided in Schedule T;
 - (c) executed and procured execution of the Substitution Agreement in the form provided in Schedule W;

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- (d) Deleted
 - (e) procured all the Applicable Permits specified in Schedule-E unconditionally, or if subject to conditions, then all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full, and such Applicable Permits are in full force and effect;
 - (f) executed the Financing Agreement and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;
 - (g) delivered to the Authority 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders;
 - (h) delivered to the Authority from {the Consortium Members, their respective} confirmation, in original, of the correctness of their representations and warranties set forth in Sub-clauses (k), (l) and (m) of Clause 7.1 of this Agreement; and
 - (i) delivered to the Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof;
 - (j) executed the agreement to be entered into between the Concessionaire and IMD, as per the format prescribed by IMD
 - (k) executed the agreement to be entered into between the Concessionaire and BCAS, as per the format provided by BCAS
 - (l) executed the CNS-ATM Agreement in the format prescribed by Airports Authority of India

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

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

4.2 Damages for delay by the Authority

In the event that (i) the Authority does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Authority shall pay to the Concessionaire Damages in an amount calculated at the rate of 0.1 % (zero point one per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty per cent) of the Performance Security.

4.3 Damages for delay by the Concessionaire

In the event that (i) the Concessionaire does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the period specified in the clause, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.2 or other breach of this Agreement by the Authority or due to Force Majeure, the Concessionaire shall pay to the Authority Damages in an amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum amount equal to the Bid Security, and upon reaching such maximum specified limit, the Authority may, in its sole discretion and subject to the provisions of Clause 9.2, terminate the Agreement. Provided that in the event of delay by the Authority in procuring fulfilment of the Conditions Precedent specified in Clause 4.1.2, no Damages shall be due or payable by the Concessionaire under this Clause 4.3 until the date on which the Authority shall have procured fulfilment of the Conditions Precedent specified in Clause 4.1.2.

4.4 Deemed Termination upon delay

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

4.4.2 In the event of a termination as set out in Clause 4.4.1,

- (a) the {selected bidder/Consortium} shall discharge all liabilities, if any created, in any form whatsoever, within 7 (seven) days of such termination;

- (b) the {selected bidder/Consortium members} shall transfer its entire shareholding in the Concessionaire to the Authority or any of its nominees, at its own cost, within 15 (fifteen) days of the termination, and each of the Concessionaire and the {Selected Bidder/Concessionaire} shall take all such actions and proceedings, as may be required under the Applicable Laws, to complete such transfer.

ARTICLE 5

OBLIGATIONS OF THE CONCESSIONAIRE

5.1 General Obligations of the Concessionaire

- 5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Heliport, in accordance with the provisions of this Agreement and the Master Plan, and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2 The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.3 The Concessionaire shall, at all times during the subsistence of this Agreement, comply with all the conditions stipulated in the In-Principle Approval or any substitute and/ or consequential approvals
- 5.1.4 Save and except as otherwise provided in this Agreement or Applicable Laws, as the case may be, the Concessionaire shall, in discharge of all its obligations under this Agreement, conform with and adhere to Good Industry Practice at all times.
- 5.1.5 The Concessionaire shall, from time to time, undertake expansion or augmentation of the Aeronautical Assets, Terminal Building and Non-Aeronautical Assets in accordance with the provisions of this Agreement and Good Industry Practice.
- 5.1.6 Save and except as expressly provided in this Agreement, the Concessionaire shall, at all times during the subsistence of this Agreement, pay all taxes, levies, duties, cesses and all other statutory charges, dues, assessments or outgoings payable in respect of the Heliport or in respect of the materials stored therein which may be levied by any Government Instrumentality.
- 5.1.7 The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits (other than those set forth in Clause 4.1.2), and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
 - (b) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used or incorporated into the Heliport;
 - (c) perform and fulfil its obligations under the Financing Agreements;

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- (d) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
 - (e) make reasonable efforts to facilitate the acquisition of land and procuring of environmental and forest clearances required for the purposes of this Agreement;
 - (f) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
 - (g) always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner be violative of any of the provisions of this Agreement;
 - (h) procure that all facilities and amenities within the Heliport are operated and maintained in accordance with Good Industry Practice and the Users have non-discriminatory access for use of the same in accordance with the provisions of this Agreement and Applicable Laws;
 - (i) ensure that Users are treated with due courtesy and consideration and provided with ready access to services and information;
 - (j) provide, or cause to be provided, Ground Handling Services at the Heliport in accordance with the provisions of this Agreement and Applicable Laws;
 - (k) provide assistance and support to the Authority and Designated GoI Agencies, as may be necessary and required for the provision of Reserved Services at the Heliport;
 - (l) procure the supply of electricity to the Heliport from the grid, including procuring standby arrangements for supply of electricity necessary for maintenance of Aeronautical Services and Non-Aeronautical Services in the event of outages or failure of electricity supply from the grid;
 - (m) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
 - (n) transfer the Project to the Authority upon Termination of this Agreement, in accordance with the provisions thereof.

5.1.8 The Concessionaire shall, at all times (including during the Construction Period), comply with all instructions and requirements of DGCA and BCAS and allow DGCA and BCAS to inspect the Site and the Heliport from time to time at their own cost and with reasonable advance notice to the concessionaire.

5.2 Obligations relating to Project Agreements

- 5.2.1 It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Concessionaire from its obligations or liability hereunder.
- 5.2.2 The Concessionaire shall submit to the Authority the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of the Authority to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Authority. No review and/ or observation of the Authority and/ or its failure to review and/ or convey its observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.
- 5.2.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire.
- 5.2.4 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the "**Covenant**"). For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party(s) of each of the Project Agreements, whereunder such counter party(s) shall acknowledge and accept the Covenant and undertake to be bound by the same and

not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.

- 5.2.5 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that selection or replacement of all O&M Contractors and execution of all O&M Contracts shall be subject to the prior approval of the Authority from national security and of the Authority in this behalf being public interest perspective, the decision final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such selection or contract without prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire or its Contractors from any liability or obligation under this Agreement.

5.3 Obligations relating to Change in Ownership

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

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

For the purposes of this Clause 5.3.2:

- (a) the expression "acquirer", "control" and "person acting in concert" shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Concessionaire;
- (b) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and
- (c) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situate in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of not less than 25% (twenty five per cent) of the Equity of the Concessionaire shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.

5.4 Obligations relating to Golden Share

5.4.1 [Deleted]

5.5 Obligations relating to DGCA licence

5.5.1 The Concessionaire shall procure and keep current the Applicable Permits from DGCA, and if such Applicable Permits are issued subject to conditions, then the Concessionaire shall at all times comply with all such conditions.

5.5.2 The Authority shall, on a best endeavour basis, provide necessary support to the Concessionaire for obtaining the Applicable Permits from DGCA no later than 60 (sixty) days from the date of filing of the application by the Concessionaire with the DGCA; provided that on the date of such application the Concessionaire shall have completed construction of the Heliport in accordance with the provisions of this Agreement and shall have complied with (i) the requirements of Rule 83 and Section A of Schedule V of the Aircraft Rules, 1937; (ii) any special directions or guidelines issued by the DGCA pursuant to Rule 133A of the Aircraft Rules, 1937; (iii) in Civil Aviation Requirements (Aerodrome Standards), Section - 4, Series 'B', Part III and (iv) any other requirement of the DGCA in connection with the issuance of an heliport licence.

5.5.3 The provisions of Clauses 5.5.1 and 5.5.2 shall apply, *mutatis mutandis*, to the renewal of Applicable Permits until Termination of this Agreement.

5.6 Procurement of goods and services

5.6.1 The Concessionaire agrees and undertakes that it shall procure contracts, goods and services for the construction and operation of the Heliport in a fair, transparent and efficient manner, and without any undue favour or discrimination in this behalf. In pursuance hereof, it shall frame a procurement policy specifying the principles and procedures that it shall follow in awarding contracts for supply of goods and services, and shall place the policy on its website for the information of general public and all interested parties. The policy shall also include the principles and procedures to be followed for leasing, licensing, sub-licensing, or grant or allocation of any space, building, rights or privileges to private entities.

5.6.2 [Deleted]

5.7 Obligations relating to employment of foreign nationals

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

5.8 Obligations relating to employment of trained personnel

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

5.8.2 If the Authority finds that any of the personnel engaged by the Concessionaire have (a) committed serious misconduct or have been charged with having committed a criminal action, or (b) have reasonable cause to be dissatisfied with the performance of any of the personnel, then the Concessionaire shall, at the Authority's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the Authority. The Concessionaire shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of personnel.

5.9 Obligations relating to security clearance

Notwithstanding anything to the contrary contained in this Agreement, the employees, staff and personnel shall always of the Concessionaire and of its Contractors and subcontractors be subject to security clearance by the Authority or such agency as it may by notice designate, and only persons having a valid security clearance shall be permitted on the Site. For the avoidance of doubt, it is agreed that refusal of or inability to obtain any such permits and approvals by the Concessionaire or any of its contractors or sub-contractors shall not constitute a Force Majeure Event, and shall not in any manner excuse the Concessionaire from the performance and discharge of its obligations and liabilities under this Agreement.

5.10 Obligations relating to non-discriminatory access

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

5.11 Obligations relating to medical aid

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

5.12 Obligations relating to aesthetic quality of the Heliport

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

5.13 Obligations relating to noise control

The Concessionaire shall take all such measures as may be necessary in accordance with Applicable Laws and Good Industry Practice to control and mitigate the noise arising from the Heliport and its impact on Users and the neighbourhood.

5.14 Sole purpose of the Concessionaire

The Concessionaire having been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the Concessionaire or any of its subsidiaries shall not, except with the previous written consent of the Authority, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

5.15 Branding of the Heliport

The Project or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Concessionaire or its shareholders. Save an except as may be necessary in the normal course of business, the Concessionaire undertakes that it shall not, in any manner, use the name or identity of the Heliport to advertise or display its own identity, brand equity or business interests, including those of its shareholders. For the avoidance of doubt, it is agreed that the Concessionaire may display its own name at a spot where other public notices are displayed for the Users. It is further agreed that the Heliport shall be known, promoted, displayed and advertised by the name of ***** Heliport.

5.16 Facilities for physically challenged and elderly persons

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

5.17 Taxes and Duties

The Concessionaire and their personnel shall pay such direct and indirect taxes, duties, fees, and other impositions levied under the Applicable Laws.

5.18 Confidentiality

Except with the prior written consent of the Authority, the Concessionaire and the Personnel shall not at any time communicate to any person or entity any confidential information, maps, images, reports, etc. acquired in the course of the Services, nor shall the Concessionaire and the Personnel make public the recommendations formulated in the course of, or as a result of, the Services.

ARTICLE 6

OBLIGATIONS OF THE AUTHORITY

6.1 Obligations of the Authority

- 6.1.1 The Authority shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 6.1.2 The Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:
- (a) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Heliport;
 - (b) upon written request from the Concessionaire, provide reasonable assistance to the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;
 - (c) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, procure Applicable Permits, if any, relating to environmental protection and conservation of the Heliport, at the cost and expense of the Concessionaire ;
 - (d) procure that no barriers are erected or placed on or about the Heliport by any Government Instrumentality or persons claiming through or under it, except for reasons of Safety Requirements, Emergency, national security, or law and order;
 - (e) make best endeavours to procure that no local Tax, toll or charge is levied or imposed on the use of whole or any part of the Heliport;
 - (f) subject to and in accordance with the Applicable Laws, grant to the Concessionaire the authority to regulate traffic on the Site;
 - (g) assist the Concessionaire in procuring police assistance for regulation of traffic, removal of trespassers and security on or at the Heliport;
 - (h) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;

- (i) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement and in accordance with Applicable Laws;
- (j) upon written request from the Concessionaire and subject to the provisions of Clause 5.7, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for the purposes of discharge by the Concessionaire or its Contractors their obligations under this Agreement and the Project Agreements.

6.2 Maintenance obligations prior to Appointed Date

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

6.3 Obligations relating to Competing Facilities

The Authority shall procure that during the subsistence of this Agreement, the Authority shall, at any time before the 15th (fifteenth) anniversary of the Appointed Date, construct or cause to be constructed any Competing Facility. Upon breach of its obligations hereunder, the Authority shall be liable to payment of compensation to the Concessionaire under and in accordance with Clause 39.4, and such compensation shall be the sole remedy of the Concessionaire.

6.4 Obligations relating to Reserved Services

- 6.4.1 Subject to and in accordance with the provisions of this Agreement and Applicable Laws, the Concessionaire shall provide, or cause to be provided through the Designated GoI Agency, the CNS/ ATM Services in accordance with the provisions of Article 22, and shall at all times procure that the Designated GoI Agency empowered to control and regulate of air traffic shall enable movement of Helicopters on the Helipad in accordance with Applicable Laws and Good Industry Practice.
- 6.4.2 Subject to the provisions of Article 22, the Concessionaire shall perform, or cause to be performed through the Authority or Designated GoI Agency, all the Reserved Services in accordance with the provisions of this Agreement and Applicable Laws; provided that nothing in this Agreement shall restrict the Authority from requiring the Concessionaire to undertake any or all of the Reserved Services on such terms and conditions as may be mutually agreed between the Parties.

6.5 Assistance and Exemptions

The Authority shall use its best efforts to ensure that it shall provide the Concessionaire such assistance as reasonably required for the execution of the Project.

ARTICLE 7

REPRESENTATIONS AND WARRANTIES

7.1 Representations and warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

- (a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (f) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association { or those of any member of the Consortium } or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any

Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

- (j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- (k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3; and that the {selected bidder/Consortium Members}, together with {its/their} Associates, hold not less than 51 % (fifty one per cent) of its issued and paid up Equity as on the date of this Agreement; and that in case of a Consortium no Member of the Consortium whose technical and financial capacity was evaluated for the purposes of pre-qualification and short-listing in response to the Request for Qualification cum Proposal shall hold less than 26% (twenty-six per cent) of such Equity until the completion of 2 (two) years from the COD;
- (l) {the selected bidder/ Consortium Members and its/their} Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- (m) { the selected bidder/ each Consortium Member} is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Authority to enter into this Agreement with the Concessionaire pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (n) all its rights and interests in the Heliport shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;
- (o) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (p) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith; and

- (q) all information provided by the {selected bidder/ Consortium Members} in response to the Request for Qualification cum Proposal or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects.
- (r) all undertakings and obligations of the Concessionaire arising from the Request for Qualification cum Proposal or otherwise shall be binding on the Concessionaire as if they form part of this Agreement.

7.2 Representations and warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

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

7.3 Disclosure

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

ARTICLE 8

DISCLAIMER

8.1 Disclaimer

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

Part III
Development & Operations

ARTICLE 9

PERFORMANCE SECURITY

9.1 Performance Security

9.1.1 The Concessionaire shall, for the performance of its obligations hereunder during the Construction Period, provide to the Authority no later than 180 (one hundred and eighty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs. 1,29,00,000 (Rupees one crore twenty nine-lakhs only crore)¹ in the form set forth in Schedule-F (the "**Performance Security**"). Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Concessionaire.

9.1.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Concessionaire within a period of 180 (one hundred and eighty) days from the date of this Agreement, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

9.2 Appropriation of Performance Security

Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such Concessionaire Default. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case and the Concessionaire shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 42 . Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Concessionaire shall be entitled to an additional Cure Period of 120 (one hundred and twenty) days for remedying the Concessionaire Default, and in the event of the

¹ Calculated at 3% (three per cent) of the amount specified in the definition of total Project Cost. May be reduced to 2% (two per cent) if the Total Project Cost exceeds Rs. 2,000 crores.

Concessionaire not curing its default within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 42.

9.3 Release of Performance Security

The Performance Security shall remain in force and effect until the achievement of the COD, but shall be released earlier upon the Concessionaire expending on Project construction an aggregate sum that is not less than 20% (twenty per cent) of the Total Project Cost; provided, however, that the Performance Security shall not be released if the Concessionaire is in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars which establish satisfaction of the requirements specified under this Clause 9.3, the Authority shall release the Performance Security forthwith.

9.4 Deemed Performance Security

- 9.4.1 The Parties expressly agree that at least 15(fifteen) days prior to release of the Performance Security in accordance with the provisions of Clause 9.3, a substitute Performance Security for the same amount shall be deemed to be created under this Clause 9.4, as if it is a Performance Security under Clause 9.1 for and in respect of the entire remaining Concession Period (the “**Deemed Performance Security**”). The Deemed Performance Security shall be unconditional and irrevocable, and shall, notwithstanding anything to the contrary contained in Article 36, constitute the first and exclusive charge on an equivalent balance in the Escrow Account and the payments accrued or payments due and payable subsequently, as the case may be, by the Concessionaire to the Authority, and the Authority shall be entitled to enforce the Deemed Performance Security through a withdrawal from the Escrow Account or by making a deduction from the amounts due and payable to it by the Concessionaire in accordance with the provisions of Clause 9.5. For the avoidance of doubt, the Parties agree that no amounts shall be earmarked, frozen or withheld in the Escrow Account for securing payment of any potential Damages that may fall due at a subsequent date, and only the amounts which shall have become due and payable by the Concessionaire upon occurrence of a Concessionaire Default shall be liable to appropriation hereunder.

9.5 Appropriation of Deemed Performance Security

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

9.6 References to Performance Security

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

ARTICLE 10

RIGHT OF WAY

10.1 The Site

The site of the Project shall comprise the land described in Schedule-A and in respect of which the Right of Way shall be provided and granted by the Authority to the Concessionaire as a licensee under and in accordance with this Agreement (the "**Site**"). For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the land required for the Heliport as set forth in Schedule-A.

10.2 Licence, Access and Right of Way

- 10.2.1 The Authority hereby grants to the Concessionaire access to the Site for carrying out any surveys, investigations and soil tests that the Concessionaire may deem necessary during the Development Period, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Concessionaire on or about the Site pursuant hereto in the event of Termination or otherwise.
- 10.2.2 In consideration of the Monthly Concession Fee specified in Article 31 and the License Fee specified in Article 30, this Agreement and the covenants and warranties on the part of the Concessionaire herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from the Appointed Date, leave and licence rights in respect of all the land (along with any buildings, constructions or immovable assets, if any, thereon) comprising the Site which is described, delineated and shown in Schedule A hereto (the "**Licensed Premises**"), on an "as is where is" basis, free of any Encumbrances, to develop, operate and maintain the said Licensed Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Licensed Premises, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.
- 10.2.3 The licence, access and right of way granted by this Agreement to the Concessionaire shall always be subject to existing rights of way and the Concessionaire shall perform its obligations in a manner that the Heliport is open to Users at all times during the Concession Period, save and except during the hours for which closure thereof shall have been permitted by the Authority.
- 10.2.4 It is expressly agreed that the licence granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the licence, upon the Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Site by the Concessionaire or its sub-licensees, the licence in respect of the Site shall

automatically terminate, without any further act of the Parties, upon Termination of this Agreement.

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

10.3 Procurement of the Site

- 10.3.1 Pursuant to the notice specified in Clause 4.1.2, the Authority Representative and the Concessionaire shall, on a mutually agreed date and time, inspect the Site and prepare a memorandum containing an inventory of the Site including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Site. Such memorandum shall have appended thereto an appendix (the "**Appendix**") specifying in reasonable detail those parts of the Site to which vacant access and Right of Way has not been granted to the Concessionaire. Signing of the memorandum, in two counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall, subject to the provisions of Clause 10.2.2, be deemed to constitute a valid licence and Right of Way to the Concessionaire for free and unrestricted use and development of the vacant and unencumbered Site during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For the avoidance of doubt, it is agreed that valid licence and Right of Way with respect to the parts of the Site as set forth in the Appendix shall be deemed to have been granted to the Concessionaire upon vacant access thereto being provided by the Authority to the Concessionaire.
- 10.3.2 Without prejudice to the provisions of Clause 10.3.1, the Parties hereto agree that on or prior to the Appointed Date, the Authority shall have granted vacant access and Right of Way such that the Appendix shall not include more than 10 % (ten per cent) of the total area of the Site required and necessary for the Heliport, and in the event Financial Close is delayed solely account of delay in grant of such vacant access and Right of Way, the Authority shall be liable to payment of Damages under and in accordance with the provisions of Clause 4.2. For the avoidance of doubt, the Authority acknowledges and agrees that the Appendix shall not include any land which may prevent or delay the construction of Aeronautical Assets and the Terminal Building without which the Completion Certificate or Provisional Certificate may not be granted. The Parties also acknowledge and agree that the conditions specified in this Clause 10.3.2 shall not be modified or waived by either Party.

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- 10.3.3 On and after signing the memorandum referred to in Clause 10.3.1, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.
- 10.3.4 The Authority shall make best efforts to procure and grant, no later than 90 (ninety) days from the Appointed Date, the Right of Way to the Concessionaire in respect of all land included in the Appendix, and in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Concessionaire, it shall pay to the Concessionaire Damages in a sum calculated at the rate of Rs. 1,000 (Rupees one thousand) per day for every 500 (five hundred) square meters or part thereof, commencing from the 91st (ninety first) day of the Appointed Date and until such Right of Way is procured.
- 10.3.5 Upon receiving Right of Way in respect of any land included in the Appendix, the Concessionaire shall complete the Construction Works thereon within a reasonable period to be determined by the Independent Engineer in accordance with Good Industry Practice; provided that the issue of Provisional Certificate shall not be affected or delayed on account of vacant access to any part of the Site not being granted to the Concessionaire or any construction on such part of the Site remaining incomplete on the date of Tests on account of the delay or denial of such access thereto. For the avoidance of doubt, it is expressly agreed that Construction Works on all lands for which Right of Way is granted within 180 (one hundred and eighty) days of the Appointed Date shall be completed before the Project Completion Date. It is also expressly agreed that completion of the respective Construction Works within the time determined by the Independent Engineer hereunder shall be deemed to be Project Milestones for the purposes of levy and recovery of Damages under and in accordance with the provisions of Clause 12.4.2.
- 10.3.6 The Concessionaire shall, if so required by the Authority, procure on behalf of the Authority, on the terms and to the extent specified by the Authority, the additional land required for Non-Aeronautical Assets for construction of works specified in Change of Scope Order issued under Article 16, in accordance with this Agreement and upon procurement, such land shall form part of the Site and vest in the Authority; provided that the Concessionaire may, by notice given to the Authority no later than 90 (ninety) days from the Appointed Date or the date of Change of Scope Order, as the case may be, require the Authority to initiate and undertake proceedings for acquisition of such land under the provisions of the Applicable Laws and the Authority shall take all such steps as may be reasonably necessary for such land acquisition forthwith; provided further that the cost of land acquired under this Clause 10.3.6 shall be borne by the Authority in accordance with the provisions of Applicable Laws; provided also that the land to be acquired by the Authority hereunder as a part of the Site shall be deemed to be included in the Appendix referred to in this Clause 10.3 and dealt with in accordance with the provisions thereof.
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10.4 Site to be free from Encumbrances

Subject to the provisions of Clause 10.3, the Site shall be made available by the Authority to the Concessionaire pursuant hereto free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Concession Period, except insofar as otherwise expressly provided in this Agreement. For the avoidance of doubt, it is agreed that existing rights of way, easements, privileges, liberties and appurtenances to the Licensed Premises shall not be deemed to be Encumbrances. It is further agreed that the Concessionaire accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Site.

10.5 Protection of Site from encroachments

During the Concession Period, the Concessionaire shall protect the Site from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Contractor or other person claiming through or under the Concessionaire to place or create any Encumbrance or security interest over all or any part of the Site or the Project Assets, or on any rights of the Concessionaire therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

10.6 Special/temporary right of way

The Concessionaire shall bear all costs and charges for any special or temporary right of way required by it in connection with access to the Site. The Concessionaire shall obtain at its cost such facilities on or outside the Site as may be required by it for the purposes of the Agreement. Heliport and the performance of its obligations under this Agreement.

10.7 Access to the Authority and Independent Engineer

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

10.8 Geological and archaeological finds

It is expressly agreed that mining, geological or archaeological rights do not form part of the licence granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Site shall vest in and belong to the Authority or the concerned Government Instrumentality. The Concessionaire shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Authority

forthwith of the discovery thereof and comply with such instructions as the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Concessionaire hereunder shall be reimbursed by the Authority. It is also agreed that the Authority shall procure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period so as to enable the Concessionaire to continue its Construction Works with such modifications as may be deemed necessary.

ARTICLE 11

UTILITIES, ASSOCIATED ROADS AND TREES

11.1 Existing utilities and roads

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

11.2 Shifting of obstructing utilities

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

11.2.2 The Concessionaire shall, after commencement of work in accordance with Clause 11.2.1, present to the Authority bills for payment in respect of the works in progress or completed works, as the case may be, supported by such Documentation as is reasonably sufficient for the Authority to determine the accuracy thereof. Within 90 (ninety) days of receipt of such bills, the Authority shall disburse to the Concessionaire such amounts as are certified by the Independent Engineer.

11.3 New utilities and transport systems

11.3.1 The Concessionaire shall allow, subject to such conditions as the Authority may specify, access to, and use of the Site for laying telephone lines, water pipes, electric cables or other public utilities; provided that the laying of such telephone lines, water pipes, electric cables or other public utilities do not in any way adversely impact the operations of the Heliport. Where such access or use causes any financial loss to the Concessionaire, it may require the user of the Site to pay compensation or damages as per Applicable Laws. For the avoidance of doubt, it is agreed that use of the Site under this Clause 11.3 shall not in any manner relieve the Concessionaire of its obligation to maintain the Heliport in accordance with this Agreement and any damage caused by such use shall be restored forthwith.

11.3.2 The Authority may, by notice require the Concessionaire to connect any adjoining transport system, including approach roads, overbridges/ underbridges, over-passes or under-passes, to the Heliport. Upon receipt of a notice hereunder, the connecting portion thereof falling within the Site shall be constructed by the Concessionaire at the Authority's cost in accordance with Article 16, and the maintenance thereof shall be undertaken by the Concessionaire in accordance with the provisions of Clause 17.1.3. For the avoidance of doubt, the provisions of this Clause 11.3.2 shall not apply to a rail link which may be constructed on such terms as the Parties may mutually determine.

11.4 Felling of trees

The Authority shall assist the Concessionaire in obtaining the Applicable Permits for felling of trees to be identified by the Authority for this purpose if and only if such trees cause a material adverse effect on the construction, operation or maintenance of the Heliport. The cost of such felling shall be borne by the Concessionaire, and in the event of any delay in felling thereof for reasons beyond the control of the Concessionaire, it shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay in the felling of trees.

For the avoidance of doubt, the Parties hereto agree that the felled trees shall be deemed to be owned by the Authority and shall be disposed in such manner and subject to such conditions as the Authority may in its sole discretion deem appropriate and the costs and expense in respect of felling of trees shall be borne by the Concessionaire and any revenues thereof shall be paid to the Authority

ARTICLE 12

CONSTRUCTION OF THE HELIPORT

12.1 Obligations prior to commencement of construction

12.1.1 Prior to commencement of Construction Works, the Concessionaire shall:

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

12.1.2 The Concessionaire shall, prior to commencement of construction of the Terminal Building, furnish to the Authority and to the Independent Engineer, the architectural parameters, controls, building profiles, facades, dimensions, designs and building materials (the "**Architectural Design**"), which it shall have procured from an architect of international repute.

12.1.3 Within 30 (thirty) days of the receipt of the Architectural Design, the Authority and/ or the Independent Engineer shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards or the aesthetic quality thereof and its harmony with the environment. If the aforesaid observations of the Authority or the Independent Engineer indicate that the Architectural Design is not in conformity with the Scope of the Project or the Specifications and Standards or require improvement in aesthetic quality or harmony with the environment, it shall be revised by the Concessionaire and resubmitted to the Authority and the Independent Engineer for review. The Authority and/ or the Independent Engineer shall give their observations, if any, within 7 (seven) days of receipt of the revised Architectural Design.

12.1.4 The Concessionaire shall not be obliged to await the observations of the Authority on the Architectural Design submitted 30 (thirty) days period specified above in Clause 12.1.3 and may begin the said Construction Works at its own discretion and risk. For the avoidance of doubt no review and/or observation of the Authority or the Independent Engineer and/or their failure to review and/or convey their observations

on the Architectural Design shall not relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority or the Independent Engineer be liable for the same in any manner.

- 12.1.5 In the event that the Concessionaire or the Authority, as the case may be, proposes to modify any element of Architectural Design subsequent to the process specified in Clauses 12.1.2, 12.1.3 and 12.1.4, and notifies the other Party of its intent, then the same shall be deemed to be a Change of Scope under Article 16 of this Agreement and the process laid down in Article 16 shall apply.
- 12.1.6 In the event that any modifications to the Architectural Design shall have been determined under and in accordance with Clause 12.1.3, the Architectural Design shall be deemed to be modified to the extent thereof.

12.2 Master Plan for the Site

- 12.2.1 The Concessionaire shall at all times procure and ensure that the Heliport is constructed and developed in accordance with the Master Plan set forth in Schedule-A.
- 12.2.2 The Concessionaire may, with prior written consent of the Authority, use any area earmarked for future expansion of the Heliport, for other purposes incidental to or associated with the Heliport, until the same is required for the expansion specified in the Master Plan, subject to the condition that only temporary structures may be constructed in such area and the use thereof shall at all times be in conformity with Applicable Laws and Good Industry Practice.
- 12.2.3 The Concessionaire may, at any time during the Concession Period, seek approval of the Authority for modifications in the Master Plan to improve or augment the Aeronautical Services and upon receipt of any request hereunder, the Authority shall grant approval to the extent reasonably required in pursuance of this Clause 12.2.3. For the avoidance of doubt, the Parties expressly agree that the Master Plan shall not be amended for and in respect of Non-Aeronautical Services, save and except when required to deal with the effects of Force Majeure or for providing facilities or amenities to Users without payment of any Fee or charge.

12.3 Drawings

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

- (a) The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, three copies each of all Drawings to the Independent Engineer for review;
- (b) By submitting the Drawings for review to the Independent Engineer, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering, including field construction criteria

related thereto, are in conformity with the Scope of the Project and the Specifications and Standards, Applicable Laws and Good Industry Practice.

- (c) Within 15 (fifteen) days of the receipt of the Drawings, the Independent Engineer shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. The Concessionaire shall not be obliged to await the observations of the Independent Engineer on the Drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin or continue Construction Works at its own discretion and risk;
- (d) If the aforesaid observations of the Independent Engineer indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the Concessionaire and resubmitted to the Independent Engineer for review. The Independent Engineer shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings;
- (e) No review and/or observation of the Independent Engineer and/or its failure to review and/or convey its observations on any Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Engineer or the Authority be liable for the same in any manner;
- (f) Without prejudice to the foregoing provisions of this Clause 12.3, the Concessionaire shall submit to the Authority for review and comments. its Drawings relating to the alignment of Helipad, finished Helipad level, location and layout of the Aeronautical Assets and Terminal Building and general arrangement drawings of major bridges and grade separators, if any, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, within 30 (thirty) days of the receipt of such Drawings. The provisions of this Clause 12.3 shall apply mutatis mutandis to the review and comments hereunder; and
- (g) Within 90 (ninety) days of the Project Completion date, the Concessionaire shall furnish to the Authority and the Independent Engineer a complete set of as-built Drawings, in 2 (two) hard copies and in micro film form or in such other medium as may be acceptable to the Authority, reflecting the Heliport as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Heliport and setback lines, if any, of the buildings and structures forming part of Project Facilities.

12.4 Construction of the Heliport

- 12.4.1 On or after the Appointed Date, the Concessionaire shall undertake construction of the Heliport as specified in Schedule-B and Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D and the Master Plan. The 450th (Four hundred and fifty) day i.e. 15 (Fifteen) months from the Appointed Date shall

be the scheduled date for completion of the Project (the "**Scheduled Completion Date**") and the Concessionaire agrees and undertakes that construction of the Heliport shall be completed on or before the Scheduled Completion Date.

- 12.4.2 The Concessionaire shall construct the Heliport in accordance with the Project Completion Schedule set forth in Schedule-G. In the event that the Concessionaire fails to achieve any Project Milestone within a period of 90 (ninety) days from the date set forth for such Milestone in Schedule-G, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of 0.1 % (zero point one per cent) of the amount of Performance Security for delay of each day until such Milestone is achieved; provided that if any or all Project Milestones or the Scheduled Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-G shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-G has been amended as above; provided further that in the event Project Completion Date is achieved on or before the Scheduled Completion Date, the Damages paid under this Clause 12.4.2 shall be refunded by the Authority to the Concessionaire, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.4.2 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.
- 12.4.3 In the event that the Heliport is not completed within 270 (two hundred and seventy) days from the Scheduled Completion Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.

12.5 Development of Terminal Building

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

12.6 Development of Car Park

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

12.7 Development of Cargo Facilities

- 12.7.1 Subject to the provisions of Clause 12.4, the Concessionaire may at its option undertake development of Cargo Facilities as specified in Schedule-B together with provision of Project Facilities as specified in Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D. For the avoidance of doubt, it shall not be mandatory for the Concessionaire to undertake construction and development of the Cargo Facilities as per the terms of this Agreement and development of such Cargo Facilities shall only be an optional obligation for the Concessionaire.
- 12.7.2 Any development, addition or modification to the Cargo Facilities and its surrounding areas shall be in accordance with the Master Plan and in harmony with the overall design and environment of the Heliport.

12.8 Expansion of the Heliport

- 12.8.1 At any time after the Scheduled Completion Date, if the Aeronautical Assets, Terminal Building and Non-Aeronautical Assets, as the case may be, fall short of the norms and standards specified by ICAO Documents and Annexes, the applicable guidelines of DGCA, Good Industry Practice and the provisions of this Agreement or if the actual number of passengers in any year is equal to or more than the number of annual passengers as set out in Schedule B, the Concessionaire shall undertake capacity addition and expansion thereof, at its own cost and expense, in accordance with Schedule B, to meet such shortfall.
- 12.8.2 Without prejudice to the provisions of this Article 12, the Concessionaire shall ensure and procure that expansion of the Terminal Building and its surrounding areas shall be in accordance with the Architectural Design and Master Plan, and in harmony with the overall design and environment of the Heliport. It shall also ensure and procure that in terms of quality, reliability, efficiency, passenger convenience and aesthetic value, such development is no inferior than the existing Terminal Building.
- 12.8.3 The additional assets and facilities required to be constructed in pursuance of the provisions of Clause 12.8.1 shall be completed and placed into operation within a period not exceeding 3 (three) years from the date on which the shortfall specified therein occurred. For the avoidance of doubt, any assets and facilities constructed under this Clause 12.8 shall be deemed to form part of the Project Assets.
- 12.8.4 The provisions of this Agreement, insofar as they relate to Construction Works, shall apply, mutatis mutandis; to the expansion of the Heliport, save and except where express provisions to the contrary have been made in respect thereof.

12.9 Development of Hangar Facilities

- 12.9.1 Subject to the provisions of this Article 12, the Concessionaire shall have to mandatorily undertake the development of the Hangar Facilities latest by 5th anniversary of the Signing of agreement, as specified in Schedule B together with provision of Project Facilities as specified in Schedule C, in conformity with the Specifications and Standards set forth in Schedule D and in accordance with the provisions of this Agreement, Applicable Laws, relevant ICAO Documents and Annexes, CAR Guidelines and Good Industry Practice. For avoidance of doubt – the concessionaire shall construct & operate the hangar within 60th month of Signing of Agreement.
- 12.9.2 Any development, addition or modification to the Hangar Facilities and its surrounding areas shall be in accordance with the Master Plan and in harmony with the overall design and environment of the Heliport.

ARTICLE 13

MONITORING OF CONSTRUCTION

13.1 Monthly progress reports

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

13.2 Inspection

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

13.3 Tests

13.3.1 For determining that the Construction Works conform to the Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the Independent Engineer from time to time, in accordance with Good Industry Practice for quality assurance. The size of sample for such tests shall, to the extent possible, not exceed 10% (ten per cent) of the quantity and/or number of tests that the owner or builder of such works would normally undertake in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the Independent Engineer and furnish the results thereof to the Independent Engineer. One half of the costs incurred on such tests, and to the extent certified by the Independent Engineer as reasonable, shall be reimbursed by the Authority to the Concessionaire. For the avoidance of doubt, the costs to be incurred on any test which is undertaken for determining the rectification of any defect or deficiency in construction shall be borne solely by the Concessionaire.

13.3.2 In the event that results of any tests conducted under this Clause 13.3 establish any defects or deficiencies in the Construction Works, the Concessionaire shall carry out remedial measures and furnish a report to the Independent Engineer in this behalf. The Independent Engineer shall require the Concessionaire to carry out or cause to

be carried out tests to determine that such remedial measures have brought the Construction Works into compliance with the Specifications and Standards, and the procedure set forth in this Clause 13.3 shall be repeated until such Construction Works conform to the Specifications and Standards. For the avoidance of doubt, it is agreed that tests pursuant to this Clause 13.3 shall be undertaken in addition to and independent of the tests that shall be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Concessionaire to the Independent Engineer forthwith.

13.4 Delays during construction

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

13.5 Suspension of unsafe Construction Works

- 13.5.1 Upon recommendation of the Independent Engineer to this effect, the Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Authority, such work threatens the safety of the Users or any other person on or about the Heliport. Provided, however, that in case of an emergency, the Authority may *Suo moto* issue the notice referred to hereinabove.
- 13.5.2 The Concessionaire shall, pursuant to the notice under Clause 13.5.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works and the Users. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Independent Engineer, the Authority shall either revoke such suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this Clause 13.5 shall be repeated until the suspension hereunder is revoked.
- 13.5.3 Subject to the provisions of Clause 39.7, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (the "**Preservation Costs**"), shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the Authority, the Preservation Costs shall be borne by the Authority.

13.5.4 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine any extension of the dates set forth in the Project Completion Schedule to which the Concessionaire is reasonably entitled, and shall notify the Authority accordingly whereupon the Authority shall extend such Project Completion Schedule dates in accordance with the recommendations of the Independent Engineer. In the event that the Scheduled Completion Date is extended pursuant hereto, the Concession Period shall be deemed to be extended by a period equal in length to the period of extension of the Scheduled Completion Date.

13.6 Video recording

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

ARTICLE 14

COMPLETION CERTIFICATE

14.1 Tests

14.1.1 At least 30 (thirty) days prior to the likely completion of the Heliport, the Concessionaire shall notify the Independent Engineer of its intent to subject the Heliport to Tests. The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Concessionaire, and notified to the Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Engineer failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) days' notice to the Independent Engineer, and in the event the Independent Engineer delays the Tests hereunder, the Authority shall impose exemplary penalties on the Independent Engineer and shall ensure that Tests are completed in time either by the Independent Engineer or any substitute thereof.

14.1.2 All Tests shall be conducted in accordance with Schedule-I. The Independent Engineer shall observe, monitor and review the results of the Tests to determine compliance of the Heliport with Specifications and Standards and if it is reasonably anticipated or determined by the Independent Engineer during the course of any Test that the performance of the Heliport or any part thereof does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Independent Engineer shall provide to the Concessionaire and the Authority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent Engineer may require the Concessionaire to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Heliport with Specifications and Standards, Applicable Laws, Applicable Permits and terms of this agreement.

14.2 Completion Certificate

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

14.3 Provisional Certificate

14.3.1 The Independent Engineer may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Schedule- J (the "**Provisional Certificate**") if the Tests are successful and the Heliport can be

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

- 14.3.2 The Parties hereto expressly agree that a Provisional Certificate under this Clause 14.3 may, upon request of the Concessionaire to this effect, be issued for operating part of the Heliport, if it can be safely and reliably placed in commercial operation in accordance with the provisions of Clause 14.3.1. Upon issue of such Provisional Certificate, the provisions of this Agreement shall apply to such completed part of the Heliport, and the rights and obligations of the Concessionaire for and in respect of such completed part of the Heliport shall be construed accordingly.

14.4 Completion of Punch List items

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

14.5 Withholding of Provisional Certificate

- 14.5.1 If the Independent Engineer determines that the Heliport or any part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in commercial operation, it shall forthwith make a report in this behalf and send copies thereof to the Authority and the Concessionaire. Upon receipt of such a report from the Independent Engineer and after conducting its own inspection, if the Authority is of the opinion that the Heliport is not fit and safe for commercial

service, it shall, within 7 (seven) days of receiving the aforesaid report, notify the Concessionaire of the defects and deficiencies in the Heliport and direct the Independent Engineer to withhold issuance of the Provisional Certificate. Upon receipt of such notice, the Concessionaire shall remedy and rectify such defects or deficiencies and thereupon Tests shall be undertaken in accordance with this Article 14. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.

- 14.5.2 Notwithstanding anything to the contrary contained in Clause 14.5 .1, the Authority may, at any time after receiving a report from the Independent Engineer under that Clause, direct the Independent Engineer to issue a Provisional Certificate under Clause 14.3, and such direction shall be complied forthwith.

14.6 Rescheduling of Tests

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

ARTICLE 15

ENTRY INTO COMMERCIAL SERVICE

15.1 Commercial Operation Date (COD)

The Heliport shall be deemed to be complete when the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 14, and accordingly the commercial operation date of the Heliport shall be the date on which such Completion Certificate or the Provisional Certificate is issued and the Concessionaire shall have obtained the Applicable Permits, including the licence from DGCA to operate the Heliport (the "**COD**"). The Heliport shall enter into commercial service on COD whereupon the Concessionaire shall be entitled to demand and collect Fee in accordance with the provisions of Article 32.

15.2 Damages for delay

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

ARTICLE 16

CHANGE OF SCOPE

16.1 Change of Scope

- 16.1.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the Scope of the Project as contemplated by this Agreement (the "**Change of Scope**"). Any such Change of Scope shall be made in accordance with the provisions of this Article 16 and the costs thereof shall be expended by the Concessionaire and reimbursed to it by the Authority in accordance with Clause 16.3.
- 16.1.2 If the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved services to the Users, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 15 (fifteen) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefor in accordance with this Article 16 or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope.
- 16.1.3 Any works or services which are provided under and in accordance with this Article 16 shall form part of the Heliport and the provisions of this Agreement shall apply *mutatis mutandis* to such works or services.
- 16.1.4 The Concessionaire acknowledges and agrees that any expansion of the Heliport, including expansion of Aeronautical Assets and Non-Aeronautical Assets, which is necessary for compliance of the provisions of this Agreement shall not form part of Change of Scope and shall be undertaken at the cost and expense of the Concessionaire.

16.2 Procedure for Change of Scope

- 16.2.1 In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder (the "**Change of Scope Notice**").
- 16.2.2 Upon receipt of a Change Scope Notice, the Concessionaire shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary Documentation in support of:
- (a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period; and

(b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Authority to its contractors, along with the proposed premium/discount on such rates; provided that the cost incurred by the Concessionaire in providing such information shall be reimbursed by the Authority to the extent such cost is certified by the Independent Engineer as reasonable.

16.2.3 Upon receipt of information set forth in Clause 16.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Concessionaire, and the Parties shall, with assistance of the Independent Engineer, thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (the "**Change of Scope Order**") requiring the Concessionaire to proceed with the performance thereof. In the event that the Parties are unable to agree, the Authority may, by issuing a Change of Scope Order, require the Concessionaire to proceed with the performance thereof pending resolution of the Dispute, or carry out the works in accordance with Clause 16.5.

16.2.4 The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to the works undertaken by the Concessionaire under this Article 16.

16.3 Payment for Change of Scope

16.3.1 Within 7 (seven) days of issuing a Change of Scope Order, the Authority shall make an advance payment to the Concessionaire in a sum equal to 20% (twenty per cent) of the cost of Change of Scope as agreed hereunder, and in the event of a dispute, 20% (twenty per cent) of the cost assessed by the Independent Engineer. The Concessionaire shall, after commencement of work, present to the Authority bills for payment in respect of the works in progress or completed works, as the case may be, supported by such Documentation as is reasonably sufficient for the Authority to determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills, the Authority shall disburse to the Concessionaire such amounts as are certified by the Independent Engineer as reasonable and after making a proportionate deduction for the advance payment made hereunder, and in the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure.

16.3.2 Notwithstanding anything to the contrary contained in Clause 16.3.1, all costs arising out of any Change of Scope Order issued during the Construction Period shall be borne by the Concessionaire, subject to an aggregate ceiling of 0.25% (zero point two five per cent) of the Total Project Cost. Any costs in excess of the ceiling shall be reimbursed by the Authority in accordance with Clause 16.3.1. In the event that the total cost arising out of Change of Scope Orders (if any) issued prior to the Project Completion Date is less than 0.25% (zero point two five per cent) of the Total Project Cost, the difference thereof shall be credited by the Concessionaire to

the Safety Fund within a period of 180 (one hundred and eighty) days of the Project Completion Date. For the avoidance of doubt, it is agreed that the aforesaid 0.25% (zero point two five per cent) of the Total Project Cost shall, to the extent borne by the Concessionaire, be deemed to form part of the actual capital cost of the Project.

16.4 Restrictions on certain works

- 16.4.1 Notwithstanding anything to the contrary contained in this Article 16, but subject to the provisions of Clause 16.4.2, the Authority shall not require the Concessionaire to undertake any works or services if such works or services are likely to delay completion of the Heliport; provided that in the event that the Authority considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of or affected by such Order shall not be reckoned for purposes of determining completion of the Heliport and issuing the Provisional Certificate.
- 16.4.2 Notwithstanding anything to the contrary contained in this Article 16, the Concessionaire shall be entitled to nullify any Change of Scope Order if it causes the cumulative costs relating to all the Change of Scope Orders to exceed 10% (ten per cent) of the Total Project Cost in any continuous period of 3 (three) years immediately preceding the date of such Change of Scope Order or if such cumulative costs exceed 25% (twenty five per cent) of the Total Project Cost at any time during the Concession Period.

16.5 Power of the Authority to undertake works

- 16.5.1 Notwithstanding anything to the contrary contained in Clauses 16.1.1, 16.2 and 16.3, the Authority may, after giving notice to the Concessionaire and considering its reply thereto, award any works or services, contemplated under Clause 16.1.1, to any person on the basis of open competitive bidding; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 2 % (two per cent) of the bid amount to the Authority[£], and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten per cent) thereof. It is also agreed that the Concessionaire shall provide access, assistance and cooperation to the person who undertakes the works or services hereunder.
- 16.5.2 The works undertaken in accordance with this Clause 16.5 shall conform to the Specifications and Standards and shall be carried out in a manner that *minimises* the disruption in operation of the Heliport. The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to the works carried out under this Clause 16.5.

[£] The Government shall transfer 75% (seventy-five per cent) of the amount so received to the first ranked bidder whose bid shall have been matched by the Concessionaire

16.6 [Reduction in Scope of the Project]

- 16.6.1 If the Concessionaire shall have failed to complete any Construction Works on account of Force Majeure or for reasons solely attributable to the Authority, the Authority may, in its discretion, require the Concessionaire to pay 80% (eighty per cent) of the sum saved therefrom, and upon such payment to the Authority, the obligations of the Concessionaire in respect of such works shall be deemed to have been fulfilled. For the avoidance of doubt, it is agreed that in the event such reduction in Scope of the Project causes or will cause a reduction in net after-tax return of the Concessionaire, the Parties shall meet, as soon as reasonably practical, and agree on a full or partial waiver of the aforesaid payment of 80% (eighty per cent) so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no reduction in Scope of the Project, and for this purpose, the Parties shall conform to the provisions of Clause 46.3. It is further agreed that the liability of the Authority under this Clause 16.6 shall not extend beyond waiver of the aforesaid 80% (eighty per cent). It is also agreed that in the event of a dispute, the Dispute Resolution Procedure shall apply.
- 16.6.2 For determining the obligations of the Concessionaire under this Clause 16.6, the provisions of Clauses 16.1, 16.2 and 16.4 shall apply *mutatis mutandis*, and upon issue of Change of Scope Order by the Authority hereunder, the Concessionaire shall pay forthwith the sum specified therein.

ARTICLE 17

OPERATION AND MAINTENANCE

17.1 O&M obligations of the Concessionaire

- 17.1.1 During the Operation Period, the Concessionaire shall operate and maintain the Heliport in accordance with this Agreement either by itself, or through O&M Contractors and if required, modify, repair or otherwise make improvements to the Heliport to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. The obligations of the Concessionaire hereunder shall include:
- (a) permitting safe, smooth and uninterrupted movement of Users and flow of traffic on the Heliport, during normal operating conditions;
 - (b) collecting and appropriating the Fee;
 - (c) minimising disruption to movement of Users and flow of traffic in the event of accidents or other incidents affecting the safety and use of the Heliport by providing a rapid and effective response and maintaining liaison with emergency services of the State;
 - (d) carrying out periodic preventive maintenance of the Heliport;
 - (e) procuring that the Aeronautical Assets, including Helipads, taxiways, aprons and approach areas are maintained and operated in accordance with the provisions contained in the relevant ICAO Documents and Annexes;
 - (f) procuring that Helipads, including the strips, shoulders, TLOF and FATO for Helipad and strips and shoulders for taxiways and isolation bays are maintained in accordance with the provisions contained in the relevant ICAO Documents and Annexes;
 - (g) procuring that the obstacle limitation surfaces of the Heliport and the approach and take-off areas shall be maintained free from obstructions or that the obstructions shall be limited to the permissible limits specified in the relevant ICAO Documents and Annexes;
 - (h) undertaking routine maintenance including prompt repairs of cracks, joints, drainage systems, embankments, structures, buildings, pavement markings, signalling systems, communication systems, lighting, road signs and other equipment;
 - (i) undertaking major maintenance such as repairs to structures, repairs and refurbishment of equipment, signalling and communication system and major overhaul of equipment;

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- (j) procuring that the sensitive and critical areas, as identified by the Authority or the Designated GoI Agency, as the case may be, for the operation of CNS/ ATM equipment and facilities shall be maintained free of any obstructions and that no obstruction which may hamper the safety or functioning of these equipment and facilities or endanger the safety of helicopter operations shall be permitted;
 - (k) procuring that appropriate arrangements and precautions have been undertaken at the Heliport to prevent bird and animal nuisance in and around the operational areas, Helipad and taxiways;
 - (l) maintaining the Helipad Lighting System and the main and standby power supply systems in accordance with the standards prescribed in the relevant ICAO Documents and Annexes;
 - (m) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on the Heliport;
 - (n) protection of the environment and provision of equipment and materials therefor;
 - (o) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Heliport;
 - (p) maintaining a public relations unit to interface with and attend to suggestions from the Users, government agencies, media and other agencies;
 - (q) complying with Safety Requirements in accordance with Article 23:
 - (r) operation and maintenance of all Project Assets diligently and efficiently and in accordance with Good Industry Practice;
 - (s) maintaining punctuality and reliability in operating the Heliport;
 - (t) maintaining a high standard of cleanliness and hygiene on the Heliport; and
 - (u) taking all measures relating to fire precautions in accordance with relevant ICAO standards, Applicable Laws, Applicable Permits and Good Industry Practice.
 - (v) providing all the requisite information, data, operating statistics, etc., as may be required by the Authority, any of the Government Instrumentality, DGCA, GoUP or GoI, from time to time.

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

- 17.1.3 The Concessionaire shall maintain, in conformity with Good Industry Practice, all stretches of approach roads, over-bridges/ under-bridges, over-passes, under-passes or other structures situated on the Site but not forming part of the Heliport.

17.2 Maintenance Requirements

The Concessionaire shall procure that at all times during the Operation Period, the Heliport conforms to the maintenance requirements set forth in Schedule-K (the "**Maintenance Requirements**").

17.3 Maintenance Manual

- 17.3.1 No later than 90 (ninety) days prior to the Scheduled Completion Date, the Concessionaire shall, in consultation with the Independent Engineer, evolve a repair, operation and maintenance manual (the "**Maintenance Manual**") for the regular and preventive maintenance of the Heliport in conformity with the Specifications and Standards, Maintenance Requirements, Safety Requirements, standards prescribed in the relevant ICAO Documents and Annexes, the applicable guidelines notified by the DGCA from time to time, all other Applicable Laws and Good Industry Practice, and shall provide 5 (five) copies thereof to the Authority and 2 (two) copies to the Independent Engineer. The Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause 17.3 shall apply, *mutatis mutandis*, to such revision.

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

17.4 Maintenance Programme

- 17.4.1 On or before COD and no later than 45 (forty five) days prior to the beginning of each Accounting Year during the Operation Period, as the case may be, the Concessionaire shall provide to the Authority and the Independent Engineer, its proposed annual programme of preventive, urgent and other scheduled maintenance (the "**Maintenance Programme**") to comply with the Maintenance Requirements, Maintenance Manual and Safety Requirements. Such Maintenance Programme shall include:

- (a) preventive maintenance schedule;
- (b) arrangements and procedures for carrying out urgent repairs;
- (c) criteria to be adopted for deciding maintenance needs;

- (d) intervals and procedures for carrying out inspection of all elements of the Heliport;
- (e) intervals at which the Concessionaire shall carry out periodic maintenance;
- (f) arrangements and procedures for carrying out safety related measures; and
- (g) intervals for major maintenance works and the scope thereof.

17.4.2 Within 15 (fifteen) days of receipt of the Maintenance Programme, the Independent Engineer shall review the same and convey it connects to the Concessionaire with particular reference to its conformity with the Maintenance Requirements. Maintenance Manual and Safety Requirements.

17.4.3 The Concessionaire may modify the Maintenance Programme as may be reasonable in the circumstances, and the procedure specified in Clauses 17.4.1 and 17.4.2 shall apply *mutatis mutandis* to such modifications.

17.5 Safety, breakdowns and accidents

17.5.1 The Concessionaire shall ensure safe conditions for the Users, and in the event of unsafe conditions, damage to Helipad or taxiway, disruption in Helipad Lighting System, breakdowns and accidents, it shall follow the relevant operating procedures and undertake removal of obstruction and debris without delay. Such shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits, the standards prescribed in the relevant ICAO Documents and Annexes and Good Industry Practice.

17.5.2 The Concessionaire's responsibility for rescue operations on the Heliport shall include safe evacuation of all Users and staff from the affected area as an initial response to any particular incident and shall also include obstruction, which may endanger or movement of the Users. For this purpose, prompt removal of debris or any other interrupt the smooth flow of traffic and it shall maintain and operate [2 (two)] round-the-clock rescue vehicles with rescue equipment and position the vehicles in a manner that allows prompt access to the accident site.

17.5.3 The Concessionaire shall be solely responsible for operations and maintenance of the machineries. In case any accident or mishap happens, then it shall be the responsibility of the Concessionaire. Any claim if paid by the Authority shall be indemnified in full by the Concessionaire during the Concession Period.

17.6 De-commissioning due to Emergency

17.6.1 If, in the reasonable opinion of the Concessionaire there exists an Emergency which warrants de-commissioning and closure of the whole or any part of the Heliport, the Concessionaire shall be entitled to de-commission and close the whole or any part of the Heliport to Users for so long as such Emergency and the consequences thereof warrant; provided that such de-commissioning and particulars thereof shall be

notified by the Concessionaire to the Authority without any delay, and the Concessionaire shall diligently carry out and abide by any reasonable directions that the Authority may give for dealing with such Emergency.

- 17.6.2 The Concessionaire shall re-commission the Heliport or the affected part thereof as quickly as practicable after the circumstances leading to its de-commissioning and closure have ceased to exist or have so abated as to enable the Concessionaire to re-commission the Heliport and shall notify the Authority of the same without any delay.
- 17.6.3 Any decommissioning or closure of any part of the Heliport and the re-commissioning thereof shall, as soon as practicable, be brought to the notice of affected persons by means of public announcements/notice.
- 17.6.4 No claim or compensation shall be due and payable to the Concessionaire on account of decommissioning or restricted use of the Heliport or any part thereof during an Emergency or for reasons of national security and public interest

17.7 Section closure

- 17.7.1 Save and except as provided in Clause 17.6, the Concessionaire shall not close any section of the Heliport for undertaking maintenance or repair works, except with the prior written approval of the Independent Engineer and the Authority. Such approval shall be sought by the Concessionaire through a written request to be made to the Independent Engineer, and a copy thereof furnished to the Authority, at least 7 (seven) days before the proposed closure of such section and shall be accompanied by particulars thereof. Within 3 (three) days such request, the Independent Engineer and the Authority shall grant permission with such modifications as it may deem necessary and a copy of such permission shall be sent to the Authority.
- 17.7.2 The provisions of clause 17.7.1 shall not apply to de-commissioning under Clause 17.6.1 or to closure of any section of the Heliport for a period not exceeding 6 (six) hours in a day at any time of the day specified by the Independent Engineer as off-peak period for this purpose.
- 17.7.3 Upon receiving the permission pursuant to Clause 17.7.1, the Concessionaire shall be entitled to close the designated section for the period specified therein, and in the event of any delay in re-opening such section, the Concessionaire shall pay Damage to the Authority calculated at the rate of 0.1 % (zero point one per cent) of the Average Daily Fee for that section, for each day of delay until the section has been re-opened for traffic.

17.8 Damages for breach of maintenance obligations

- 17.8.1 In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the higher of (a) 0.5% (zero point five per cent) of Average Daily Fee.

and (b) 0.1 % (zero point one per cent) of the cost of such repair or rectification an estimated by the Independent Engineer. Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

- 17.8.2 The Damages set forth in Clause 17.8.1 may be assessed and specified forthwith by the Independent Engineer; provided that the Authority may, in its discretion. Demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Concessionaire is otherwise in compliance with its obligations hereunder. The Concessionaire shall pay such Damages forthwith and, in the event, that it contests such Damages, the Dispute Resolution Procedure shall apply.

17.9 Authority's right to take remedial measures

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

17.10 Overriding powers of the Authority

- 17.10.1 If in the reasonable opinion of the Authority, the Concessionaire is in material breach of its obligations under this Agreement and, in particular, the Maintenance Requirements, and such breach is causing or likely to cause material hardship or danger to the Users, the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.
- 17.10.2 In the event that the Concessionaire, upon notice under Clause 17.10.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Clause 17.10.2 and take over the

performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Authority shall be entitled to recover them from the Concessionaire in accordance with the provisions of Clause 17.9. along with the Damages specified therein.

- 17.10.3 In the event of a national emergency, civil commotion or any other act specified in Clause 39.3, the Authority may take over, or authorise any Designated GoI Agency to take over, the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it, and exercise such control over the Heliport or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 39. It is also agreed that the Concessionaire shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause 17.10, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

17.11 Restoration of loss or damage to the Heliport

Save and except as otherwise expressly provided in this Agreement, in the event that the Heliport or any part thereof suffers any loss or damage during the Concession Period from any cause whatsoever, the Concessionaire shall, at its cost and expense, rectify and remedy such loss or damage forthwith so that the Heliport conforms to the provisions of this Agreement.

17.12 Modifications to the Heliport

- 17.12.1 The Concessionaire shall not carry out any material modifications to the Heliport save and except where such modifications are necessary for the Heliport to operate in conformity with the Specifications and Standards, Maintenance Requirements, Good Industry Practice and Applicable Laws; provided that the Concessionaire shall notify the Independent Engineer of the proposed modifications along with particulars thereof at least 15 (fifteen) days before commencing work on such modifications and shall reasonably consider any suggestions that the Independent Engineer may make within 15 (fifteen) days of receiving the Concessionaire's proposal. For the avoidance of doubt, all modifications made hereunder shall comply with the Specifications and Standards, Applicable Laws and the provisions of this Agreement.
- 17.12.2 The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply mutatis mutandis to all Construction Works forming part of modification of the Heliport.

17.13 Excuse from performance of obligations

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

- (a) an event of Force Majeure;
- (b) measures taken to ensure the safe use of the Heliport except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or
- (c) compliance with a request from the Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Heliport

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

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

17.14 Barriers and diversions

The Authority shall procure that during the Operation Period, no barriers are erected or placed by any Government Instrumentality on the Emergency, national security, or law and order. The Authority shall also make best endeavours to procure that no Government Instrumentality shall undertake or cause Instrumentality shall undertake or cause national security or law and order, any diversions, or closing down of approach roads to the Heliport that may cause a material adverse effect on the movement to and from the Heliport.

17.15 Use of Heliport by Defence Forces

17.15.1 The Concessionaire hereby undertakes and agrees that the Defence Forces shall, at all times have the right to use the Heliport and all facilities thereof, free of charge and without any restriction or constraint of any nature whatsoever in accordance with Applicable Laws.

17.15.2 Without prejudice to the generality of the foregoing, the Concessionaire's obligations to the Defence Forces in respect of allocation and closure of airspace and usage of Helipads during an Emergency shall be determined by GoI / GoUP from time to time, and at times other than an Emergency, the same shall be determined by mutual agreement between the Concessionaire and GoI / GoUP and in accordance with the existing principles and operating procedures followed by GoI / GoUP; provided that the right of Defence Forces to the allocation of airspace and usage of Helipad shall not in any manner be restricted on account of delay in notification or consultation by GoI / GoUP; provided further that the Concessionaire shall be relieved of its obligations to provide Aeronautical Services to civilian Helicopters to

the extent such obligations are affected by Emergency or use of the Heliport by the Defence Forces.

17.16 Deleted

17.17 Advertising on the Heliport and Terminal Building

17.17.1 The Concessionaire shall not undertake or permit any form of commercial advertising, display or hoarding at any place on the Site if such advertising, display or hoarding shall diminish the aesthetic quality of the Heliport or violates Applicable Laws. All advertising on the Heliport shall also conform to Good Industry Practice.

17.17.2 Without prejudice to the provisions of Clause 17.17.1, the Concessionaire may undertake or cause to be undertaken commercial advertising or display in the Terminal Building in conformity with the Applicable Laws.

17.18 Use by Helicopter of the Authority

The Concessionaire shall provide adequate space for parking of 1 (one) Helicopter of Designated GoI Agencies, Authority and its nominees on priority basis. The Concessionaire agrees and undertakes to cooperate with and assist the Designated GoI Agencies, Authority and its nominees, in the movement of their Helicopter at the Heliport and to facilitate the use of the Heliport, on priority basis.

ARTICLE 18

OPERATION OF AERONAUTICAL ASSETS

18.1 Operation and management of Aeronautical Assets

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

18.2 Ground Handling Services

- 18.2.1 The Concessionaire shall provide or cause to be provided, at its own cost and expense, the infrastructure required for operation of the ground handling services required at the Heliport for and in respect of helicopters, passengers and cargo, which shall include ramp handling, traffic handling, helicopter handling, helicopter cleaning, loading and unloading (the “**Ground Handling Services**”). Such infrastructure shall include luggage conveyor belts, computer terminals, IT backbone and associated facilities in accordance with the provisions of this Agreement, Applicable Laws and Good Industry Practice.

18.2.2 The Concessionaire shall, subject to the provisions of Clause 18.2.3, provide Ground Handling Services in accordance with the provisions of this Agreement and Good Industry Practice.

18.2.3 Notwithstanding anything to the contrary contained in this Clause 18.2, the Concessionaire shall enable each helicopter operator, at the option of such helicopter operator, to undertake Ground Handling Services for and in respect of the helicopters of that operator on payment of a service charge to the Concessionaire in an amount equal to 10% (ten per cent) of the maximum Fees specified for Ground Handling Services.

18.3 Helicopter Fuelling Services

18.3.1 The Concessionaire shall provide, or cause to be provided, the infrastructure required for operation of fuelling services for helicopters at the Heliport (the “**Helicopter Fuelling Services**”). Such infrastructure shall include tank farms, common hydrant fuelling systems and associated facilities in accordance with the provisions of this Agreement, Applicable Laws and Good Industry Practice.

18.3.2 The Concessionaire shall, subject to the provisions of Clause 18.3, provide or cause to be provided, Helicopter Fuelling Services in accordance with the provisions of this Agreement and Good Industry Practice.

ARTICLE 19

OPERATION OF TERMINAL BUILDING

19.1 Operation and maintenance of Terminal Building

- 19.1.1 The Concessionaire shall undertake the operation and maintenance of the Terminal Building in accordance with the provisions of this Agreement, Applicable Laws and Good Industry Practice. Without prejudice to the generality of this Article 19, the Concessionaire shall procure that the spaces within the Terminal Building are used for the respective purposes specified in Schedule–B and Schedule–C.
- 19.1.2 The Concessionaire shall operate the Terminal Building in accordance with the Specifications and Standards set forth in Schedule-D and the standards specified from time to time by the IATA or any successor thereof.
- 19.1.3 The Concessionaire shall regulate the use of the Terminal Building by third parties and provide non-discriminatory access to all passengers in accordance with the Applicable Laws and the provisions of this Agreement. For the avoidance of doubt, provision of different levels of services for identified categories of passengers shall not be construed as discrimination hereunder.
- 19.1.4 The Concessionaire shall at all times keep free from obstruction all areas meant for circulation and use by passengers.
- 19.1.5 The Concessionaire shall provide and maintain an adequate supply of efficient baggage trolleys within easy reach of the baggage claim areas and at the entry points of the Terminal Building. For the avoidance of doubt, provision of different levels of services for identified categories of helicopter operators and passengers shall not be construed as discrimination hereunder.
- 19.1.6 The Concessionaire shall, depending on demand, procure the availability of porter services for passengers on payment of of charges as may be determined by the Concessionaire with prior approval of the Authority.
- 19.1.7 The Concessionaire shall at all times provide, or cause to be provided, within the Terminal Building, all of the following:
- (a) sufficient free drinking water outlets for passengers at suitable locations, of which one shall be located within the security hold area for passengers;
 - (b) sufficient vending machines installed at convenient locations for dispensing bottled water and popular beverages, hot and cold, at a price which shall not exceed the maximum retail price of each such product being offered for sale; and

(c) sufficient kiosks or outlets for vending beverages and snacks to passengers, operated by competing vendors.

19.1.8 The Concessionaire shall, subject to conformity with the standards for signage as may be specified by ICAO from time to time, provide directions, signs, signals public announcement systems and enquiry counters to facilitate passengers and assist them in finding their way to helicopter operators' counters, travel facilities, passenger amenities and Cargo Facilities.

19.1.9 The Concessionaire shall ensure the availability of waiting areas for passengers such that seating capacity for at least [33% (thirty-three per cent)] of the Peak Hour Traffic is available at the Terminal Building.

The Concessionaire shall ensure that the Terminal Building is open to passengers during Heliport operating hours, including on public holidays, and at all times during 120 (one hundred and twenty) minutes before the scheduled departure of a flight and 60 (sixty) minutes after the arrival thereof, or as may be specified by the Authority in accordance with the security requirements and Good Industry Practice.

19.2 Level of Service

19.2.1 The Concessionaire agrees and undertakes that the level of service in the Terminal Building shall at no time be inferior to Level of Service-D' as specified by IATA from time to time and in the event that the level of service is inferior to Level of Service-D in any Accounting Year, the Concessionaire shall pay Damages to the Authority which shall be determined at the rate of 1% (one per cent) of the total revenues from Fees for that Accounting Year.

19.2.2 The Concessionaire shall publish and implement the Passenger Charter in accordance with the provisions of Clause 26.11.

19.3 Passengers who require special assistance

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

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

19.3.3 The Concessionaire shall set up and operate first aid facilities within the Terminal Building in the manner specified in Clause 5. 10.

19.4 Reserved Area

- 19.4.1 The space for the following entities or purposes, as described in Schedule-B, shall constitute the reserved area in the Terminal Building (the "**Reserved Area**"):
- (a) The Authority
 - (b) security;
 - (c) GoUP/GoI or any substitute thereof;
 - (d) DGCA;
 - (e) VIP Lounges;
 - (f) quarantine.
- 19.4.2 Control over the Reserved Area shall vest in the respective Designated Government Instrumentalities responsible for carrying out the functions for which the space has been earmarked under Clause 19.4.1 or for any other purpose analogous to the purposes specified in Clause 19.4.1. The obligations of the Concessionaire in respect of Reserved Areas and its access thereto shall be restricted to maintenance of civil works, structures and equipment forming part of the Reserved Area; provided that it shall have unrestricted access thereto in case of Emergency, fire or other similar event.
- 19.4.3 The Concessionaire shall supply electricity and water, at its own cost and expense, to the Reserved Area within the Terminal Building. For avoidance of doubt, it is clarified that the cost of serving electricity/water to the reserved area for operational requirement only that has been mutually agreed between the Concessionaire and the relevant Government Instrumentality.
- 19.4.4 To the extent central air conditioning is installed and operated in the Terminal Building, the Concessionaire shall not deny the benefit thereof to the Reserved Area; provided that this obligation shall not extend to the hours when general air conditioning is switched off for passenger lounges and other common areas within the Terminal Building.
- 19.4.5 Notwithstanding anything to the contrary contained in this Clause 19.4, the Authority and/ or the Designated GoI Agencies, as the case may be, may, with consent of the Concessionaire, transfer the Reserved Area or any part thereof to the Concessionaire on such terms and conditions as may be agreed upon. In such an event, the Concessionaire shall make best endeavours to cooperate with the Authority and/ or the Designated GoI Agencies, including the agencies designated by it, for procuring a safe and efficient environment in the Reserved Area.

19.5 Deleted

19.6 Commercial use of specified areas

- 19.6.1 Subject to the provisions of this Agreement and Applicable Laws, the Concessionaire may utilise the Terminal Building for commercial passenger amenities, restaurants and retail purposes, such as travel facilities,
- 19.6.2 The Concessionaire shall procure and ensure that the maximum area to be used for commercial purposes within the Terminal Building shall not exceed 30% (thirty per cent) of the floor area of the Terminal Building.
- 19.6.3 The Concessionaire shall procure and ensure that out of the area specified for commercial use under and in accordance with Clause 19.6.2, at least 2% (two per cent) of the floor area of the Terminal Building shall be utilised for counters to be set up by hotels, tour operators, travel agents, taxi operators, telecom and internet operators, banks and foreign exchange dealers or similar service provided for convenience of passengers.
- 19.6.4 The Concessionaire may, in addition to the areas specified in Clause 19.6.2, allocate and utilise an additional area not exceeding 2% (two per cent) of the floor area of the Terminal Building, and up to an equivalent area outside the Terminal Building, for setting up and operation of counters, vending machines and kiosks for sale of eatables, beverages, travel accessories or books and periodicals within or outside the Terminal Building, without causing obstruction or congestion in the movement of passengers.
- 19.6.5 The Concessionaire shall not sub-license, assign or in any manner create an Encumbrance on any part of the Terminal Building except in accordance with the provisions of Clause 5.2.
- 19.6.6 The Concessionaire shall procure that its sub-licensees do not create public nuisance including excessive noise or cooking smells; do not tout for business; and do not offer counterfeit goods for sale.
- 19.6.7 Expansion of Reserved Areas in the event that more space is required for discharging the specified functions in the Reserved Area, the Concessionaire shall, in consultation with the Designated GoI Agency, provide additional space to form part of the Reserved Area, on such terms and conditions as may be agreed upon.

19.7 Check-in Services

- 19.7.1 The Concessionaire shall provide or cause to be provided, at its own cost and expense, the infrastructure required for operation of check-in services at the Heliport for and in respect of departing passengers (the “**Check-in Services**”). Such infrastructure shall include counters, self-service check-in kiosks, computer terminals, IT backbone and associated facilities in accordance with the provisions of

this Agreement, Applicable Laws, relevant ICAO Documents and Annexes and Good Industry Practice.

- 19.7.2 The Concessionaire shall, subject to the provisions of Clause 19.6.3, provide Check-in Services to the passengers, for and on behalf of helicopter operators, in accordance with the provisions of this Agreement and Good Industry Practice.
- 19.7.3 Notwithstanding anything to the contrary contained in this Clause 19.7, the Concessionaire shall enable each helicopter operator, at the option of such helicopter operator, to provide Check-in Services to the passengers of that helicopter operator on payment of a service charge to the Concessionaire in an amount equal to 10% (ten per cent) of the maximum Fees specified for Check-in Services in the Schedule of Fees.

ARTICLE 20

OPERATION OF CAR PARK

20.1 Operation and maintenance of Car Park

- 20.1.1 The Concessionaire shall operate and maintain the Car Park in accordance with the provisions of this Agreement, Applicable Laws and Good Industry Practice.
- 20.1.2 The Concessionaire shall regulate the use of Car Park by third parties in accordance with the provisions of this Agreement and shall permit non-discriminatory use thereof to all passengers and visitors provided that the Concessionaire may levy charges for the use of Car Park. and may ordinarily restrict the use of Car Park to 4 (four) hours for every single entry of a vehicle and may levy additional charges for every subsequent 4 (four) hours or part thereof.
- 20.1.3 The Concessionaire shall:
- (a) procure that the Car Park is used only for parking of vehicles and for no other purpose, save and except advertising and provision of facilities and amenities for Users; and
 - (b) not sub-license, assign or in any manner create an Encumbrance on any part of the Car Park except in accordance with the provisions of Clause 5.2.

20.2 Provision for Reserved Car

The Concessionaire shall construct, operate and maintain a reserved car park (the "**Reserved Car Park**") as specified in Schedule-B, and shall facilitate free use thereof by Exempted Persons and persons who is a person holding a pass issued by the Authority.

20.3 Facilities at Car Park

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

- (a) sufficient free drinking water outlets at convenient locations;
- (b) sufficient vending machines installed at convenient locations for dispensing bottled water and popular beverages, hot and cold, at a price which shall not exceed the maximum retail price of each such product as prevalent in the market outside the Heliport; and
- (c) sufficient kiosks or outlets for vending beverages and snacks to users of Car Park, and operated by competing vendors.

20.4 Deleted

20.5 Unauthorised Parking

- 20.5.1 The Concessionaire may remove any vehicle that is parked at a place not earmarked or authorised for parking, and park such vehicle in the Car Park. If the Concessionaire is not able to shift the vehicle to the Car Park for any reason, it may immobilise the vehicle at or near the spot where it is parked. The Concessionaire shall be entitled to recover Fee for such vehicle and also charge a sum equivalent to 5 (five) times the Fee as the pre-determined and agreed cost of immobilising the vehicle or moving it to the Car Park, as the case may be. For the avoidance of doubt, the Concessionaire shall procure that any shifting or immobilising of vehicles under the provisions of this Clause 20.5.1 is undertaken in a manner that does not cause damage to such vehicles.
- 20.5.2 The Concessionaire shall not stop the movement of, or charge any Fee from vehicles that use the approach road to pass through any part of the Heliport but do not stop for more than 2 (two) minutes during the Peak Period and 5 (five) minutes during Off-Peak Period.

20.6 Expansion of Car Park

The Concessionaire shall procure that the parking slots provided in the Car Park are sufficient to meet the requirements of Users. In the event that 90% (ninety per cent) of the parking slots are on an average occupied during 8 (eight) Peak Hours for any continuous period of 6 (six) months, the capacity of the Car Park shall be deemed to be inadequate and the Concessionaire shall, at its own cost, undertake capacity addition and expansion thereof and construct additional parking space forthwith in accordance with Good Industry Practice and the provisions of this Agreement.

ARTICLE 21

OPERATION OF CARGO FACILITIES

21.1 Operation and maintenance of Cargo Facilities

- 21.1.1 The Concessionaire may operate and maintain, at its own cost and expense, the Cargo Facilities which shall include the buildings, structures and equipment required for handling of incoming and outgoing cargo, including short-term warehousing thereof in accordance with the provisions of this Agreement, Applicable Laws, relevant ICAO Documents and Annexes and Good Industry Practice. For the avoidance of doubt, the construction and thereafter, operation and maintenance of the Cargo Facilities shall not be mandatory obligation of the Concessionaire under this Agreement and shall only be optional in nature. The obligations and requirements set forth in this Article 21 shall only be applicable only in case the Cargo Facilities are opted to be constructed by the Concessionaire.
- 21.1.2 In case the Cargo Facilities are constructed, the Concessionaire shall procure that the Cargo Facilities shall include adequate cargo and parcel space, handling equipment, storage and handling of perishable cargo and dangerous goods, space for cargo agents and customers, inspection area, office space, automation systems, screening equipment, storage facilities, and facilities for mail handling and courier shipments in accordance with the provisions of this Agreement and Good Industry Practice.
- 21.1.3 The Concessionaire shall operate and maintain the Cargo Facilities and provide the associated services to helicopter operators and consignors in accordance with the provisions of this Agreement, Applicable Laws and Good Industry Practice.
- 21.1.4 The Concessionaire shall provide, free of charge and in accordance with Good Industry Practice, office space and other facilities to customs, security, quarantine and other Designated GoI Agencies, as the case may be, for discharging their statutory functions.

21.2 Restrictions on use of Cargo Facilities

- 21.2.1 The area earmarked for Cargo Facilities shall be used only for handling of cargo and for associated activities. The Concessionaire shall install and keep operating in good working condition, the web-cams, at all the strategic locations, wherever, the cargo facilities are being handled or dealt with in any manner whatsoever.
- 21.2.2 The Concessionaire shall provide free storage for in-bound and out bound cargo in accordance with the notification issued in this behalf by the Authority and may also recover demurrage for any additional period of storage as may be specified in such notification.

- 21.2.3 Without prejudice to the provisions of Clause 21.2.2, the Concessionaire may provide warehousing for cargo for a period not exceeding 30 (thirty) days on payment of such charges as the Concessionaire may determine.
- 21.2.4 The Concessionaire shall not sub-license, assign or in any manner create an Encumbrance on any part of the Cargo Facilities except in accordance with the provisions of Clause 5.2.
- 21.2.5 The Concessionaire shall levy, collect and appropriate Fees from the consignors in accordance with the provisions of Article 32 for providing Cargo Facilities.

21.3 Fee for Cargo Facilities

The Concessionaire may charge Fee from the Users of Cargo Facilities in accordance with the Applicable Laws and the provisions of this Agreement.

ARTICLE 22

RESERVED SERVICES²

22.1 Reserved Services

22.1.1 The Concessionaire shall perform, or cause to be performed, through the Designated GoI Agencies, the following services (the "**Reserved Services**") at the Heliport:

- (i) CNS/ATM Services;
- (ii) security services;
- (iii) health services
- (iv) meteorological services;
- (v) quarantine services.
- (vi) any other services, as may be notified by GoI, GoUP or any other designated Government Instrumentality, from time to time, in accordance with the Applicable Laws;

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

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

22.2 CNS/ATM Services

22.2.1 The Concessionaire shall procure the execution of an agreement between AAI and the Concessionaire which shall ensure the provision of the CNS/ATM Services at the Heliport, at all times during the Concession Period, in accordance with the practices established or recommended from time to time pursuant to the Chicago Convention and on the same terms as applicable to similar services at other heliports in India, and in compliance with the directions of DGCA.

22.2.2 [Deleted]

² The provisions of this Article may be suitably modified if the Concessionaire is required to engage directly with the Designated GOI Agencies for provision of the reserved services.

- 22.2.3 In the event the Authority or to the Designated GoI Agency, as the case may be, deems it necessary, it may at its own cost, install at the Heliport, any radars, equipment, buildings, works or facilities necessary for the provision of en-route air navigation services and the Concessionaire hereby undertakes that it shall provide all necessary support and assistance in respect thereto.
- 22.2.4 In the event that the Concessionaire shall require the Designated GoI Agency to upgrade the equipment deployed by it for the provision of Reserved Services, including the CNS/ATM Equipment, to a level which may be in excess of or higher than the requirements set forth in ICAO Documents and Annexes, then all costs incurred on such incremental upgradation of the equipment and the additional costs of operation thereof shall be borne by the Concessionaire and paid in advance annually to the Designated GoI Agency.

22.3 Other Reserved Services

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

22.4 Heliport security

- 22.4.1 The Concessionaire shall, on the same terms and conditions as applicable to other similar Heliports in India, procure the provision of security at the Heliport, including for the prevention of terrorism, hijacking, sabotage and/or similar acts or occurrences, through the Designated GoI Agency.
- 22.4.2 The Parties agree and undertake that the procedures to be adopted for the security of the Heliport, Users, persons working at the Heliport and other persons or property at the Heliport shall be in accordance with the guidelines prescribed by the BCAS.
- 22.4.3 The Authority shall procure that the personnel of the Concessionaire and all its contractors, suppliers, sub-contractors and agents and the Users of the Heliport are allowed free entry into and exit from the Heliport without any unreasonable interference by the security personnel or other personnel of the Authority or the Designated GoI Agency.
- 22.4.4 The Designated GoI Agency shall be entitled to inspect and search the Heliport and to search any person or vehicle entering the Site or departing there from, without unduly or unreasonably disrupting the operations of the Heliport.
- 22.4.5 The Concessionaire shall not be entitled to any compensation for disruption of its operations or loss or damage resulting from the actions of the Authority or any

Designated GoI Agency, save and except those resulting from wilful or grossly negligent acts or omissions of the Authority or Designated GoI Agency, as the case may be.

- 22.4.6 The Authority and the Concessionaire shall jointly make best endeavour to ensure that the security of the Heliport is maintained such that the level of risk premium under insurance covers (if any) that is to be borne by the Concessionaire shall be at the lowest possible rate. The Parties hereto agree that in the event of a significant rise in such risk premium arising out of a change in the security environment, the Concessionaire shall, notwithstanding anything to the contrary contained in this Agreement, be entitled to pass on 80% (eighty per cent) of such increase to the Users by means of a corresponding increase in Fees.
- 22.4.7 The costs of provision of security services at the Heliport under and in accordance with the provisions of this Article 22 shall be recovered by the Concessionaire from the Users as part of Fee and shall be paid by the Concessionaire to the Authority or the Designated GoI Agency, as the case may be, in accordance with the provisions of Article 32.

22.5 Police assistance

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

22.6 Meteorological services

The Authority shall procure that the meteorological services at the Heliport are provided by the Designated GoI Agency in accordance with the practices established or recommended from time to time pursuant to the Chicago Convention and on the same terms as it provides such services at other similar Heliports in India

22.7 Obligations of the Concessionaire in respect of Reserved Services

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

- (a) make the ATC Facility available to the Authority or Designated GoI Agency, as the case may be, for provision of the CNS/ATM Services;
- (b) make available the Reserved Area for provision of the Reserved Services in accordance with the provisions of this Agreement;

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- (c) comply with all rules, regulations and guidelines prescribed by BCAS in connection with the security of the Heliport and provide and maintain perimeter fencing or other appropriate protection around the Heliport;
 - (d) provide and maintain all the security equipment as may reasonably be required by BCAS or the Designated GoI Agency from time to time;
 - (e) abide by and implement any instructions of the Authority and/or the Designated GoI Agency for enhancing the security within and around the Heliport and to permit the Authority and/or the Designated GoI Agency to take such actions as reasonably deemed necessary by them, without unduly or unreasonably disrupting the operations of the Heliport;
 - (f) provide support and cooperation to the Authority and the Designated GoI Agencies in the discharge of their obligations under this Article 22;
 - (g) provide such information as the Authority and the Designated GoI Agency, may reasonably require for the provision of Reserved Services;
 - (h) provide, on payment of the cost thereof, continuous supply of electricity and water that may be required by the Authority and the Designated GoI Agencies, as the case may be, to perform the Reserved Services; and
 - (i) notify the Authority and the Designated GoI Agency of any proposed closure or withdrawal of any infrastructure or facilities at the Heliport, except in case of an Emergency, as per the operating procedures to be mutually agreed between the Parties from time to time.
 - (j) ensure and procure that the equipment and manpower required for an effective and efficient response to the following events shall be available in accordance with Applicable Laws and Good Industry Practice:
 - i. removal of disabled helicopter from the helipad;
 - ii. bomb threat to any helicopter or the helicopter;
 - iii. helicopter accidents in and around the vicinity of the heliport;
 - iv. non-scheduled helicopter forced to land at the helipad;
 - v. fires at the helipad facilities;
 - vi. natural calamities and disasters;
 - vii. strikes at the helipad facilities;
 - viii. unlawful interference with civil aviation; and
 - ix. any other emergency at the heliport.
 - (k) provide, on payment of cost thereof, any supply of electricity and water that may be required by the Authority and the Designated GoI Agencies, as the case may be, in addition to the supply specified in Sub-Clause (h) of this Clause 22.7; and
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- (l) notify the Authority and the Designated GoI Agency of any proposed closure or withdrawal of any infrastructure or facilities at the Heliport, except in case of an Emergency, as per the operating procedures to be mutually agreed between the Parties from time to time.

22.8 Provision of space and access for Reserved Services

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

22.8.7 In the event that additional space is required for discharging the specified functions in the Reserved Area, the Authority may, with the consent of the Concessionaire, increase the space comprising the Reserved Area.

ARTICLE 23

SAFETY REQUIREMENTS

23.1 Safety Requirements

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

23.2 Expenditure on Safety Requirements

All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire to the extent such costs and expenses form part of the works and services included in the Scope of the Project, and works and services, if any, not forming part of the Scope of the Project shall be undertaken in accordance with the procedure specified in Article 16.

ARTICLE 24

MONITORING OF OPERATION AND MAINTENANCE

24.1 Monthly / Daily status reports

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

24.2 Reports of unusual occurrence

The Concessionaire shall, prior to the close of each day, notify the Authority and the Independent Engineer, by facsimile or e-mail, a report stating accidents and unusual occurrences on the Heliport relating to the safety and security of the Users and Heliport. A weekly and monthly summary of such reports shall also be sent within 3 (three days) of the closing of each week and month, as the case may be. For the purposes of this Clause 24.2, accidents and unusual occurrences on the Heliport shall include:

- (a) death or injury to any person;
- (b) damaged or dislodged fixed equipment;

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

24.3 Inspection

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

24.4 Tests

For determining that the Heliport conforms to the Maintenance Requirements, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Independent Engineer and furnish the results of such tests forthwith to the Independent Engineer. One half of the costs incurred on such tests, and to the extent certified by the Independent Engineer as reasonable, shall be reimbursed by the Authority to the Concessionaire.

24.5 Remedial measures

- 24.5.1 The Concessionaire shall repair or rectify the defects or deficiencies or non compliance with the Maintenance Requirements, if any, set forth in the O&M Inspection Report or in the test results referred to in Clause 24.4 and furnish a report in respect thereof to the Independent Engineer and the Authority within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.
- 24.5.2 The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Heliport into compliance with the Maintenance Requirements and the procedure set forth in this Clause 24.5 shall be repeated until the Heliport conforms to the Maintenance Requirements. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Damages from the Concessionaire under and in accordance with the provisions of Clause 17.8.

24.6 Monthly Fee Statement

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

ARTICLE 25

TRAFFIC REGULATION AND CENSUS

25.1 Traffic regulation by the Concessionaire

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

25.2 Helicopter landing and slot allocation guidelines

The Concessionaire shall manage and allocate the Helicopter landing and timetable slots at the Heliport, and shall allocate such slots in consultation with the helicopter operators based on Good Industry Practice .

25.3 Traffic Census

The Concessionaire shall collect data relating to Passenger Traffic, vehicles and cargo using the Heliport. A statement of such data shall be compiled and furnished forthwith by the Concessionaire to the Authority substantially in the forms specified in Schedule-N.

25.4 Traffic sampling

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

Concession Fee for any comparable period shall be calculated with reference to the traffic determined hereunder.

25.5 Computer systems and network

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

ARTICLE 26

KEY PERFORMANCE INDICATORS

26.1 Key Performance Indicators³

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

26.2 Operation of Aeronautical Assets

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

26.2.2 The Helipad, taxiways, apron, ATC Facility and Helipad Lighting System shall at all-time be operated and maintained in accordance with the relevant ICAO standards, guidelines of DGCA, Applicable Laws, Applicable Permits and Good Industry Practice.

26.3 Operation of Terminal Building

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

26.3.2 The Concessionaire shall at all times procure that:

- (a) the Terminal Building and its toilets are clean, hygienic and free of odour;
- (b) there is adequate lighting within the Terminal Building in conformity with the Specifications and Standards;
- (c) the temperature in common areas within the Terminal Building is maintained in accordance with the Maintenance Requirements;
- (d) all entry and exit points, passages, circulation areas and vehicular traffic are so managed that they do not have a queue with a waiting time exceeding 2 (two) minutes;
- (e) all lifts, escalators, walkalators, flight information systems, public address systems, baggage belts and lighting systems function efficiently and their availability is no less than 98% (ninety-eight per cent) of the scheduled operating time in a month; and
- (f) 75% (seventy-five per cent) of all phone calls during office hours and the scheduled operating time are answered within 30 (thirty) seconds.

³ The Key Performance Indicators specified here are indicative in nature and may be modified by the Authority, as necessary, to reflect project – specific requirements

26.3.3 The Concessionaire shall procure that the time taken for an arriving domestic passenger to exit from the Terminal Building from the time a Helicopter halts at its parking bay shall not be more than 20 (twenty) minutes for at least 95% (ninety five per cent) of the arriving passengers.

26.3.4 The Concessionaire shall procure that local taxis are available at the exit point of the Terminal Building and the maximum waiting time for at least 95% (ninety-five per cent) of passengers shall not exceed 5 (five) minutes. For the avoidance of doubt, the Concessionaire acknowledges and agrees that it shall not restrict or regulate the access or movement of taxis at the Heliport and shall enable free movement thereof for the convenience of the passengers, save and except for regulation of traffic in a non-discriminatory manner.

26.4 Operation of Car Park

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

26.4.2 The Concessionaire shall, at all times after COD, procure that:

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

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

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

26.5 Operation of Cargo Facilities

26.5.1 In case the Cargo Facilities are constructed and developed by the Concessionaire, it shall operate and manage the Cargo Facilities such that it conforms to the Key Performance Indicators specified in this Clause 26.5.

26.5.2 The Concessionaire shall, at all times after COD, procure that:

- (a) the average time taken for processing of incoming cargo shall not exceed a maximum duration of 12 (twelve) hours; and
 - (b) the average time taken for processing of outgoing cargo shall not exceed a maximum duration of 12 (twelve) hours.
- 26.5.3 The Concessionaire shall procure that the Cargo Facilities are kept clean and with adequate lighting.
- 26.5.4 The Concessionaire shall provide and operate an electronic data interchange (EDI) facility in accordance with Good Industry Practice
- 26.5.5 The Concessionaire shall provide adequate number of toilets in the Cargo Facilities and keep them in clean and hygienic condition.

26.6 ISO certification

- 26.6.1 The Concessionaire shall, within 6 (six) months from COD, achieve and thereafter maintain throughout the Concession Period, ISO 9001:2015 certification or a substitute thereof for all the facilities at the Heliport, and shall provide a certified copy thereof to the Authority forthwith.
- 26.6.2 In the event of default in obtaining the certification specified in Clause 26.6.1, the Concessionaire shall, within 15 (fifteen) days thereof, submit to the Authority an action plan that sets out the actions proposed to be taken by the Concessionaire for rectifying its deficiencies and obtaining such certification for all facilities at the Heliport.
- 26.6.3 If the period of default in obtaining the ISO certification under this Clause 26.6 shall exceed a continuous period of 3 (three) months, the Concessionaire shall thereafter pay Damages to the Authority in an amount equal to [2% (two per cent)] of the total monthly revenue from Fee for every 1 (one) month of default.

26.7 Service Quality Requirements

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

26.8 Target Rating and User Survey

- 26.8.1 In addition, the Authority may, at its cost and expense, engage an independent expert agency to conduct a sample survey of User satisfaction (the "User Survey") once every calendar quarter to determine the compliance of the provisions of this Article 25 by the Concessionaire. The nature and content of the User Survey shall be determined by the Authority in consultation with the Concessionaire to procure that

the outcome is objective and represents a cross-section of Users. For the avoidance of doubt, it is agreed that in designing the User Survey, the Authority shall rely on Good Industry Practice and conform to similar surveys undertaken from time to time such as the Heliport Service Quality Survey currently conducted at several international Heliports.

- 26.8.2 In the event that the User Survey reveals that more than 20% (twenty per cent) of the Users surveyed are not satisfied with the performance of the Concessionaire and rank the services as poor or fair, the Authority may levy and collect from the Concessionaire, Damages calculated at the rate of 5% (five per cent) of its revenues from Fees during the preceding month for every 10% (one per cent) Users who are not satisfied beyond the aforesaid 20% (twenty per cent). For the avoidance of doubt, in the event that 22% (twenty-two per cent) Users are not satisfied, the Damages shall be a sum equal to 10% (ten per cent) of the Fee revenues of the immediately preceding month and further penalties, if any, shall be determined by the next User Survey.

26.9 Monthly status report

During Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish a monthly report stating in reasonable detail the compliance with all the Key Performance Indicators specified in this Article 26 along with an analysis of the reasons for failures, if any, and the strategies for addressing the same and for otherwise improving the operational performance of the Heliport. The monthly report shall include a quantification of the Damages calculated in accordance with Clause 26.10.

26.10 Penalty for shortfall in performance

The Concessionaire shall ensure and procure compliance of each of the Key Performance Indicators specified in this Article 26 and for any shortfall in average performance during a quarter, it shall pay Damages within 30 (thirty) days of the close of the quarter in which the shortfall occurred. The Damages due and payable under this Clause 26.10 shall, save and except as provided in Clauses 26.6.3 and 26.8., be determined at the rate of (1% (one per cent) of the total revenue from Fees in the respective quarter for every shortfall of 10% (ten per cent) in any single performance indicator specified in this Article 26; provided, however, that where the shortfall cannot be quantified, the Damages shall be determined at the rate or (2% (two per cent)) of the total revenue from Fee for the relevant quarter: provided further that the Authority may waive the Damages, in part or full, if it is satisfied that the Concessionaire has been carrying out its obligations diligently and efficiently and that the shortfall to be waived was on account of reasons beyond the control of the Concessionaire.

26.11 Passenger Charter

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

26.12 Excuse from Key Performance Indicators

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

ARTICLE 27

INDEPENDENT ENGINEER

27.1 Appointment of Independent Engineer

The Authority shall appoint a consulting engineering firm substantially in accordance with the selection criteria set forth in Schedule-Q, to be the independent consultant under this Agreement (the "**Independent Engineer**"). The appointment shall be made no later than 90 (ninety) days from the date of this Agreement and shall be for a period of 3 (three) years. On expiry or termination of the aforesaid period, the Authority may in its discretion renew the appointment, or appoint another firm from a fresh panel constituted pursuant to Schedule-Q to be the Independent Engineer for a term of 3 (three) years, and such procedure shall be repeated after expiry of each appointment.

27.2 Duties and functions

- 27.2.1 The Independent Engineer shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule-R.
- 27.2.2 The Independent Engineer shall submit regular periodic reports (at least once every month) to the Authority in respect of its duties and functions set forth in Schedule-R.
- 27.2.3 A true copy of all communications sent by the Authority to the Independent Engineer and by the Independent Engineer to the Authority shall be sent forthwith by the Independent Engineer to the Concessionaire.
- 27.2.4 A true copy of all communications sent by the Independent Engineer to the Concessionaire and by the Concessionaire to the Independent Engineer shall be sent forthwith by the Independent Engineer to the Authority.

27.3 Remuneration

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

27.4 Termination of appointment

- 27.4.1 The Authority may, in its discretion, terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer in accordance with Clause 27.1.
- 27.4.2 If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Authority and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the Independent Engineer is terminated hereunder, the Authority shall appoint forthwith another Independent Engineer in accordance with Clause 27.1.

27.5 Authorised signatories

The Authority shall require the Independent Engineer to designate and notify to the Authority and the Concessionaire up to 2 (two) persons employed in its firm to sign for and on behalf of the Independent Engineer, and any communication or document required to be signed by the Independent Engineer shall be valid and effective only if signed by any of the designated persons; provided that the Independent Engineer may, by notice in writing, substitute any of the designated persons by any of its employees.

27.6 Dispute resolution

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

27.7 Interim arrangement

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

ARTICLE 28

Deleted

Part IV

Financial Covenants

ARTICLE 29

FINANCIAL CLOSE

29.1 Financial Close

- 29.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 120 (one hundred and eighty) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding [40 (forty)] days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.05 % (zero point zero five cent) of the Performance Security for each day of delay, or for a further period not exceeding 200 (two hundred) days, subject to payment of Damages specified in Clause 4.3; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 180 (one hundred and eighty) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred solely as a result of any default or delay by the Authority in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Concessionaire shall be in addition to the Damages, if any, due and payable under the provisions of Clause 4.3.
- 29.1.2 The Concessionaire shall, upon occurrence of Financial Close, notify the Authority forthwith, and shall have provided to the Authority, at least 2 (two) days prior to the Financial Close, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders.

29.2 Termination due to failure to achieve Financial Close

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

return the Bid Security forthwith along with the Damages due and payable under Clause 4.2. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by Performance Security, the Authority shall be entitled to encash therefrom an amount equal to Bid Security.

ARTICLE 30

LICENSE FEE

30.1 License Fee

- 30.1.1 The Concessionaire shall, as consideration for the use, in its capacity as a bare licensee of the Site, made available in accordance with Article 3.1.2(a), pay to the Authority the sum of 1% (one percent) of land value payable as per schedule mentioned under clause 30.1.3. The land value as on December 2020 has been estimated to be Rs. 22.70 Crores (Rupees twenty-two decimal seventy crores only). Therefore, the license fee as on December 2020 is Rs. 22.70 Lakhs (Rupees twenty-two decimal seventy lakhs only) (the “**License Fee**”). Such amount shall be paid by the Concessionaire annually subject to an escalation @ 2% per annum compounded annually.
- 30.1.2 Further, subject to and in accordance with Clause 42.1.1, in the event of any delay in payment of the License Fee as per Clause 30.1.1, the Concessionaire shall pay to the Authority of a sum calculated at the rate of 0.05% (zero point five percent) of the Performance Security for each day of delay.
- 30.1.3 The Licensee fee as mentioned under clause 30.1.1 is payable as per the following schedule:

Period	Payable License Fee
From Signing of Concession Agreement to 15 th Month	0%
From 16 th Month to 24 th Month	25%
From 25 th Month to 36 th Month	50%
Beyond 36 th Month	100%

ARTICLE 31

CONCESSION FEE

31.1 Monthly Concession Fee

- 31.1.1 Subject to Clause 31.3, the Concessionaire agrees to pay to the Authority, during the Concession Period, a monthly concession fee calculated as follows (the “**Monthly Concession Fee**”):

Per Passenger Fee x Passenger Throughput for that month

Where:

“**Per Passenger Fee**” means Rs. [_____ (Rupees _____)]⁴, as may be revised pursuant to Clause 31.3;

“**Passenger Throughput**” for any month shall mean the total Passenger Traffic (embarking) as provided by the Authority by the 7th (seventh) day of subsequent month in the form and manner as specified by the Authority from time to time;

Provided further that, in the first and last months of the Concession Period, the Passenger Throughput shall be pro-rated by the number of days in such months as reckoned to the COD or Transfer Date, as relevant.

- 31.1.2 The Monthly Concession Fee paid/ payable by the Concessionaire to the Authority under and pursuant to the terms of this Agreement shall not be included as a part of costs for provision of Aeronautical Services and no pass-through would be available in relation the same.

31.2 Verification of Passenger Throughput

The Authority may, in order to verify the Passenger Throughput at the Heliport, depute its representatives to the Heliport and the offices of the Concessionaire, and undertake such other measures and actions as it may deem necessary. The Authority may call upon the Concessionaire to furnish any and all data, information, log, sheet, document or statement, as the Authority may deem fit and necessary for these purposes.

31.3 Revision of Per Passenger Fee

The Parties hereto acknowledge and agree that the Per Passenger Fee shall be applicable from the COD and shall be revised annual on each anniversary of the COD to take account of the variation in the WPI and CPI (IW).

⁴ To be determined through competitive bidding.

$$\frac{\text{Per Passenger Fee}_{(CY)}}{\text{Per Passenger Fee}_{(CY-1)}} = \text{Per Passenger Fee}_{(CY-1)} \times (1 + 50\% * (70\% \text{ of Delta WPI} + 30\% \text{ of Delta CPI(IW)}))$$

Where:

“**Per Passenger Fee_(CY)**” means the revised Per Passenger Fee to be paid by the Concessionaire in the new Concession Year;

“**Per Passenger Fee_(CY-1)**” means Per Passenger Fee paid by the Concessionaire in the previous Concession Year;

“**Delta WPI**” shall be calculated as follows:

$$\frac{\text{(Latest available monthly WPI as of the date of calculation)}}{\text{(WPI pertaining to 12 (twelve) months prior to such latest available monthly WPI)}}$$

$$\text{(WPI pertaining to 12 (twelve) months prior to such latest available monthly WPI)}$$

“**Delta CPI(IW)**” shall be calculated as follows:

$$\frac{\text{(Latest available monthly CPI(IW) as of the date of calculation)}}{\text{(CPI(IW) pertaining to 12 (twelve) months prior to such latest available monthly CPI(IW))}}$$

$$\text{(CPI(IW) pertaining to 12 (twelve) months prior to such latest available monthly CPI(IW))}$$

31.4 Payment of Monthly Concession Fee

- 31.4.1 Pursuant to Clause 31.2, the ‘**Authority**’ shall submit to the Concessionaire, an invoice for the payment of the Monthly Concession Fee, which invoice shall also contain the amount of GST which is leviable on payment of the Monthly Concession Fee under Applicable Law, not later than the 15(fifteenth) day of the subsequent month.
- 31.4.2 The Concessionaire shall bear any GST which is leviable on the payment of the Monthly Concession Fee to the ‘**Authority**’ under Applicable Laws and shall pay to the Authority, the amount of GST specified in the invoice raised by the Authority pursuant to Clause 31.4.1.

31.4.3 The Concessionaire shall be entitled to deduct any Taxes required to be deducted at source under Applicable Laws while making payment of the Monthly Concession Fee to the Authority.

31.4.4 Further, subject to and in accordance with Clause 42.1.1, in the event of any delay in payment of the Monthly Concession Fee as per Clause 31.4, the Concessionaire shall pay to the Authority of a sum calculated at the rate of 0.05% (zero point five percent) of the Performance Security for each day of delay.

31.5 Yearly Reconciliation of Monthly Concession Fee

31.5.1 The cumulative Monthly Concession Fee payable to the Authority by the Concessionaire for any Concession Year shall be:

$$\sum_{i=1}^{12} \text{Monthly Concession Fee paid for the month } i \text{ in any Concession Year}$$

31.5.2 The cumulative Monthly Concession Fee paid by the Concessionaire for any Concession Year shall be compared with the Yearly Concession Fee payable for that Concession Year.

For the purpose of this Clause, “**Yearly Concession Fee**” shall be calculated as per the following formula:

Per Passenger Fee x Passenger Throughput for the Concession Year

The adjustment towards any differences in the cumulative Monthly Concession Fee paid by the Concessionaire for a Concession Year and the Yearly Concession Fee for that Concession Year shall be undertaken as part of the Balancing Payment that becomes due and payable as per Clause 38.4 immediately after the completion of the reconciliation.

31.6 Termination for Fall in Passenger Traffic

31.6.1 Notwithstanding the above, in the event that the Passenger Traffic Change is negative by 20% (twenty percent) or more for a consecutive period of 2(two) Concession Years, the Agreement may be terminated by the Concessionaire within 180 (one hundred and eighty) days of the expiry of the second such Concession Year, by giving a notice of 30(thirty) days.

Where:

“**Passenger Traffic Change**”, denoted as a percentage, is calculated as follows:

$$100 \quad \times \quad \frac{\text{(Passenger Throughput for the current Concession Year – Passenger Throughput for the previous Concession Year)}}{\text{Passenger Throughput for the previous Concession Year}}$$

31.6.2 Upon such Termination, the Authority shall be liable to pay to the Concessionaire an amount as determined in accordance with Cause 42.3.1.

ARTICLE 32

USER FEE

32.1 Collection and appropriation of charges by the Concessionaire⁵

- 32.1.1 On and from the COD till the Transfer Date, the Concessionaire shall have the sole and exclusive right to demand, collect and appropriate Fee from the Users, including the helicopter operators and passengers, in accordance with the provisions of the Applicable Act and this Agreement, provided that the Concessionaire may determine and collect Fees at such lower rates as may be agreed with the Users or any category of Users in accordance with the Applicable Laws and this Agreement.
- 32.1.2 The Concessionaire acknowledges and agrees that upon payment of Fee, any User shall be entitled to use the specified facility at the Heliport and the Concessionaire shall not place, or cause to be placed, any restriction on such use, except to the extent specified in any Applicable Law, Applicable Permit or the provisions of this Agreement.
- 32.1.3 The Concessionaire acknowledges and agrees that any User who is not liable for payment of Fee shall be entitled to use the Heliport without any restrictions except to the extent specified in any Applicable Law, Applicable Permit or the provisions of this Agreement. For the avoidance of doubt, Exempted Persons and pass-holders of the Authority shall not be liable to payment of Fee for entry into the Heliport or for use of the Reserved Car Park. In addition, the Concessionaire may issue passes to its own employees and the employers of contractors, sub-contractors, agents and other persons for free entry into the Heliport, subject to Applicable Laws and the provisions of this Agreement.
- 32.1.4 The Concessionaire shall be entitled to levy, collect and appropriate the following Fee for use of the Heliport by helicopter operators, helicopters, passengers and Users:
- (a) Landing Fee;
 - (b) Parking Fee;
 - (c) Passenger Service Fee;
 - (d) Fees for Cargo Facilities;
 - (e) Fees for Ground Handling Services
 - (f) Fees for Helicopter Fuelling Services

⁵ The fees and classification of passengers specified in the fare notification

- (g) Fee for entry of visitors to the visitors' area in the Terminal Building;
- (h) Fee for use of the Car Park; and
- (i) Any other Fees for Aeronautical Services which the Concessionaire may charge in accordance with the terms of this Agreement.

For the avoidance of doubt, the Concessionaire shall be entitled to determine the rates payable by the Users and the helicopter operators for availing the Aeronautical Services, provided however, in case such Fees for Aeronautical Services is determined by the operation or enactment or amendment of any Applicable Law, the Concessionaire shall ensure that any Fees which is charged from the Users and the helicopter operators shall be in compliance with Applicable act and the provisions of such Applicable Laws.

- 32.1.5 Subject to compliance with Applicable Laws, this Agreement and Good Industry Practice, the Concessionaire shall be entitled to levy, collect and appropriate charges for use of any or all Non-Aeronautical Services.
- 32.1.6 The Parties agree that charges for provision of Heliport security services by the Authority or a Designated GoI Agency, as the case may be, shall be recovered by the Concessionaire from the passengers and paid to the Authority or the Designated GoI Agency. The amount to be collected from the passengers hereunder shall be in addition to the Passenger Service Fee and shall be determined by the Authority once every quarter. For the avoidance of doubt, the Parties agree that the amount collected by the Concessionaire during the course of a month shall be paid to the Authority no later than the 5th (fifth) day of the following month.
- 32.1.7 Concessionaire shall be entitled to levy a User Development Fee from the embarking passengers, with effect from the COD, for the provision of passenger amenities, services and facilities and the User Development Fee will be used for the development, management, maintenance, operation and expansion of the facilities at the Heliport, subject to Applicable Laws and the provisions of this Agreement.

32.2 Collection of Navigational charges

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

32.3 Additional charge for evasion of Fee

In the event that any person uses the Heliport without payment of Fee due, the Concessionaire shall, subject to Applicable Law and Applicable Permits, be entitled to determine and collect from such person the Fee due and thrice the amount thereof towards predetermined liquidated damages for attempt to make unauthorised use of the Heliport; provided that the determination and collection of such Fee and liquidated damages hereunder shall be at the risk and cost of the Concessionaire and the Authority shall not be liable on this account in any manner whatsoever.

32.4 Display of Fee

- 32.4.1 The Concessionaire shall, at all entry points of the Heliport and near the Fee counters at the Heliport, prominently display the applicable rates of Fee for information of the Users.
- 32.4.2 The Concessionaire shall, from time to time, inform the Authority of the applicable Fee and the detailed calculation thereof. Such information shall be communicated at least 15 (fifteen) days prior to the revision of Fee.

ARTICLE 33

[Deleted]

33.1 Deleted

ARTICLE 34

[Deleted]

34.1 Deleted

ARTICLE 35

CONSTRUCTION OF COMPETING FACILITY

35.1 Restrictions on construction of Competing Facility

- 35.1.1 Notwithstanding anything to the contrary contained in this Agreement but subject always to Clause 35.2, the Authority shall not construct or cause to be constructed, any Competing Facility at any time before the 15th (fifteenth) anniversary of the Appointed Date.
- 35.1.2 If the Authority shall be in breach of the provisions of Clause 35.1.1, the Concessionaire shall, without prejudice to its other rights and remedies under this Agreement including Termination thereof, be entitled to receive compensation from the Authority under and in accordance with the provisions of Clause 40.4.

35.2 Modification in the Concession Period

In the event of the Authority constructing or causing the construction of any Competing Facility after the 15th (fifteenth) anniversary of the Appointed Date, the following shall apply:

- (a) if the Competing Facility is opened to traffic between the 15th (fifteenth) and 30th (thirtieth) anniversary of the Appointed Date, the Concessionaire shall be entitled to an additional Concession Period, which shall be equal in duration to the period between the opening of the Competing Facility and the 30th (thirtieth) anniversary. For the avoidance of doubt, if the Competing Facility is opened on the 25th (twenty-fifth) anniversary, the Concession Period shall be deemed to be increased by a period of 5 (five) years; and
- (b) if the Concession Period is to be increased in accordance with the provisions of this Clause 35.2, the same shall be added to the Concession Period due to the Concessionaire under and in accordance with all other provisions of this Agreement, save and except the provisions relating to Termination, save and except the provisions relating to Termination.

ARTICLE 36

ESCROW ACCOUNT

36.1 Escrow Account

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

36.1.2 The nature and scope of the Escrow Account are fully described in the agreement (the "**Escrow Agreement**") to be entered into amongst the Concessionaire, the Authority, the Escrow Bank and the Senior Lenders through the Lenders' Representative, which shall be substantially in the form set forth in Schedule- T.

36.2 Deposits into Escrow Account

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

- (a) all funds constituting the Financial Package;
- (b) all Fee and any other revenues from or in respect of the Heliport, including the proceeds of any rentals, deposits, capital receipts or insurance claims;
- (c) all payments by the Authority, after deduction of any outstanding License Fee and/or Monthly Concession Fee;
- (d) all Fee collected by the Authority in exercise of its rights under the Concession Agreement
- (e) Termination Payment

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

36.3 Withdrawals during Concession Period

36.3.1 The Concessionaire shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, inter alia, that deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due

in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due:

- (a) all taxes due and payable by the Concessionaire for and in respect of the Heliport;
- (b) all payments relating to construction of the Heliport, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements ;
- (d) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;
- (e) License Fee due and payable to the Authority;
- (f) Monthly Concession Fee due and payable to the Authority;
- (g) monthly proportionate provision of Debt Service due in an Accounting Year;
- (h) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire, including repayment of Revenue Shortfall Loan;
- (i) monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- (j) any reserve requirements set forth in the Financing Agreements; and
- (k) balance, if any, in accordance with the instructions of the Concessionaire.

36.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Clause 36.3.1, except with the prior written approval of the Authority.

36.4 Withdrawals upon Termination

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

- (a) all taxes due and payable by the Concessionaire for and in respect of the Heliport;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;

- (c) outstanding License Fee and/ or Monthly Concession Fee;
- (d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire, including repayment of Revenue Shortfall Loan;
- (e) retention and payments relating to the liability for defects and deficiencies set forth in Article 44;
- (f) outstanding Debt Service including the balance of Debt Due;
- (g) outstanding Subordinated Debt;
- (h) incurred or accrued O&M Expenses;
- (i) any other payments required to be made under this Agreement; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire:

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

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

ARTICLE 37

INSURANCE

37.1 Insurance during Concession Period

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

37.2 Insurance Cover

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

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

37.3 Notice to the Authority

No later than 45 (forty-five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 37. Within 30 (thirty) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

37.4 Evidence of Insurance Cover

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

37.5 Remedy for failure to insure

If the Concessionaire shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Authority shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Concessionaire, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Concessionaire.

37.6 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 37 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, *inter alia*, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

37.7 Concessionaire's waiver

The Concessionaire hereby further releases, assigns and waives any and all rights of subrogation or recovery against, *inter alia*, the Authority and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or

in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Concessionaire pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

37.8 Application of insurance proceeds

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

37.9 Compliance with conditions of insurance policies

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

ARTICLE 38

ACCOUNTS AND AUDIT

38.1 Audited accounts

- 38.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including all Realisable Fee and other revenues derived/collected by it from or on account of the Heliport and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.
- 38.1.2 The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.
- 38.1.3 On or before the thirty-first day of July each Year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on (a) the traffic count for each category of persons using the Heliport and liable for payment of Fee therefor, (b) Fee charged and received, Realisable Fee and other revenues derived from the Heliport, and (c) such other information as the Authority may reasonably require.

38.2 Appointment of auditors

- 38.2.1 The Concessionaire shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from the mutually agreed list of 5 (five) reputable firms of chartered accountants (the "**Panel of Chartered Accountants**"), such list to be prepared substantially in accordance with the criteria set forth in Schedule-U. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.

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- 38.2.2 The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of 45 (forty-five) days to the Authority, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.
- 38.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, another firm (the "**Additional Auditors**") from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

38.3 Certification of claims by Statutory Auditors

Any claim or document provided by the Concessionaire to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business including the submission of Monthly Fee Statements under Clause 24.6.

38.4 Reconciliation

- 38.4.1 Every quarter the balancing payment (reflecting netting of amount as which are due and payable as reimbursement, adjustment or otherwise, or as Damages which are not paid, or not recovered from the Performance Security or the Bid Security, as the case may be, under this Agreement (the "**Balancing Payment**") shall be calculated by the Authority who shall deliver its calculation and statement to the Concessionaire within 15(fifteen) days of the end of each quarter of an Accounting Year. Each such statement shall have attachments reasonably supporting evidence of all amounts claimed. For the avoidance of any doubt, Balancing Payment calculated under this Clause 38.4.1 shall not take into account the Monthly Concession Fee for such calculation, but shall include any adjustment pursuant to Clause 31.5.
- 38.4.2 On receipt of the Authority's statement under Clause 38.4.1, the Concessionaire shall have 20(twenty) days in which to (a) approved or (b) require recalculations and amendments. both Parties shall maintain sufficient records to enable verification of all the Authority's statements made under Clause 38.4.1. Failure by the Concessionaire to comment on any Authority's statement within the above 20(twenty) day period shall be deemed to constitute approval.
- 38.4.3 If the Authority does not submit the calculation of the Balancing Payment within 10(ten) days of the end of any quarter of an Accounting Year, the Concessionaire shall be entitled to submit such calculation, together with attachments reasonably supporting evidence of all amounts claimed, and in such event, the provisions of Clause 38.4.2 above shall apply to the Parties in reverse.

38.5 Dispute resolution

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

Part V
Force Majeure and Termination

ARTICLE 39

FORCE MAJEURE

39.1 Force Majeure

As used in this Agreement, the expression "**Force Majeure**" or "**Force Majeure Event**" shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 39.2, 39.3 and 39.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "**Affected Party**") of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

39.2 Non-Political Event

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

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

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- (e) any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;
 - (f) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
 - (g) any event or circumstances of a nature analogous to any of the foregoing.

39.3 Indirect Political Event

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

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the operations, management or development of the Project to be financially unviable or otherwise not feasible.
- (c) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty-four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (d) any civil commotion, boycott or political agitation which prevents collection of Fee by the Concessionaire for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (e) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (f) any Indirect Political Event that causes a Non-Political Event;
- (g) any lockdowns or shutdowns imposed by any Government Instrumentality on account of COVID-19 or any other pandemic, endemic or epidemic; or
- (h) any event or circumstances of a nature analogous to any of the foregoing.

39.4 Political Event

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

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

39.5 Duty to report Force Majeure Event

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

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 39 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

- 39.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.
- 39.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 39.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

39.6 Effect of Force Majeure Event on the Concession

- 39.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 29.1.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.
- 39.6.2 At any time after the Appointed Date, if any Force Majeure Event occurs:
- (a) before COD, the Concession Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
 - (b) after COD, whereupon the Concessionaire is unable to collect Fee despite making best efforts or it is directed by the Authority or any Government Instrumentality to suspend the collection thereof during the subsistence of such Force Majeure Event, the Concession Period shall be extended by a period, equal in length to the period during which the Concessionaire was prevented from collection of Fee on account thereof; provided that in the event of partial collection of Fee where the daily collection is less than 90% (ninety per cent) of the Average Daily Fee, the Authority shall extend the Concession Period in proportion to the loss of Fee on a daily basis. For the avoidance of doubt, loss of 25% (twenty-five per cent) in collection of Fee as compared to the Average Daily Fee for four days shall entitle the Concessionaire to extension of one day in the Concession Period.

39.7 Allocation of costs arising out of Force Majeure

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- 39.7.1 Upon occurrence of any Force Majeure Event prior to the Appointed Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.
- 39.7.2 Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Project (the "**Force Majeure Costs**") shall be allocated and paid as follows:
- (a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;
 - (b) upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Concessionaire; and
 - (c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Concessionaire.

For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses, any increase in the cost of Construction Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of Fee revenues or debt repayment obligations, and for determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant.

- 39.7.3 Save and except as expressly provided in this Article 39, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

39.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 39, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

39.9 Termination Payment for Force Majeure Event

- 39.9.1 If Termination is on account of a Non-Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover.
- 39.9.2 If Termination is on account of an Indirect Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to:
- (a) Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due;
 - (b) 110% (one hundred and ten per cent) of the Adjusted Equity; and
 - (c) an amount equivalent to the Additional Termination Payment Less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in computation of the amount payable hereunder.
- 39.9.3 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 42.3.2 as if it were an Authority Default.

39.10 Dispute resolution

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

39.11 Excuse from performance of obligations

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

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;

- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- (c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

39.12 Relief for Unforeseen Events

39.12.1 Upon occurrence of an unforeseen event, situation or similar circumstances not contemplated or referred to in this Agreement, and which could not have been foreseen by a prudent and diligent person (the “**Unforeseen Event**”), any Party may by notice inform the other Party of the occurrence of such Unforeseen Event with the particulars thereof and its effects on the costs, expense and revenues of the Project. Within 15 (fifteen) days of such notice, the Parties shall meet and make efforts in good faith to determine if such Unforeseen Event has occurred, and upon reaching agreement on occurrence thereof deal with it in accordance with the provisions of this Clause 39.12.

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

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

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

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

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

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

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

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

ARTICLE 40

COMPENSATION FOR BREACH OF AGREEMENT

40.1 Compensation for default by the Concessionaire

Subject to the provisions of Clause 40.6, in the event of the Concessionaire being in material default or breach of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material default, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 40.1 for any breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Authority.

40.2 Compensation for default by the Authority

Subject to the provisions of Clause 40.6, in the event of the Authority being in material default or breach of this Agreement at any time after the Appointed Date, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material default within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any breach or default in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses, any increase in capital costs on account of inflation and all other costs directly attributable to such material default but shall not include loss of Fee revenues or debt repayment obligations or other consequential losses, and for determining such compensation, information contained in the Financial Package and the Financial Model may be relied upon to the extent it is relevant.

40.3 Extension of Concession Period

Subject to the provisions of Clause 40.6, in the event that a material default or breach of this Agreement set forth in Clause 40.2 causes delay in achieving COD or leads to suspension of or reduction in collection of Fee, as the case may be, the Authority shall, in addition to payment of compensation under Clause 40.2, extend the Concession Period, such extension being equal in duration to the period by which COD was delayed or the collection of Fee remained suspended on account thereof, as the case may be; and in the event of reduction in collection of Fee where the daily collection is less than 90% (ninety per cent) of the Average Daily Fee, the Authority shall, in addition to payment of compensation hereunder, extend the Concession Period in proportion to the loss of Fee on a daily basis. For the avoidance of doubt, loss of 25% (twenty-five per cent) in collection of Fee as

compared to the Average Daily Fee for 4 (four) days shall entitle the Concessionaire to extension of one day in the Concession Period.

40.4 Compensation for Competing Facility

40.4.1 Subject to the provisions of Clause 40.6, in the event that a Competing Facility is opened to traffic in breach of this Agreement, the Authority shall pay to the Concessionaire, for each day of breach, compensation in a sum equal to the difference between the average daily Realisable Fee for the most recent Concession Year and the projected daily Fee (the "**Projected Fee**") until the breach is cured. The Projected Fee hereunder shall be an amount equal to the Average Daily Fee, increased at the close of every month by 0.5% (zero point five per cent) thereof and revised in accordance with Clause 32.3. For the avoidance of doubt, the Average Daily Fee for the purposes of this Clause shall be the amount so determined in respect of the Accounting Year or period, as the case may be, occurring prior to such opening or operation of the Competing Facility.

40.4.2 Payment of compensation under this Clause 40.4 shall be deemed to cure the breach of this Agreement so long as the Authority continues to pay compensation hereunder.

40.5 Compensation to be in addition

Compensation payable under this Article 40 shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any.

40.6 Mitigation of costs and damage

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

ARTICLE 41

SUSPENSION OF CONCESSIONAIRE'S RIGHTS

41.1 Suspension upon Concessionaire Default

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

41.2 Authority to act on behalf of Concessionaire

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

41.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period. The Concessionaire hereby licenses and sub-licenses respectively, To the Authority or any other person authorised by it under Clause 41.1 to use during Suspension, all Intellectual Property belonging to or licensed to the Concessionaire with respect to the Heliport and its design, engineering, construction, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

41.3 Revocation of Suspension

- 41.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 180 (one hundred and eighty) days from the date of Suspension or any other extended period as agreed by the Authority, it shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.
- 41.3.2 Upon the Concessionaire having cured the Concessionaire Default within a period not exceeding 180 (one hundred and eighty) days from the date of Suspension or any other extended time period agreed with the Authority, the Authority shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

41.4 Substitution of Concessionaire

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

41.5 Termination

- 41.5.1 At any time during the period of Suspension under this Article 41, the Concessionaire may by notice require the Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Clause 41.4, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 41.
- 41.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 41.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, mutatis mutandis, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Concessionaire Default.

ARTICLE 42

TERMINATION

42.1 Termination for Concessionaire Default

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

- (a) the Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Concessionaire fails to cure, within a Cure Period of 90 (ninety) days, the Concessionaire Default for which whole or part of the Performance Security was appropriated;
- (c) the Concessionaire does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule-G and continues to be in default for 120 (one hundred and twenty) days;
- (d) the Concessionaire abandons or manifests intention to abandon the construction or operation of the Heliport without the prior written consent of the Authority;
- (e) Project Completion Date does not occur within the period specified in Clause 12.4.3 & 12.9.;
- (f) the Punch List items have not been completed within the period set forth in Clause 14.4.1;
- (g) the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be, or commits repeated default in conforming to the Key Performance Indicators;
- (h) the Concessionaire has failed to make any payment to the Authority within the period specified in this Agreement;
- (i) an Escrow Default has occurred and the Concessionaire fails to cure the default within a Cure Period of 15 (fifteen) days;

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- (j) upon occurrence of a Financial Default, the Lenders' Representative has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;
 - (k) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
 - (l) the Concessionaire creates any Encumbrance in breach of this Agreement;
 - (m) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
 - (n) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
 - (o) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;
 - (p) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
 - (q) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;
 - (r) the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause in the reasonable opinion of the Authority, a Material Adverse Effect;
 - (s) a resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:
 - (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
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- (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and
 - (iii) each of the Project Agreements remains in full force and effect;
 - (t) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false or the Concessionaire is at any time hereafter found to be in breach thereof;
 - (u) the Concessionaire submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
 - (v) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement; or
 - (w) the Concessionaire commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the Authority.

42.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry or such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of clause 42.1.3

42.1.3 The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 42.1.2 to inform the Lender Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement:

Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is cured

within the aforesaid period of 180 (one hundred and eighty) days. and upon such curing thereof, the Authority shall withdraw its notice referred to above and restore all the rights of the Concessionaire:

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

42.2 Termination for Authority Default

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

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

42.2.2 Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon occurrence of an Authority Default, the Concessionaire shall, subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Concessionaire shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Authority to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

42.3 Termination Payment

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

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

Provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due.

For the avoidance of doubt, the Concessionaire hereby acknowledges that no Termination Payment shall be due or payable on account of a Concessionaire Default occurring prior to COD.

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

- (a) Debt Due;
- (b) 150% (one hundred and fifty per cent) of the Adjusted Equity; and
- (c) 115% (one hundred and fifteen per cent) or the amount representing the Additional Termination Payment.

42.3.3 Termination Payment shall become due and payable to the Concessionaire within 15 (fifteen) days of a demand being made by the Concessionaire to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to 3% (three per cent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

42.3.4 Upon Termination on expiry of the Concession Period by efflux of time, no Termination Payment shall be due and payable to the Concessionaire; provided that in the event any Project Assets, essential for the efficient, economic and safe operation of the Heliport, shall have been acquired and installed after the [20th (twentieth)] anniversary of COD, with prior written consent of the Authority (which consent shall not be unreasonably denied, a Termination Payment equal to 80% (eighty per cent) of the Adjusted Depreciated Value of such Project Assets shall be made by the Authority to the Concessionaire.

42.3.5 Notwithstanding anything to the contrary in this Agreement, but subject to the provisions of Clause 42.3.4, in the event any Project Assets, essential for the efficient, economic and safe operation of the Heliport, shall have been acquired and installed after the [20th (twentieth)] anniversary of COD, with prior written consent of the Authority which consent shall not be unreasonably denied, a sum equal to 80% (eighty per cent) of the Adjusted Depreciated Value thereof shall be deemed to be Debt Due for the purposes of Termination Payment.

42.3.6 The Concessionaire expressly agrees that Termination Payment under this Article 42 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that it shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

42.4 Certain limitations on Termination Payment

42.4.1 Termination Payment, not being Additional Termination Payment, due and payable under this Agreement shall be limited to the Debt Due and Adjusted Equity, as the case may be, which form part of the Total Project Cost in accordance with the provisions of this Agreement; provided that the amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Payment. For the avoidance of doubt, it is agreed that within a period of 60 (sixty) days from COD, the Concessionaire shall notify to the Authority, the Total Project Cost as on COD and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing Termination Payment, and it is further agreed that in the event such disaggregation is not notified to the Authority, Equity shall be deemed to be the amount arrived at by subtracting Debt Due from Total Project Cost.

42.4.2 The amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Payment. Provided, however, that the provisions of this Clause 42.4.2 shall not apply if the Concessionaire does not notify the particulars of any foreign currency loans within 60 (sixty) days of the date of conversion of such foreign currency loans into Indian currency. Provided further that all borrowings in foreign currency shall be restricted to the financing of Total Project Cost and any borrowings in excess thereof shall not qualify for computation of Termination Payment.

42.4.3 Deleted

42.4.4 Additional Termination Payment due and payable in respect of Specified Assets, which are constructed, acquired or installed after the 5th (fifth) anniversary of COD, but before the 20th (twentieth) anniversary thereof, shall be limited to the lowest of:

(a) Adjusted Depreciated Value thereof;

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

42.4.5 Additional Termination Payment due and payable in respect of the expansion of the Heliport, in accordance with the provisions of Clause 12.8 and the Master Plan, forming part of Specified Assets shall be limited to the lowest of:

- (a) Adjusted Depreciated Value thereof;
- (b) the capital cost of the expansion of the Heliport as approved by Senior Lenders;
- (c) the actual cost of the expansion of the Heliport upon completion thereof; and
- (d) the estimated capital cost of the expansion of the Heliport, as reasonably specified by the Authority, in consultation with the Independent Engineer, and prior to commencement of construction thereof.

42.5 Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

- (a) be deemed to have taken possession and control of the Heliport forthwith;
- (b) take possession and control of all materials, stores, implements, construction plants and equipment on or about the Site;
- (c) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Site or any part of the Project;
- (d) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 43.1; and
- (e) succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all

sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

42.6 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 42.3.6, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 43

DIVESTMENT OF RIGHTS AND INTEREST

43.1 Divestment Requirements

43.1.1 Upon Termination, the Concessionaire shall comply with and conform to the following Divestment Requirements:

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

43.1.2 Subject to the exercise by the Authority of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a third

party of any of the obligations of the Concessionaire, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the giving of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

43.2 Inspection and cure

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

43.3 Cooperation and assistance on transfer of Project

- 43.3.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Users, other members of the public or the lawful occupiers of any part of the Site.
- 43.3.2 The Parties shall provide to each other, 9 (nine) months prior to the Transfer Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the Authority, its concessionaire or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.
- 43.3.3 The Authority shall have the option to purchase or hire from the Concessionaire at a fair market value and free from any encumbrance all or any part of the plant and machinery used in connection with the Project but which does not form part of the assets specified in Clause 43.1.1 and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.

43.4 Vesting Certificate

The divestment of all rights, title and interest in the Heliport shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Authority shall, without unreasonable delay, thereupon issue a certificate

substantially in the form set forth in Schedule-V (the "**Vesting Certificate**"), which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Heliport, and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on, or in respect of, the Heliport on the footing that all Divestment Requirements have been complied with by the Concessionaire.

43.5 Divestment costs etc.

- 43.5.1 The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Heliport in favour of the Authority upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such divestment shall be borne by the Authority.
- 43.5.2 In the event of any dispute relating to matters covered by and under this Article 43. the Dispute Resolution Procedure shall apply.

ARTICLE 44

DEFECTS LIABILITY AFTER TERMINATION

44.1 Liability for defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Heliport for a period of 120 (one hundred and twenty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Engineer in the Heliport during the aforesaid period. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Heliport conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the Escrow Account under the provisions of Clause 44.2 or from the Performance Guarantee provided thereunder.

44.2 Retention in Escrow Account

- 44.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 44.2.3, a sum equal to 5% (five per cent) of the total Realisable Fee for the year immediately preceding the Transfer Date shall be retained in the Escrow Account for a period of 120 (one hundred and twenty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 44.1.
- 44.2.2 Without prejudice to the provisions of Clause 44.2.1, the Independent Engineer shall carry out an inspection of the Heliport at any time between 210 (two hundred and ten) and 180 (one hundred and eighty) days prior to the Termination and if it recommends that the status of the Heliport is such that a sum larger than the amount stipulated in Clause 44.2.1 should be retained in the Escrow Account and for a period longer than the aforesaid 120 (one hundred and twenty) days, the amount recommended by the Independent Engineer shall be retained in the Escrow Account for the period specified by it.
- 44.2.3 The Concessionaire may, for the performance of its obligations under this Article 44, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under Clause 44.2.1 or 43.2.2, as the case may be, and for the period specified therein, substantially in the form set forth in Schedule-F (the "Performance

Guarantee"), to be modified, mutatis mutandis, for this purpose, and the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at the Concessionaire's risk and cost in accordance with the provisions of this Article 44. Upon furnishing of a Performance Guarantee under this Clause 44.2.3, the retention of funds in the Escrow Account in terms of Clause 44.2.1 or 44.2.2, as the case may be, shall be dispensed with.

Part VI
Other Provisions

ARTICLE 45

ASSIGNMENT AND CHARGES

45.1 Restrictions on assignment and charges

- 45.1.1 Subject to Clauses 45.2 and 45.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.
- 45.1.2 Subject to the provisions of Clause 45.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

45.2 Permitted assignment and charges

The restraints set forth in Clause 45.1 shall not apply to:

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

45.3 Substitution Agreement

- 45.3.1 The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire pursuant to the agreement for substitution of the Concessionaire (the "**Substitution Agreement**") to be entered into amongst the Concessionaire, the Authority and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Schedule-W.
- 45.3.2 Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire; provided that where the Concessionaire is in breach of this Agreement on the date of such substitution, the Authority shall by notice grant a Cure Period of 120 (one hundred and twenty) days to the Concessionaire for curing such breach.

45.4 Assignment by the Authority

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

ARTICLE 46

CHANGE IN LAW

46.1 Increase in costs

If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of Rs. 8,60,000 (Rupees eight lakhs sixty thousand only)⁶ and 0.5% (zero point five per cent) of the Realisable Fee in any Accounting Year, the Concessionaire may so notify the Authority and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Concessionaire may by notice require the Authority to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Authority shall pay the amount specified therein; provided that if the Authority shall dispute such claim of the Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 46.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

46.2 Reduction in costs

If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds the higher of Rs. 8,60,000 (Rupees eight lakhs sixty thousand only) and 0.5% (zero point five per cent) of the Realisable Fee in any Accounting Year, the Authority may so notify the Concessionaire and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and

⁶ This amount may in the discretion of the Authority, be suitably increased, but in no case exceeding a ratio of Rs. 1 cr. (Rupees 1 crore) for every Rs. 500 Cr. (Rupees five hundred crore) of Total Project Cost.

either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

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

46.3 Protection of NPV

Pursuant to the provisions of Clauses 46.1 and 46.2 and for the purposes of placing the Concessionaire in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall rely on the Financial Model to establish a net present value (the "NPV") of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred.

46.4 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 46 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than 1 (one) year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.

46.5 No claim in the event of recovery from Users

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

ARTICLE 47

LIABILITY AND INDEMNITY

47.1 General indemnity

47.1.1 The Concessionaire will indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities, Designated GoI Agencies and Authority owned and/or controlled entities/enterprises, (the "**Government Indemnified Persons**") against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the Concessionaire to any User or from any negligence of the Concessionaire under contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Government Indemnified Persons.

47.1.2 The Authority will indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (i) defect in title and/or the rights of the Authority in the land comprised in the Site, and/or (ii) breach by the Authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Concessionaire of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Concessionaire, its subsidiaries, affiliates, contractors, servants or agents. the same shall be the liability of the Concessionaire.

47.2 Indemnity by the Concessionaire

47.2.1 Without limiting the generality of Clause 47.1, the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Government Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- (a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;

- (b) payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire's contractors, suppliers and representatives; or
- (c) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its contractors which are payable by the Concessionaire or any of its contractors.

47.2.2 Without limiting the generality of the provisions of this Article 46, the Concessionaire shall fully indemnify, hold harmless and defend the Government Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Government Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Heliport, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a licence, at no cost to the Authority, authorising continued use of the infringing work. If the Concessionaire is unable to secure such licence within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

47.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 47 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

47.4 Defence of claims

- 47.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 47, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.
- 47.4.2 If the Indemnifying Party has exercised its rights under Clause 47.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).
- 47.4.3 If the Indemnifying Party exercises its rights under Clause 47.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:
- (a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
 - (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or
 - (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
 - (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
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-

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

Provided that if Sub-clauses (b), (c) or (d) of this Clause 47.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

47.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 47, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

47.6 Survival on Termination

The provisions of this Article 47 shall survive Termination.

ARTICLE 48

RIGHTS AND TITLE OVER THE SITE

48.1 Licensee rights

For the purpose of this Agreement, the Concessionaire shall have rights to the use of the Site as sole licensee subject to and in accordance with this Agreement, and to this end, it may regulate the entry and use of the Heliport by third parties in accordance with and subject to the provisions of this Agreement.

48.2 Access rights of the Authority and others

48.2.1 The Concessionaire shall allow free access to the Site at all times for the authorised representatives of the Authority, Senior Lenders, and the Independent Engineer, and for the persons duly authorised by any Government Instrumentality or Designated GoI Agency to inspect the Heliport and to investigate any matter within their authority, and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

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

48.3 Property taxes

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

48.4 Restriction on sub-letting

The Concessionaire shall not sub-license or sublet the whole or any part of the Site, save and except as may be expressly set forth in this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of

the Concessionaire to appoint Contractors for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Heliport.

ARTICLE 49

DISPUTE RESOLUTION

49.1 Dispute resolution

- 49.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "Dispute") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 49.2.
- 49.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

49.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer or without the intervention of the Independent Engineer, either Party may require such Dispute to be referred to the CEO of the Authority and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 49.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 49.3.

49.3 Arbitration

- 49.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 49.2, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 49.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules"), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration Act. The venue of such arbitration shall be Noida, and the language of arbitration proceedings shall be English.

- 49.3.2 There shall be a Board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.
- 49.3.3 The arbitrators shall make a reasoned award (the "**Award**"). Any Award made in any arbitration held pursuant to this Article 49 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.
- 49.3.4 The Concessionaire and the Authority agree that an Award may be enforced against the Concessionaire and/or the Authority, as the case may be, and their respective assets wherever situated.
- 49.3.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

49.4 Adjudication by Regulatory Authority or Commission

In the event of constitution of a statutory Regulatory Authority or Commission with powers to adjudicate upon disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 49.3, be adjudicated upon by such Regulatory Authority or Commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or High Court, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

ARTICLE 50**DISCLOSURE****50.1 Disclosure of Specified Documents**

The Concessionaire shall make available for inspection by any person, copies of this Concession Agreement, the Maintenance Manual, the Maintenance Programme, the Maintenance Requirements and the Safety Requirements (hereinafter collectively referred to as the “Specified Documents”), free of charge, during normal business hours on all working days at the Concessionaire’s Registered Office and at the Heliport. The Concessionaire shall prominently display at the Terminal Building, public notices stating the availability of the Specified Documents for such inspection, and shall provide copies of the same to any person upon payment of copying charges on a ‘no profit no loss’ basis.

50.2 Disclosure of Documents relating to safety

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

50.3 Withholding disclosure of Protected Documents

Notwithstanding the provisions of Clauses 50.1 and 50.2, the Authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses.

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 50.1 and 50.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

ARTICLE 51

REDRESSAL OF PUBLIC GRIEVANCES

51.1 Complaints Register

- 51.1.1 The Concessionaire shall maintain a public relations office at the Heliport where it shall keep a register (the "**Complaint Register**") open to public access at all times for recording of complaints by any person (the "**Complainant**"). Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Concessionaire at the Terminal Building so as to bring it to the attention of all Users.
- 51.1.2 The Complaint Register shall be securely bound and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Concessionaire. Immediately after a complaint is registered, the Concessionaire shall give a receipt to the Complainant stating the date and complaint number.
- 51.1.3 Without prejudice to the provisions of Clauses 51.1.1 and 51.1.2, the Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

51.2 Redressal of complaints

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

ARTICLE 52

MISCELLANEOUS

52.1 Governing law and jurisdiction

These standard conditions shall be governed by and construed in accordance with the laws of India and the courts at Noida shall have the exclusive jurisdiction to entertain and decide any petition, application, suit etc. pertaining to the present project and any subject thereof.

52.2 Waiver of immunity

Each Party unconditionally and irrevocably:

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

52.3 Depreciation and interest

- 52.3.1 For the purposes of depreciation under the Applicable Laws, the property representing the capital investment made by the Concessionaire in the Project Assets shall be deemed to be acquired and owned by the Concessionaire. For the avoidance of doubt, the Authority shall not in any manner be liable in respect of any claims for depreciation to be made by the Concessionaire under the Applicable Laws.

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

52.4 Delayed payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 5% (five per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

52.5 Waiver

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

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

52.5.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

52.6 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by the Authority or the independent Engineer of any Project Agreement, Document or Drawing submitted by the Concessionaire nor any observation or inspection of the construction, operation or maintenance of the Heliport nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and

- (b) the Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

52.7 Exclusion of implied warranties etc.

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

52.8 Survival

52.8.1 Termination shall:

- (a) not relieve the Concessionaire or the Authority, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

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

52.9 Entire Agreement

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

52.10 Severability

If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or

enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

52.11 No partnership

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

52.12 Third parties

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

52.13 Successors and assigns

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

52.14 Notices

52.14.1 Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- (a) in the case of the Concessionaire, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Concessionaire may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside ***** may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Concessionaire may from time to time designate by notice to the Authority;

{Attention:_____}

Designation:

Address:

Fax No:

Email:}

- (b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the CEO of the Authority with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Concessionaire; provided that if the Concessionaire does not have an office in Noida it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and

{Name:

Designation:

Address:

Fax No:

Email:}; and

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

52.15 Language

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

52.16 Counterparts

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

ARTICLE 53

DEFINITIONS

53.1 Definitions

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

"**AAI**" means the Airport Authority of India, established under the Airport Authority of India Act, 1994;

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

"**ACI**" means the Airports Council International;

"**ATC**" means the Air Traffic Control, and includes the tower and associated buildings and equipment located at the Heliport;

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

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

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

"**Additional Termination Payment**" means the amount, if any, payable upon Termination, on account of the Adjusted Depreciated Value of Specified Assets. as further limited by the provisions of Clauses 42.4.2, 41.4.3 and 41.4.4, as the case may be;

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

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

- (a) on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and the Reference Date;
- (b) from COD and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the "**Base Adjusted Equity**") and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in WPI occurring between COD and the Reference Date; and
- (c) after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.28% (zero point two eight per cent)⁷ thereof at the commencement of each month following the 4th (fourth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date; and the aforesaid shall apply, mutatis mutandis, to the Equity funded in Indian Rupees and expended for the Project Facilities and the expansion of the Heliport in accordance with the provisions of Clause 12.8 and the Master Plan. For the avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the Concession Period is extended, but the revision on account of WPI shall continue to be made;

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

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

"**Affected Party**" shall have the meaning set forth in Clause 39.1;

⁷ This number shall be substituted in each case by the figure arrived at upon dividing 100 (hundred) by the number of months comprising the concession Period. For example the figure for a 20 (twenty) year Concession Period shall be $100/240 = 0.416$ rounded off to two decimal points i.e. 0.42.

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

"Aircraft Fuelling Services" shall have the meaning as set forth in Clause 18.3.1;

"Airfield/Helipad Lighting System" means the lighting systems at the Heliport, including those in respect of the Helipad, taxiway, apron and approach, required for aircraft operations in accordance with the provisions contained in the relevant ICAO Documents and Annexes;

"Appendix" shall have the meaning set forth in Clause 10.3.1;

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

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

"Appointed Date" means the date on which Financial Close is achieved or an earlier date that the Parties may by mutual consent determine, and shall be deemed to be the date of commencement of the Concession Period. For the avoidance of doubt, every Condition Precedent shall have been satisfied or waived prior to the Appointed Date and in the event all Conditions Precedent are not satisfied or waived, as the case may be, the Appointed Date shall be deemed to occur only when each and every Condition Precedent is either satisfied or waived, as the case may be;

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

"Arbitration Act" means the Arbitration and Conciliation Act, 1996 and shall include modifications to or any re-enactment thereof, as in force from time to time;

"Architectural Design" shall have the meaning set forth in Clause 12.1.2;

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

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

"**Authority Default**" shall have the meaning set forth in Clause 42.2.1

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

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

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

"**BCAS**" means the Bureau of Civil Aviation Security;

"**Bank**" means a bank incorporated in India and having a minimum net worth of Rs. 1000 crore (Rupees one thousand crore) or any other bank acceptable to Senior Lenders, but does not include a bank in which any Senior Lender has an interest:

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

"**Bid**" means the documents in their entirety comprised in the bid submitted by the {selected bidder/Consortium} in response to the Request for Proposals in accordance with the provisions thereof;

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

"**Bid Security**" means the security provided by the Concessionaire to the Authority along with the Bid in a sum of Rs. 43,00,000 (Rupees forty-three lakhs only)⁸ in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security;

"**Car Park**" shall have the meaning set forth in Clause 12.6.1;

⁸ Calculated at 1% (one percent) of the amount specified in the definition of Total Project Cost. The Authority may, if deemed necessary, prescribe a higher bid security not exceeding 2% of total project cost. In the case of a project having a total project cost of Rs.2000 cr. or above, the Authority may reduce the Bid Security, but not less than 0.5% of the total project cost in any case.

"Cargo Facilities" means the real estate, buildings, structures and equipment, as the case may be, required for handling of incoming and outgoing cargo, including

"Change in Law" means the occurrence of any of the following after the date of Bid:

- (a) the enactment of any new Indian law;
- (b) the repeal, modification or re-enactment of any existing Indian law;
- (c) the commencement of any Indian law which has not entered into effect until the date of Bid;
- (d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of Bid; or
- (e) any change in the rates of any of the Taxes that have a direct effect on the Project;

"Change in Ownership" means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the { selected bidder/Consortium Members}, together with {its/their} Associates in the total Equity to decline below 51 % (fifty one per cent) thereof during a period of 2 (two) years following COD ; provided that any material variation (as compared to the representations made by the Concessionaire during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or Bid, as the case may be,) in the proportion of the equity holding of {the selected bidder/ any Consortium Member} to the total Equity, if it occurs prior to COD, shall constitute Change in Ownership;

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

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

"CISF" means the Central Industrial Security Force;

"CNS/ATM Equipment" means all equipment required by the Designated GoI Agency for performing the CNS/ATM Services;

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

- (i) aerodrome control service including surface movement control or ground control excluding apron control;
- (ii) approach control / approach radar control service;
- (iii) area control / area radar control service (if planned); and

(iv) associated services such as aeronautical information service, flight information service, advisory service, alerting service and search & rescue coordination services as appropriate, all in accordance with the provisions contained in the relevant ICAO Documents and Annexes and as required for Helicopter operations at the Heliport;

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

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

"Competing Facility" means any new Heliport, save and except the proposed Heliport at Noida, within a radius of (100 km (one hundred kilometres) from the Heliport for use by commercial traffic, where commercial flights are operated for passengers and/or cargo, and does not include: (a) an Heliport, which is solely used by a company and/or its Associates for transporting passengers and/or cargo for its own purposes; (b) the expansion of an existing Heliport having scheduled commercial operations on the date hereof; or (c) any Heliport outside the State;

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

"Concession" shall have the meaning set forth in Clause 3.1.1;

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

"Concession Period" means the period starting on and from the Appointed Date and ending on the Transfer Date;

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

"Concessionaire Default" shall have the meaning set forth in Clause 42. 1. 1;

"Conditions Precedent" shall have the meaning set forth in Clause 4.1.1;

"Consortium" shall have the meaning set forth in Recital (C);

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

"Construction Period" means the period beginning from the Appointed Date and ending on COD;

"Construction Works" means all works and things necessary to complete the Heliport in accordance with this Agreement and includes the Aeronautical Assets. Non-Aeronautical Assets and Project Facilities;

"Contractor" means the person or persons, as the case may be, with whom the Concessionaire has entered into any of the EPC Contract, the O&M Contracts or any other agreement or a material contract for construction, operation and/or maintenance of the

Heliport or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Concessionaire;

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

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

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

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

“**DGCA**” means the Directorate General of Civil Aviation;

“**Damages**” shall have the meaning set forth in Sub-clause (x) of Clause 1.2. 1;

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

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

provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed to be Debt Due even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken. Provided further that the Debt Due for the purposes of this Agreement, at any time during the Agreement Period, shall not be more than 70 %(seventy percent) of the Total Project Cost;

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

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

"Designated GoI Agency/ GoI Agencies" means a department or other entity under the control of GoI and assigned statutory functions such as quarantine, air traffic control or security;

"Development Period" means the period from the date of this Agreement until the Appointed Date;

"Dispute" shall have the meaning set forth in Clause 49.1.1;

"Dispute Resolution Procedure" means the procedure for resolution of Disputes set forth in Article 49;

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

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

"Drawings" means all of the drawings, calculations and documents pertaining to the Heliport as set forth in Schedule-H, and shall include 'as built' drawings of the Heliport;

"EPC Contract" means the engineering, procurement and construction contract or contracts entered into by the Concessionaire with one or more Contractors for, inter alia, engineering and construction of the Heliport in accordance with the provisions of this Agreement;

"EPC Contractor" means the person with whom the Concessionaire has entered into an EPC Contract;

"Emergency" means a condition or situation that is likely to endanger the security of the individuals on or about the Heliport or which poses an immediate threat of material damage to any of the Project Assets, and includes a threat to public order or national security;

"Encumbrances" means, in relation to the Heliport, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any

kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Heliport, where applicable herein but excluding utilities referred to in Clause 11.1;

"Equity" means the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost, and for the purposes of this Agreement shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest-free funds advanced by any shareholder of the Company for meeting such equity component;

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

"Escrow Agreement" shall have the meaning set forth in Clause 36.1.2;

"Escrow Bank" shall have the meaning set forth in Clause 36.1.1;

"Escrow Default" shall have the 111c.i11i11g set forth in Schedule-T;

"Exempted Person" means:

- (a) the President of India;
- (b) the Vice President of India;
- (c) the Prime Minister of India;
- (d) the Chief Justice of India;
- (e) Governors and Lt. Governors;
- (f) Union Ministers;
- (g) Chief Ministers;
- (h) Judges of Supreme Court of India;
- (i) Presiding Officers of Central and State Legislatures;
- (j) Chief Justice of the High Courts and; Judges of High Courts;
- (k) Ministers of all State Governments;
- (l) foreign dignitaries on State visit;

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- (m) persons notified as such by GOI
 - (n) persons engaged in maintenance of law and order;
 - (o) fire-fighting personnel and persons on emergency medical service;
 - (p) persons entering the Terminal Building for inspection, survey, construction, or operation and maintenance thereof; and
 - (q) any person to whom a pass has been issued by the Authority for entry into the Terminal Building or for use of the Reserved Car Park; provided that the name and particulars of such person shall be notified to the Concessionaire forthwith;

"FATO" or "Final Approach and Take-off area" means a defined area over which the final phase of the approach manoeuvre to hover or landing is completed and from which the take-off manoeuvre is commenced, where the FATO is to be used by helicopters operated in performance class 1, the defined area includes the rejected take-off area available;

"Fee" means the charge levied on and payable by a User for use of the Heliport or a part thereof in accordance with this Agreement;

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

"Financial Default" shall have the meaning set forth in Schedule-W;

"Financial Model" means the financial model adopted by Senior Lenders, setting forth the capital and operating costs of the Project and revenues therefrom on the basis of which financial viability of the Project has been determined by the Senior Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein;

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

"Financing Agreements" means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Clause 5.2.2;

"Force Majeure" or "Force Majeure Event" shall have the meaning ascribed to it in Clause 39.1;

"**GoI**" means the Government of India;

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

"**GoUP**" means the Government of Uttar Pradesh;

"**Government Instrumentality**" means any department, division or sub-division of the Government of India or the State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body including Panchayat under the control of the Government of India or the State Government, as the case may be, and having jurisdiction over all or any part of the Heliport or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

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

"**Helipad**" means the portion of land at the Heliport, on which helicopters will take off and land and may be a man-made surface, including use of asphalt, concrete or a mixture of both and shall mean to comprise the TLOF, FATO and Safety Area;

"**Helipad Lighting System**" means the lighting systems at the Heliport, including those in respect of the Helipad, taxiway, apron and approach, required for Helicopter operations and aerodrome category Heliports in accordance with the provisions contained in the relevant ICAO Documents and Annexes;

"**Heliport**" means the Heliport, located on the Site at Noida in the State of Uttar Pradesh, and includes civil, mechanical and electrical works, the Terminal Building, the Helipad and all Project Assets necessary for and associated with operation of the Heliport;

"**IATA**" means the International Air Transport Association;

"**IATA Slot Allocation Guidelines**" means the slot allocation rules and guidelines as followed by IATA members;

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

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

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

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

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

"Independent Engineer" shall have the meaning set forth in Clause 27.1;

"Indirect Political Event" shall have the meaning set forth in Clause 39.3;

"Insurance Cover" means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 37, and includes all insurances required to be taken out by the Concessionaire under Clause 37.2 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

"Intellectual Property" means all patents, trademarks, service marks, logos, Get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, semiconductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

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

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

"Landing Fee" means the fee charged for the landing of a Helicopter at the Heliport as per the provisions of this Agreement and Applicable Laws;

"Lead Member" shall have the meaning set forth in Recital (B);

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

"License Fee" shall have the meaning set forth in Clause 30.1.1

"Local Authority" The Authority is 'Local Authority' under the GST law and service provided by the Authority against the Concession Agreement would be covered under reverse charge mechanism.

"MOCA" or **"Ministry of Civil Aviation"** means the Ministry of Civil Aviation and or any substitute thereof dealing with Heliports;

"Maintenance Manual" shall have the meaning ascribed to it in Clause 17.3;

"Maintenance Programme" shall have the meaning ascribed to it in Clause 17.4.1;

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

"Master Plan" means the master plan set forth in Schedule-A for construction and development of the Heliport in accordance with the provisions of this Agreement, and includes the description of vacant land earmarked for future expansion of the Heliport;

"Material Adverse Effect" means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the

provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;

"Medical Aid Post" shall have the meaning set forth in Clause 5.10;

"Meteorological Facilities" include the various meteorological equipment and systems, meteorological data pertaining to various stages of flight such as pre-flight planning, take-off, climb-out, level-cruise, descent and landing, charts, documentation, forecasts, broadcasts, and briefings;

"Monthly Concession Fee" shall have the meaning set forth in Clause 31.1.1;

"Nominated Company" means a company selected by the Lenders' Representative and proposed to the Authority for substituting the Concessionaire in accordance with the provisions of the Substitution Agreement;

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

"Non-Aeronautical Services" means the services, other than Aeronautical Services .

"Non-Political Event" shall have the meaning set forth in Clause 38.2;

"NPV" shall have the meaning as set forth in Clause 45.3;

"O&M" means the operation and maintenance of the Heliport and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities, and collection of Fare in accordance with the provisions of this Agreement;

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

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

"O&M Expenses" means expenses incurred by or on behalf of the Concessionaire or by the Authority, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premia for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under the O&M Contracts, Fare Contract or any other contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

"O&M Inspection Report" shall have the meaning set forth in Clause 24.3;

"O&M Support" shall have the meaning set forth in Clause 29.3.1;

"Operation Period" means the period commencing from COD and ending on the Transfer Date;

"Panel of Chartered Accountants" shall have the meaning set forth in Clause 38.2.1;

"Parking Fee" means the fee charged for the housing or parking of a Helicopter at the Heliport as per the provisions of this Agreement and Applicable Laws;

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

"Passenger Charter" shall have the meaning set forth in Clause 26.11;

"Passenger Service Fee" means the fee charged per embarking passenger at the Heliport as per the provisions of this Agreement and Applicable Laws ;

"Passenger Traffic" means the total number or passengers, including embarking, disembarking and transit passengers, who used the Heliport during an Accounting Year;

"Peak Hour" means that hour in the preceding Accounting Year in which the number of Users using the Heliport is the thirtieth busiest during such year;

"Peak Hour Traffic" means the number of Users using the Heliport during a Peak Hour;

"Performance Security" shall have the meaning set forth in Clause 9.1;

"Personnel" means the personnel of the Authority or the Designated GoI Agency, as the case may be, performing the CNS/ATM Services;

"Police" means a law enforcement agency and includes the state police, Central Industrial Security Force or any other organization empowered under Applicable Laws to exercise powers and discharge functions relating to security, crime prevention or maintenance of law and order;

"Police Aid Post" shall have the meaning set forth in Clause 21. 5;

"Political Event" shall have the meaning set forth in Clause 39.4;

"Preservation Costs" shall have the meaning set forth in Clause 13.5.3;

"Project" means the construction, operation and maintenance of the Heliport in accordance with the provisions of this Agreement and the Master Plan, and includes all works, services and equipment relating to or in respect of the Scope of the Project;

"Project Agreements" means this Agreement, the Financing Agreements, EPC Contract, O&M Contracts, Fare Contract, and any other agreements or material contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Escrow Agreement, Substitution Agreement, or any agreement for procurement of goods and services involving a consideration of up to Rs. [5(five)] crore;

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

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-
- (a) rights over the Site in the form of licence, Right of Way or otherwise;
 - (b) the Aeronautical Assets and the Non-Aeronautical Assets;
 - (c) tangible assets such as civil works and equipment including foundations, drainage works, electrical systems, communication systems and administrative offices;
 - (d) Project Facilities situated on the Site;
 - (e) all rights of the Concessionaire under the Project Agreements; financial assets, such as receivables, security deposits etc;
 - (f) insurance proceeds; and
 - (g) Applicable Permits and authorisations relating to or in respect of the Heliport;

"Project Completion Date" means the date on which the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 14;

"Project Completion Schedule" means the progressive Project Milestones set forth in Schedule-G for completion of the Heliport on or before the Scheduled Completion Date;

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

"Project Milestones" means the project milestones set forth in Schedule-G;

"Projected Fee" shall have the meaning set forth in Clause 39.4.1;

"Provisional Certificate" shall have the meaning set forth in Clause 14.3;

"Punch List" shall have the meaning ascribed to it in Clause 14.3;

"Re.", "Rs." or "Rupees" or "Indian Rupees" means the lawful currency of the Republic or India;

"Realisable Fee" means all the Fee due and realisable under this Agreement, but does not include Fee that the Concessionaire has not been able to realise after due diligence and best efforts. For the avoidance of doubt, Realisable Fee for a Concession Year shall be the amount so declared by the Concessionaire on the basis of its provisional accounts or the audited accounts, as the case may be, and in the event of a dispute thereto, the Dispute Resolution Procedure shall apply;

"Reference Exchange Rate" means, in respect of any one currency that is to be converted into another currency in accordance with the provisions of this Agreement, the exchange rate as of 12.00 (twelve) noon on the relevant date quoted in Delhi by the State Bank of

India, and in the absence of such rate, the average of similar rates quoted in Delhi by the Bank of India and the Bank of Baroda;

"Request for Qualification cum Proposal" or **"RFQ-cum-RFP"** shall have the meaning set forth in Recital (B);

"Reserved Services" shall mean the space and area reserved for the Authority and the Designated GoI Agencies in accordance with the provisions of Clauses 19.4 and 22.8;

"Reserved Area" shall have the meaning set forth in Clause 20.2;

"Reserved Car Park" shall have the meaning set forth in Clause 22.1;

"Right of Way" means the constructive possession of the Site, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction, operation and maintenance of the Heliport in accordance with this Agreement;

"Route Navigation Facilities Charges" means amounts charged by Authority to helicopter operators and/or Helicopter operators for the provision of route navigation facilities in accordance with the current orders of the Authority;

"Safety Area" means the defined area on a heliport surrounding the FATO which is free of obstacles, other than those required for air navigation purposes, and intended to reduce the risk of damage to helicopters accidentally diverging from the FATO. It should be capable of supporting the weight of a helicopter.

"Safety Requirements" shall have the meaning set forth in Clause 23.1;

"Scheduled Completion Date" shall have the meaning set forth in Clause 12.4. 1;

"Scope of the Project" shall have the meaning set forth in Clause 2.1;

"Senior Lenders" means the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold *pari passu* charge on the assets, rights, title and interests of the Concessionaire;

"Service Quality Requirements" shall have the meaning set forth in Annex-I of Schedule-L;

"Shareholders' Agreement" shall have the meaning set forth in Clause 5.4.1;

"Site" shall have the meaning set forth in Clause 10.1;

"Specifications and Standards" means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Heliport, as set forth in Schedule-D, and any modifications thereof, or additions thereto, as included in the design and engineering for the Heliport submitted by the Concessionaire to, and expressly approved by, the Authority;

"Specified Assets" means and includes all or any of the following:

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- (a) such of the Project Assets which are constructed, acquired or installed after the 5th (fifth)] anniversary of COD, but before the 20th (twentieth) anniversary thereof; and
 - (b) assets forming part of the expansion of the Heliport in accordance with the provisions of Clause 12.8 and the Master Plan; but shall in no case include land;

"Specified Documents" shall have the meaning set forth in Clause 49.1;

"State" means the State of Uttar Pradesh and **"State Government"** means the government of that State;

"Statutory Auditors" means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 1956 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 37.2.1;

"Subordinated Debt" means the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date:

- (a) the principal amount of debt provided by lenders or the Concessionaire's shareholders for meeting the Total Project Cost and subordinated to the: financial assistance provided by the Senior Lenders; and
- (b) all accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and six-month LIBOR (London Inter Bank Offer Rate) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due one year prior to the Transfer Date; provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the lenders and/or the Concessionaire's shareholders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

"Subsistence Revenue" means the total amount of Fee revenue that is required by the Concessionaire in an Accounting Year to meet the sum of (a) O&M Expenses, subject to an annual ceiling of 3% (three per cent) of the Total Project Cost, {plus Grant, if any} during the first Accounting Year after COD, to be revised for each subsequent year to reflect the variations in WPI occurring between COD and commencement of such Accounting Year, and (b) Debt Service in such Accounting Year, but excluding any interest paid by the Authority under clause 39.7.2 or 40.2;

"Substitution Agreement" shall have the meaning set forth in Clause 45.3;

"Suspension" shall have the meaning set forth in Clause 41.1;

"Taxes" means any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge or like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Heliport charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

"Terminal Building" means the passenger terminal building situate on the Site and the land appurtenant thereto, including the kerbside and approach roads, as described and demarcated in Schedule-A;

"Terminal Navigational Landing Charges" means amounts charged or to be charged by Authority to helicopter operators or Helicopter operators for the provision of terminal navigational landing services at the Heliport;

"Termination" means the expiry or termination of this Agreement and the Concession hereunder;

"Termination Notice" means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

"Termination Payment" means the amount payable, under and in accordance with this Agreement, by the Authority to the Concessionaire upon Termination, and includes Additional Termination Payment. For the avoidance of doubt, it is expressly agreed that the amount payable shall be subject to the limitations specified in Clause 42.4;

"Tests" means the tests set forth in Schedule-I to determine the completion of Heliport in accordance with the provisions of this Agreement, the relevant ICAO Documents and Annexes and the applicable guidelines prescribed by the DGCA [and shall, mutatis mutandis, include similar Tests to determine completion of the expansion of the Heliport in accordance with the provisions of Clause 12.8 and the Master Plan];

"TLOF" or **"Touchdown and Lift-Off area"** means the load bearing area on which a helicopter may touch down or lift off.

"Total Project Cost" means the capital cost incurred on construction and financing of the Project, including the Aeronautical Assets and the Non-Aeronautical Assets. [excluding Project Facilities], and shall be limited to the lowest of:

- (a) the capital cost of the Project, as set forth in the Financial Package;
- (b) the actual capital cost of the Project upon completion of the Heliport; and
- (c) a sum of Rs. 43,00,00,000 (Rupees forty-three crore);

provided that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in WPI or Reference Exchange Rate occurring in respect of Adjusted Equity and Debt Due, as the case may be, in accordance with the provisions of this Agreement; provided further that in the event WPI increases, on an average, by more than 6% (six per cent) per annum for the period between the date hereof and COD, the

Parties shall meet, as soon as reasonably practicable, and agree upon revision of the amount hereinbefore specified such that the effect of increase in WPI, in excess of such 6% (six per cent), is reflected in the Total Project Cost. For the avoidance of doubt, it is agreed that Total Project Cost shall not include the cost of Specified Assets.

"Transfer Date" means the date on which this Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice;

"User" means a person who uses or intends to use the Heliport or any part thereof on payment of Fee or in accordance with the provisions of this Agreement and Applicable Laws;

"User Survey" shall have the meaning set forth in Clause 25.8.3;

"Vesting Certificate" shall have the meaning set forth in Clause 43.4; and

"WPI" means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GoI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month.

[This space has been intentionally left blank]

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED THE COMMON SEAL OF
For and on behalf of the Authority by: CONCESSIONAIRE has been affixed
pursuant to the resolution passed by the Board
of Directors of the Concessionaire at its
(Signature) meeting held on the..... day of.....,
20..... hereunto affixed in the presence
(Name) of....., Director, who has signed
(Designation) these presents in token thereof and
....., company Secretary /
Authorised Officer who has countersigned the
same in token thereof[§]:

In the presence of:

- 1.
- 2.

[§] To be affixed in Accordance with the articles of association of the Concessionaire

Schedules

SCHEDULE-A
(See Clause 10.1)

SITE OF THE PROJECT

1. The Site

- 1.1 Site of the Heliport shall include the land, buildings, structures and road works as described in Annex-I of this Schedule-A.
- 1.2 An inventory of the Site including the land, buildings, structures, roadworks, trees and any other immovable property on, or attached to, the Site shall be prepared jointly by the Authority Representative and the Concessionaire, and such inventory shall form part of the memorandum referred to in Clause 10.3.1 of the Agreement.
- 1.3 Additional land required for [service areas, ancillary buildings or for] construction of works specified in Change of Scope Order shall be acquired in accordance with the provisions of this Agreement. Upon acquisition, such land shall form part of the Site and vest in the Authority.

2. Master Plan for the Site

- 2.1 The Master Plan for the Site is described in Annex-II of this Schedule-A.
- 2.2 The Master Plan includes all the land earmarked for the Heliport, and specifies the location and land use in respect of the Aeronautical Assets, Terminal Building, Non Aeronautical Assets. [The Master Plan also includes the additional land earmarked for future expansion of the Heliport that shall take place in accordance with the provisions of this Agreement].

Annex-I
(Schedule-A)
SITE FOR THE HELIPORT

1. Location of the Site

- 1.1 The heliport site is located at about 17 km from NOIDA City, via Noida-Greater Noida Expressway at Sector 151 A, NOIDA near Kambakshpur Village.
- 1.2 The site is situated at co-ordinates of 28° 26'49.77"N and 77° 26' 42.75" E with an elevation of 197.0 m above mean sea level.
- 1.3 The proposed site is approximately 47 km away from proposed international airport at Jewar and 7 km from Yamuna Expressway.
- 1.4 The total area of the site is 9.35 acres, in which all facilities of Performance class 2 can be accommodated
- 1.5 The proposed site is green field and adjacent land to the proposed site is being used for agricultural purposes. The site falls in Yamuna river basin and is located in the flood prone area of Yamuna River. The river is at a distance of about 800 m from the Heliport site in the south direction. The site is protected from Yamuna river by Pusta of about 3.25m height (Earthen Bund).
- 1.6 The terrain of the area is generally plain, but there are few pits outside the area on Eastern side. There will be requirement of raising the level of the existing site by earth filling at least up to 0.25m above the top level of Pusta (Earthen Bund) having top elevation of helipad as 200m above mean sea level.
- 1.7 A reference drawing is provided herein below showing the location of the Site and approach roads to the Site:

Map 1A: Site location



Map 1B: Site Coordinates



Annex-II
(Schedule-A)
(See Clause 12.2.1)

MASTER PLAN FOR THE SITE

1. Master plan

1.1 The Master plan of the site for reference is provided below



Annex-III
(Schedule-A)
(See Clause 3.1.3)

Deleted

SCHEDULE-B

(See Clause 2.1)

DEVELOPMENT OF THE HELIPORT

1. Development of the Heliport

Development of the Heliport shall include construction of the Heliport as described in this Schedule-B and in Schedule-C.

2. Heliport

2.1 Development of Heliport shall include:

- (i) construction and procurement of the Aeronautical Assets, including Helipads, taxiways, apron, helicopter parking bays, Air Traffic Control tower and associated facilities as described in Annex-I of this Schedule-B;
- (ii) construction and procurement of the Terminal Building as described in Annexure II of this Schedule B; and
- (iii) construction and procurement of the Non-Aeronautical Assets, as described in Annexure III of this Schedule B.

2.2 The Heliport shall be constructed by the Concessionaire in conformity with the Master Plan and the Specifications and Standards set forth in Schedule-D.

3. Reserved Area

The Concessionaire shall earmark and allocate the Reserved Area, as set forth in Annex-IV of this Schedule-B, for performance of Reserved Services by the Authority and the Designated GoI Agencies.

Annex-I (Schedule-B)

DESCRIPTION OF AERONAUTICAL ASSETS**1. Description of Aeronautical Assets****A. Helipad**

1 (One) Helipad has been proposed to be constructed. Helipad shall comprise of TLOF, FATO and Safety Area with the following dimensions.

The Heliport Operation: Day VFR commercial operations of Bell 412 Helicopter and also for Mi-172 or equivalent Helicopters under restricted loading conditions after approval of DGCA.

(i) Touchdown and Lift-off Area (TLOF)

At least one touchdown and lift-off area (TLOF) shall be provided at a helipad. TLOF may or may not be located within the FATO, Additional TLOF may be collocated with helicopter stands.

The dimensions of TLOF should be of sufficient size to contain a circle of diameter of at least 0.83D of the largest helicopter the Heliport is intended to serve.

A TLOF area of size 22m x 22m is proposed.

(ii) Final approach and take-off area (FATO)

A heliport should have an identifiable, object free area for helicopter landing and take-off. FATO should be so located that, it permits at least one clear approach / take off path aligned with the prevailing winds. As per ICAO Annexure-14 Vol II, Heliports the width of FATO shall not be less than the greatest overall dimension (D) of the helicopter the FATO is intended to serve for performance class 2 and class 3 operations.

The rectangular FATO (Final Approach & Take Off) of 26m X 26m dimensions for Mi 172 helicopter is proposed. The proposed FATO shall have two side Approach with orientation 11-29.

(iii) Safety Area

The dimensions of Safety Area shall extend outwards from the periphery of the FATO for a distance of at least 3.00 m or 0.25 times the overall length or width (whichever is greater), of the largest helicopter the Heliport is intended to serve. Further each external side of the safety area shall be at least 2D where the FATO is quadrilateral for VFR Operations.

A rectangular Safety area of size 52m x 52m is proposed including FATO & TLOF.

B. Parking Apron

A heliport requires a paved apron for parking helicopters. Each helicopter has a defined parking position with a clear path to the taxiway. This clear path is defined

by the center lines of the parking position and the maneuvering aisle. The size and layout of the parking position are based on the size of the helicopter and the manner in which the helicopter maneuvers in and out of the parking position.

The proposed Apron at Heliport will be of dimension 170m X 52m. This Apron is sufficient for 1 Nos. Mi 172 Helicopter (or 4 No. of Bell 407) and 01 No. Bell 412 Helicopter. However the number of helicopters to be parked will depend on traffic.

C. Taxiway

The width of the taxiway shall not be less than 1.5 times the largest width of the undercarriage (UCW) of helicopters the ground taxiway is intended to serve.

The width of a helicopter air taxiway shall be at least two times the largest width of the undercarriage (UCW) of the helicopters that the air taxiway is intended to serve.

A helicopter air taxi route shall extend symmetrically on each side of the centre line for a distance at least equal to the largest overall width of the helicopters it is intended to serve.

10m wide taxiway has been proposed to connect the Apron with helipad.

D. Maintenance Facility

The helicopter maintenance facility requirements have been developed assuming operator would maintain and operate a dedicated maintenance hangar that would be located adjacent to the apron. Scheduled light maintenance work for each operator's fleet would be completed on a daily basis within maintenance hangar. Maintenance hangar would typically include the following facilities:

- Large open space to maintain single helicopter
- Large open space for the storage of helicopter
- Work areas for parts maintenance
- Storage for parts and tools
- Office space for records and inspections
- Gantry Crane

A Hangar of size of size 35x35m is proposed at NOIDA Heliport adjacent to Apron. The hangar shall be sufficient to accommodate the largest Helicopter Mi-172.

Hangar Building should be should be provided with the following facilities-

1. Steel frame building with sliding Doors.
2. Sufficient for Mi 172 helicopter.
3. Annexe building shall be provided having facilities like Operation rooms, Pilot/Staff Room and toilet etc.
4. Gantry crane of sufficient capacity shall be provided inside Hangar.
5. Turbo vents shall be provided in Hangar.
6. Translucent polycarbonate sheets for wall cladding.
7. Flooring of Cement Concrete shall be provided similar to Parking Aprons.

E. Crash Fire Rescue Facilities

This must assume at all times the possibility of, and need for extinguishing a fire which may occur either immediately following a helicopter accident or incident or at any time during rescue operation.

Category	Helicopter Over-all Length including the tail boom and the rotors
H1	up to but not including 15 m
H2	from 15 m up to but not including 24 m
H3	from 24 m up to but not including 35 m

As per ICAO classification the levels of protection to be provided at the proposed heliport fall under “Category H3” and same shall be developed.

F. Fire Station cum Electric substation

A building of size 24m X 8m is proposed for Fire Station cum Electric Sub Station Building. The building will have meeting rooms for staff and Electrical Room, space for LT panel, metering room, parking space for Crash Fire Tender and Ambulance. It will also comprise of Fire/Security office.

G. UG tank

UG Tank contains three chambers, 1st for supply of Domestic water to Storage Tank, 2nd to meet the requirement for fire-fighting purposes and 3rd for accommodating the pumps which will be used to pump the water at various locations. An underground tank of 100 KLD is proposed.

H. ATC Tower

ATC building will house the control room on the top floor with clear visibility of the approaches. This building should be sufficient high to have clear visibility of complete operational area. ATC tower of 15m height has been proposed.

Details of Building are given below-

1. ATC shall be RCC framed Building structure.
2. Control Room shall be made of Glass with Steel framings including SS Railing.
3. All Necessary Equipment shall be Established for Air Traffic Control.
4. 02 No of lifts and Adequate Toilet Facility shall be provided.

I. Boundary Wall and Retaining Wall

Boundary Wall of 3m height (including Concertina Coil) is proposed all around the periphery of heliport site. Retaining wall cum Boundary wall is proposed towards the Pusta.

J. Helicopter Refueling Facility

Fuelling services at the Heliport would comply with Aircraft Fuel Storage, Handling, and Dispensing on Heliports. It is proposed to provide a place for Re-fuelling bay of

size 5m x 8m. The Fuel supply agency may provide suitable enclosure for it and obtain its clearance from the Explosives Department.

K. Electrical Facilities

- i. Power Supply Distribution
- ii. Internal Electrification
- iii. External Electrification
- iv. Low Voltage System
- v. Air Conditioning
- vi. Heliport Security System and Miscellaneous Equipments
- vii. Communication and Navigation System

i. Power Supply Distribution

The utility power supply from grid is characterized by 3-phase, 11kV voltage and 50 Hz frequency. It is proposed to establish 11/0.415 KV indoor Electric Sub Station (ESS) for augmentation and distribution of bulk power supply for the Heliport having scattered load centers like Terminal Building, ATC, Fire Station cum ESS, Internal roads, car park lighting and other miscellaneous services. The estimated load is 315kVA.

Substation Equipments

Distribution of Bulk power supply considering the scattered load centers was proposed through following equipments –

- a) 11KV HT Armoured XLPE Cable
- b) VCB HT Panel (03 breaker)
- c) 315 kVA ON Load Tap Changer oil type Transformer (02 Nos.).
- d) Main LT Panel cum DG Synchronization Panel to take care of Electrical load and interlinking with DG Sets for auto load management.
- e) Capacitor bank with APFC Relay for improvement of power factor considering the inductive nature of load
- f) DG Sets with 100% back up 320kVA (2Nos.)

ii. Internal Electrification

Designing of internal electrification is based on Indian Electricity Rules, National Building code of India and CPWD specifications etc.

For Energy conservation, the Energy efficient LED type luminaries shall be considered and 3-Phase source UPS shall be considered for internal lighting application for avoiding power interruption due to failure of main power supply.

iii. External Electrification

Designing of Electrical installations shall be carried out based on Indian Electricity rules, National Building code of India, CPWD specifications and etc.

- a) 02 Numbers High masts shall be proposed for Apron lighting purpose and also street lights have been considered along the road from main gate to terminal building and ATC building.
- b) 01 Numbers High masts shall be proposed to illuminate the **car parking area**.
- c) Peripheral Lighting has been considered along the peripheral road and operational boundary wall.

iv. Low Voltage System

Following equipments shall be proposed under low voltage system.

- a) Fire Detection & Fire Addressable Alarm System
- b) Public Address System with Weather proof outdoor type Horn and indoor type speakers.
- c) Close Circuit Surveillance System with Bullet, Dome and PTZ Cameras supported with centralized monitoring system.
- d) LAN, IPBX, Data and Networking system.

LAN, IPBX, Data and Networking system

It is proposed to provide LAN system including Wi-Fi access controller. The proposed IPBX system works based on Internet Protocol (IP).

v. Air Conditioning

For office, Conference room and public concourse area, it is proposed to provide the Inverter based 1.5/2 TR capacity Air conditioning system.

vi. Heliport Security System and Miscellaneous Equipments

The Following systems and equipment shall be proposed for Heliport security and Signage.

- a) Baggage Scanner.
 - i. Hand Baggage Scanner.
 - ii. Register Baggage Scanner.
- b) Door Fitted Metal Detectors and Hand Held Metal Detectors.
- c) Explosive Trace Detectors (ETD)
- d) Illuminated Signage Boards.

Baggage Scanner

Heliport security attempts to prevent any threats or potentially dangerous situations from arising or entering the country.

Baggage Scanner is provided for the baggage checking to identify any suspected item in the Terminal Building. The Proposed scanners comply with international health and safety regulations. The Hand Baggage system is dual view Baggage X-Baggage Inspection System proposed as per the regulations and guidelines of BCAS.

DFMDs & HHMDs

Door Fitted Metal Detectors (DFMDs) and Hand Held Metal Detectors (HHMDs) also provided. The specifications of Scanners and Metal Detectors (DFMDs & HHMDs) comply with the Bureau of Civil Aviation Security (BCAS) requirements.

Explosive Trace Detectors (ETD)

In addition to Baggage scanning system it is proposed to provide Explosive and Narcotic Trace Detector as per the BCAS guidelines. It will detect type of Explosive or Type of suspected item.

Illuminated Signage

It is proposed provide illuminated signs in Terminal Building and ATC Building to avoid confusion and quick finding of desired locations by passengers and Heliport officers etc,

vii. Communication and Navigation System**Wind Direction Indicator**

Illuminated Wind Cones are proposed so as to indicate the wind conditions over the FATO and TLOF

The wind direction indicator shall be in the form of a truncated cone made of fabric and should have a length of not less than 2.4 m and a diameter, at the larger end, of not less than 0.6 m. and at the smaller end of not less than 0.3m.

Heliport Rotating Beacon

One number Heliport Beacon is proposed to be provided which will be installed on top of ATC Tower so that the beacon is not shielded by objects in significant directions and does not dazzle a pilot approaching to land. The heliport beacon shall emit repeated series of equispaced short duration white flashes.

Automatic weather station (AWOS)

Automatic weather operating station with data collection with Installed back up batteries (12V, 26AH) with primary & Secondary telemetry, weather transmitter having measuring devices for humidity and air temperature, barometric Pressure, Precipitation sensor, Visibility, present weather sensor, Cloud height sensor with 3 meter installation frangible galvanized masts for metrological sensors.

The set shall be installed at suitable weather in air side to provided weather information to the Helipad/flights.

Air to Ground Communication System

Walkie-Talkies, Radio Telephone portable as well as base sets will utilize for air to ground communication. Fixed land line and telephone connection will also be provided for communication between ATC and essential ground services.

2. Specifications and Standards

The Aeronautical Assets shall be constructed in conformity with the Specifications and Standards specified in Annex-I of Schedule-D.

Annex-II
(Schedule-B)

DESCRIPTION OF TERMINAL CUM ATC BUILDING

1. Description of Terminal Building

The guiding principles of the terminal building will be to provide efficient planning, flexibility, sustainable solution and that which is low in cost to build and operate.

Efficiency

The organization of the terminal should be straight forward and efficient with clear way finding. Passenger and baggage circulation should be organized so that departing and arriving passengers do not mingle at any point on the airside of the building. The terminal building should allow for direct and efficient means of passenger and baggage flow for all passengers arriving and departing at the Heliport. The terminal building should have integrated landscaping.

Flexibility

The organization of the spaces and structural design of the terminal should be modular thereby allowing flexibility and ease of expansion.

Sustainability

Sustainable strategies should be integrated into the planning and architecture of the terminal. Renewable energy production, such as, solar panels, should be explored. Landscaping along with green strategies, such as, rain water harvesting should be employed.

Economy

The new integrated terminal should be economically sensitive building. It should employ the use of low cost and local materials and resources.

The Passenger Terminal Building must incorporate the **mandatory** following facilities:

- (a) PTB with a peak hour passenger of 20 departing and 20 arriving or 40 in total.
- (b) Area considered as per DGCA norms as 12sqm per passenger.
- (c) Accordingly, PTB of 500 sqm area is to be planned with clear height of 5m.
- (d) PTB shall have spacing norms for optimum comfort as defined in LOS guidelines by ADRM.
- (e) Building shall be designed for Zone-IV/Zone-V seismic regulations.
- (f) PTB shall be a modern steel and glass building with split air conditioning, Vitrified tile flooring, ACP cladding.
- (g) Following facilities are to be provided inside PTB-
 1. 2 Check-in Counters with space for addition of 2 future counter.
 2. VIP lounge with attached Toilet and pantry.
 3. Airline booking counter, Taxi booking counter.
 4. Office for Heliport Manager and its staff.

5. Security screening area with one X-Ray Baggage Scanner, 2 DFMD and one frisking area cabin for females.
6. Adequate toilet facilities in Concourse and hold areas as per NBC norms.
7. Building shall be designed for disabled provision with ramps/railings and separate toilet for disabled.
8. Adequate space for utilities like CCTV/Server Room, Electrical and UPS room etc.
9. Provision of ATM's, retail outlets in concourse and hold area.
10. Covered canopy of 3.0m width on city side and airside.
11. Building shall be fully furnished with all furniture, public seating, security counter, gate counter, Check-in counter, Water Coolers, Automatic sliding doors, Artwork, painting, sun control, queue manager, baggage trolleys, tape barrier etc.
12. LED fitted Electric lights should be provided.
13. Building should be provided with aluminium roof with insulation.

The physical dimensions and capacity of the Terminal Building is given in the table below. For assets not available in the table below the dimensions and capacity would be as per the Master Plan in compliance with ICAO Documents and Annexes and Good Industry Practice.

Passenger Terminal Building	Phase 1
Total Terminal Building (area, m ²) (20x25m)	500 sqm.
Gates Entry Departure- 1 No. Exit Departure- 1 No. Entry Arrival- 1 No. Exit Arrival- 1 No.	4 No.
ICAO Code – N/A	
Check in Counters	
Standard Counters (number) - 2	
Standard Counters (area, m ²)- 18	
Departure Hold Room (9.69mx12.275m=119m ²)	

Capacity

40 Passengers Peak Hour Traffic / 12 sq. meters per passenger during Peak Hours

2. Specifications and Standards

The Terminal Building shall be constructed in conformity with the Specifications and Standards specified in Annex-I of Schedule-D.

Annex-III

(Schedule-B)

DESCRIPTION OF NON-AERONAUTICAL ASSETS**1. Description of Non-Aeronautical Assets**

The following non-aeronautical facilities are **mandatory**:

- (a) General aviation services (other than those used for commercial air transport services ferrying passengers or cargo or a combination of both)
- (b) Vehicle parking
- (c) Police Post
- (d) Any other revenue generating activity related to the development of the Site or of the Heliport in relation to Non- Heliport Activities

The physical dimensions and capacity of the Non-Aeronautical Assets is given in the table below. For assets not available in the table below the dimensions and capacity would be as per the Master Plan in compliance with ICAO Documents and Annexes and Good Industry Practice.

S. No	Non-Aeronautical Asset	Minimum Physical Dimensions/ Capacity	Minimum
1.	Administrative offices		
2.	General Aviation services		
3.	Vehicle parking	50 Cars	
4.	Police Post		

2. Specifications and Standards

The Non-Aeronautical Assets shall be constructed in conformity with the Specifications and Standards specified in Annex-I of Schedule-D.

Annex-IV

(Schedule-B)

DESCRIPTION OF RESERVED AREA**1. Description of Reserved Area**

The requirements for Reserved Area would be as per the agreements between the Concessionaire and the respective entities providing the reserved service.

However, an indicative requirement is given in the table below:

Domestic Security Check-points	
Screening lanes (number)	1
Screening lanes (area, m ²)	37
Queue Area (area, m ²)	24
Cross Circulation (area, m ²)	22
Total Area (area, m ²)	83

Annex-V
(Schedule-B)
(See Clause 3.1.3)
Deleted.

SCHEDULE-C

(See Clause 2.1)

PROJECT FACILITIES

1. Project Facilities

The Concessionaire shall construct or install the Project Facilities in accordance with the provisions of this Agreement.

2. Project Facilities for Heliport

Project Facilities forming part of the Heliport and to be completed on or before the Project Completion Date have been described in Annex-I of this Schedule-C.

Annex-I (Schedule-C)**PROJECT FACILITIES FOR HELIPORT****1. Project Facilities**

The Concessionaire shall construct the Project Facilities described in this Annex-I to form part of the Heliport. The Project Facilities shall include:

Aeronautical

1. Heliport Control Services
2. Helipad
3. Taxiway and Parallel Taxiway
4. ARFF (Aircraft Rescue & Fire Fighting)
5. Airside and landside access roads and forecourts including writing, traffic signals, signage and monitoring
6. Security Check Points
7. Common infrastructure for aircraft fuelling services by authorised providers
8. Apron and aircraft parking area
9. Apron control and allocation of aircraft stands
10. Bird scaring

Terminal

11. Arrivals concourses and meeting areas
12. Baggage systems
13. Check-in concourses
14. Cleaning, heating, lighting and air conditioning public areas
15. Emergency services
16. Facilities for the disabled and other special needs people
17. Fire service
18. Helicopter information and public-address systems
19. Foul and surface water drainage
20. Guidance systems and marshalling for Helicopters
21. Information desks
22. Lifts and escalators
23. Lost property
24. Passenger and hand baggage search
25. Policing and general security, including CCTV systems and related security equipment
26. Signage
27. Toilets and nursing mothers' rooms
28. Waste and refuse treatment and disposal
29. X-Ray service for carry on and checked-in luggage
30. Refreshment facilities at the Terminal Building;
31. Public access telephones;
32. Postal Services

Non-Aeronautical

33. General services (other than those used for commercial air transport services ferrying passengers or cargo or a combination of both)
34. Vehicle parking
35. Police Post

Other activities related to passenger services at the Heliport, if the same is a Non-Aeronautical Asset.

In addition, any facility required as per ICAO documents and annexes, Applicable laws and the direction of the Authority would need to be provided as part of this concession agreement.

2. Description of Project Facilities

Each of the Project Facilities is briefly described below:

AERONAUTICAL**1. Aerodrome control services**

It is an air traffic control service provided for the whole aerodrome traffic on the maneuvering area of an aerodrome and for all aircraft flying in the vicinity of an aerodrome. All facilities required for the ATC need to be provided by the concessionaire as per its agreement with the AAI. An ATC Technical Block is to be provided with the purpose of offices and other space in support of ATC and meteorological operation, a small office space and additional support space, including toilets, MEP, and a room for incoming utilities and storage. The Heliport Administration Building houses offices of staff responsible for the day-to-day operation of the Heliport, including Heliport ownership, accounting and planning/media relations.

2. Airfield

This is an area of land set aside for the take-off, landing, and maintenance of helicopter. The Helipad lighting system shall consist of threshold, edge and end lights. Taxiway lightning system will be provided for the single taxiway, and the connections to the apron. Apron floodlighting is provided, to allow for efficient and safe handling of aircraft during night operations. Signage will be provided.

3. Airfield lighting

Airfield lighting is required to guide planes using the Helipads and taxiways at night or in rain or fog. At Heliports around the world, airfield lightings a crucial part of the day-to-day operations. The airfield lighting should conform to ICAO documents and annexes and Good Industry Practice.

4. Helipad

It is a paved or cleared strip of land on which helicopter land and take off. The Helipad has to be built as per the Master Plan and the specifications in Schedule B.

5. Taxiway

It's a route along which an aircraft can taxi when moving to or from a Helipad. The taxiway system proposed between the helipad and the apron will enable aircraft to travel with the minimum of delay and permit the Helipad to operate to its maximum capacity. In the initial phase the Heliport taxiway system will include the following:

The taxiways have to be built as per the Master Plan and the specifications in Schedule B.

6. Aircraft Rescue & Fire Fighting (ARFF) Building

The location of the building must meet airside response time and servicing criteria outlined in the Master Plan and Schedule D. The major organizing element of the building is the truck bay area accommodating both standard size and oversize vehicles as per the Master Plan. The minimum clear height of the truck bays must be large enough to accommodate clearance for the tallest truck, plus 2.2m (measured above the vehicle's work platform). Utility closets are required for cleaning the vehicles.

ARFF building also has contact areas where firefighting and administration staff work. The administration and training functions include offices (including the Fire Chief and Deputy Fire Chief's offices), an heliport communications center, a training room/classroom, and the alarm/watch room (which must be located to maximize views to the airfield). The ARFF building should also include firefighters' living spaces - including individual dormitory rooms, a dayroom, a joint dining/kitchen area, a laundry room, a locker room, and a fitness area.

An area for equipment supply and other functions that support the firefighting operation has to be provided. This includes first aid/medical decontamination functions; a locker room for personal protective storage and an adjacent gear washing room; a workshop area with tools for servicing and maintaining vehicles. It also includes separate storage rooms for complementary agent storage and foam storage; a hose drying room; and an area for storage and servicing of self-contained breathing apparatus.

7. Airside and landside access roads and forecourts including writing, traffic signals, signage and monitoring

An airside road system to transport the vehicles, which sustain the operation of aircraft, both on the airside and to link with the landside road system is proposed. An airside service road (apron service road) will run on the airside face of the terminal building. It serves the fire station, hangar and fuel farm area and continues as a paved road around the Heliport perimeter as per feasibility.

The landside access, approach and frontage roads are required for passenger and services access to/from the Heliport.

These roads will be built as per the Master Plan conforming to ICAO documents and annexes and relevant IS codes.

The security checkpoints as well as the security fence will need to be constructed at the time of Heliport start up as per the Master Plan. Each of the checkpoints will be identical in design and will include capacity to screen lanes of vehicles simultaneously. However, dependent upon the actual volume of vehicle traffic at different planning horizons, the operator can choose to staff a minimum of one, or more screening lanes.

8. Apron and Helicopter parking area

The layout of the apron and the terminal and the relationship between the two is designed to reflect international standards. The objectives of the apron design include:

- To minimize taxiing distance to/from the Helipad
- To provide sufficient taxi lanes to avoid delays
- To ensure that operations can be conducted safely.

The apron and Helicopter parking areas have to be built as per the Master Plan and the specifications in Schedule B.

9. Apron control and allocation of Helicopter stands

A portion of an apron designated as a taxiway and intended to provide access to Helicopter stands only. To optimize the overall utilization of aircraft parking facilities, aircraft stands for passenger and cargo flights are allocated by Apron Control Centre. The apron control centre has to be provided as per the Master Plan and ICAO documents and annexure conforming to relevant IS codes.

10. Bird scaring

A bird strike is strictly defined as a collision between a bird and helicopter which is in flight or on a take-off or landing roll. The term is often expanded to cover other wildlife strikes - with bats or ground animals. An appropriate bird scaring device (and process) would have to be provided as per ICAO documents and annexes and Good Industry Practice.

TERMINAL

11. Arrivals concourses and meeting areas

Arrival concourse is a space between baggage reclaim area or government inspection and landside exits from the terminal building. Designated meeting points should be installed to make it easier for the passengers to meet up with other.

This has to be provided as per the Master Plan, ICAO Documents and Annexes and Good Industry Practice.

12. Baggage systems including outbound and reclaim

The baggage handling system should be in-line with required security screening as per the designated GoI agency. This system has to be provided as per the Master Plan, ICAO Documents and Annexes and Good Industry Practice.

13. Check-in concourses

Check-in concourse is the space between the terminal building landside entrance and the check-in positions. This is a large open space or hall at the Heliport that provides facilities like Shopping and eating, Lounge, Baggage Reclaim etc.

These have to be provided as per the Master Plan and specifications in Schedule B.

14. Cleaning, heating, lighting and air conditioning public areas

Cleanliness, proper lighting, heating and air conditioning is essential in most settings to ensure a pleasant environment. An untidy place can cause injuries in particular,

injuries resulting from slips and trips, therefore good housekeeping practices are essential. Sufficient lighting must be provided, whether it is from a natural or artificial source, to allow safe movement around the place and to allow people to perform their tasks without having to strain their eyes to see. Emergency lighting must be provided for the safe evacuation of people in the event of an emergency.

Heliport should be adequately ventilated. Fresh, clean air should be drawn from outside the Heliport, uncontaminated by discharge from flues or other outlets, and be circulated through the Heliport.

Air-conditioning system shall be provided for the following buildings. Central air-conditioning system will be provided to cater to these areas.

An air-conditioning system should:

- provide a comfortable environment in relation to air temperature, humidity and air movement
- prevent the excessive accumulation of odours
- reduce the levels of respiratory by-products, especially carbon dioxide, and other indoor contaminants that may arise from various activities
- supply an amount of fresh air to the Heliport, exhaust some of the stale air as well as filter and recirculate some of the indoor air.

This system has to be provided as per the Master Plan, ICAO Documents and Annexes and Good Industry Practice.

15. Emergency services

All Heliport are unique and varied in a number of ways—by size, complexity, operations, facilities, geography, and types of aircraft served. A planning team must consider all of these factors when developing an Heliport emergency plan (AEP). Services like Terminal planning and construction of features for evacuation or SIP, Emergency generators, Emergency communications systems, Emergency signage Sensors Shelter area flashing lights etc are few of the examples for terminal preparedness.

16. Facilities for the disabled and other special needs people

Any person whose mobility is reduced due to a physical incapacity (sensory or locomotor) , an intellectual deficiency, age, illness or any other cause of disability when using transport and whose situation needs special attention and the adaptation to the person's needs of the services made available to all passengers.

These facilities must be provided as per ICAO documents and annexes and Good Industry Practice.

17. Fire service

The Heliport shall be equipped to provide a level of protection corresponding with the category of the aerodrome. The fire station is located such that the response time shall be the lowest to any part of the movement area in optimum visibility and surface condition. The total area of fire station should be as per the Master Plan and ICAO documents and annexes.

18. Flight information and public-address systems

Public-Address Systems included in estimate

19. Foul and surface water drainage

The design of the drainage system is determined by the topography, finished formation levels, surface run-off from paved areas and building roofs. The topographical conditions of the existing surface and, consequently, that of the graded strip of all Heliport-related facilities, result in a north-south oriented watershed. Open lined drains will be constructed. RCC box culverts or pipe culverts shall be provided beneath pavements.

This should conform to the Master Plan, Good Industry Practice and relevant IS codes.

20. Guidance systems and marshalling

Guidance system gives information to a pilot attempting to park an aircraft at an Heliport stand, usually via visual methods. This allows them to remain clear of obstructions.

Aircraft marshalling is visual signalling between ground personnel and pilots on an Heliport, aircraft carrier or helipad. Marshalling is one-on-one visual communication and a part of aircraft ground handling. It may be as an alternative to, or additional to, radio communications between the aircraft and air traffic control. The usual equipment of a marshaller is a reflecting safety vest, a helmet with acoustic earmuffs, and gloves or marshaling wands—handheld illuminated beacons.

21. Information desks

The Information desk should be dedicated to provide round the clock assistance (24 X 7) on all airline or Heliport information viz, locating the check in counter, navigation through the Heliport, usage of e-ticketing kiosk, wi-fi etc., It should offer a wide range of services, from general information about the Heliport to the rental of bikes & inline skates as well. The Passenger Service Executives should be well equipped with the information and located at all passenger touch points to render the required assistance.

22. Lifts and escalators

These should be installed as per the Master Plan, relevant IS Codes, Applicable laws and Good Industry Practice.

23. Lost property

The procedure for handing over lost and found properties claimed through different channels could be laid down as under:

- Receipt of Lost Property
- Handing over baggage / article(s) directly to claimant
- Handing over claimant's baggage / articles to his/her authorized representative
- Yellow metal received as lost property at Heliports should follow a different procedure all together

24. Passenger and hand baggage search

- X-ray baggage inspection system (X-BIS for Hand Baggage)

- Frisking booths
 - Ladies
 - Gents
 - Physically Challenged

Security Frisking Area, should be neat & clean.

These facilities should be provided as per the agreement with the designated GoI agency and Applicable Laws.

25. Policing and general security, including CCTV systems and related security equipment

26. Signage

At the Heliports, the passengers / visitors are required to be disseminated with the requisite information which may be communicated by way of signage, audio & video means. This information facilitates the passenger to take the necessary action.

The question of developing an international sign language, without the use of words as far as possible, to assist travelers and other Heliport users to locate the facilities & services in Heliport Terminal Building has been considered by several bodies. Signs should indicate both the directions to and location of the facilities in question. The Signage should be installed in conspicuous places and should not be obscured by obstructions. The signs should be large enough to be recognized at reasonable distances and where necessary should be internally & externally illuminated. Directional signs should be rectangular and location sign should be either square or rectangular.

All signage should conform to ICAO Documents and Annexes and Good Industry Practice.

27. Toilets and nursing mother's rooms

Facilities for nursing mothers should be provided in the form of separate room at appropriate locations.

28. Waste and refuse treatment and disposal

Airside development (e.g., building or rehabilitating Helipads, taxiways, and their associated items) typically produces construction debris. Terminal development often produces similar streams. Refuse can also result from construction workers, passengers, and Heliport workers using the terminal building. Personnel and activities in air cargo facilities may produce solid waste as well. In addition, solid waste may also occur during construction and operations of access roadways, parking facilities, rental car lots, or because of other on- Heliport activities. Activities needed to maintain airside and landside facilities produce yet other sources of waste.

Adequate waste disposal facilities should be developed as per the Master Plan and Applicable Laws.

It should be determined whether local disposal facilities have the capacities to hold solid waste volumes the proposed Heliport facilities would produce during their construction or operation.

29. X-Ray service for carry on and checked-in luggage

The carry-on luggage will be screened before passengers board the plane. The x-ray machines should be film safe and thus not damage the films or diskettes. They should be state-of-the art as per agreement with the relevant GoI agency.

30. Refreshment facilities at the Terminal Building

It should be a open refreshment facility for the passengers. This should offer wide variety of refreshments as per the needs of the Users.

31. Facilities for tour operators and travel agents:

A facility for tour operators and travel agents should be provided for the convenience of the Users.

32. Public access telephones

Telephones should be provided for the Users to make local, long distance (STD) or international (ISD) calls. This service should conform to Good Industry Practice.

33. Postal Services

Postal service should be provided in partnership with the Indian Postal Service for the benefit of the User and Service Providers.

NON-AERONAUTICAL

34. General aviation services (other than those used for commercial air transport services ferrying passengers or cargo or a combination of both)

General Aviation (GA) Services are for non-commercial and/or non-scheduled air transport services.

The GA facility is intended to have a flexible interior organization to allow for changing aviation demands and possible operation by a fixed based operator. To allow for maximum flexibility,

The GA facility should include baggage rooms with adjacent service desk zones; a pilot support room; ramp ops; other support spaces; MEP area; and a pair of toilet rooms, departures lounge, reception area, kitchen (café space)

These should be based on the Master Plan, Schedule B, ICAO Documents and Annexes and Good Industry Practice.

35. Vehicle parking

Vehicle parking should be provided for Users, Employees and Service Providers at adequate locations, especially, for the passenger and cargo terminal buildings.

Facilities should be created for short-term and long term parking including park-and-fly options for the passengers.

These should be based on the Master Plan, Schedule B, ICAO Documents and Annexes and Good Industry Practice.

SCHEDULE-D

(See Clause 2.1)

SPECIFICATIONS AND STANDARDS

1. Heliport

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

Annex-I

(Schedule-D)

SPECIFICATIONS AND STANDARDS FOR THE HELIPORT**1. Specifications and Standards to apply**

The Heliport, including the Aeronautical Assets, the Terminal Building and the Non-Aeronautical Assets shall conform to the Civil Aviation Requirements, Section-4, Series 'B', Part III and ICAO Annex 14, Volume II.

2. Mandatory construction standards and requirements

The Concessionaire shall conform to the construction standards and other requirements specified in the following:

- (a) Director General of Civil Aviation (DGCA) CIVIL AVIATION REQUIREMENTS SECTION-4, AERODROME STANDARDS & LICENSING SERIES 'F', PART I 16th October 2006 regarding grant of an Aerodrome Licence;
- (b) International Civil Aviation Organisation (ICAO) - International Standards and Recommended Practices, Aerodromes, Annex 14 to the Convention on International Civil Aviation: Volume 2 Aerodrome Design and Operations - Fourth Edition, 2004;
- (c) ICAO Aerodrome Design Manual (Doc 9981);
- (d) ICAO Heliport Manual (Doc 9261)
- (e) ICAO Annexure 14 Part II
- (f) ICAO Annexure 6 Part III
- (g) Relevant Indian Standard Codes published by the Bureau of Indian Standards.

3. Deviations from the Manual and Mandatory Requirements

Notwithstanding anything to the contrary contained in the aforesaid Manual and the mandatory requirements specified in paragraph 2 above, the following Specifications and Standards shall apply to the Heliport, and for purposes of this Agreement, the aforesaid Manual and mandatory requirements shall be deemed to be amended to the extent set forth below:]3

[**Note 1:** Deviations from the aforesaid Manual and mandatory requirements shall be listed out here. Such deviations shall be specified only if they are considered essential in view of project-specific requirements].

[**Note 2:** See Notes below Schedule-D].

SCHEDULE-E
(See Clause 4.1. 3)

APPLICABLE PERMITS

1. Applicable Permits

1.1 The Concessionaire shall obtain, as required under the Applicable Laws, the following Applicable Permits on or before the Appointed Date, save and except to the extent of a waiver granted by the Authority in accordance with Clause 4.1.3 of the Agreement:

Part A: Applicable Permits prior to Appointed Date

- (i) 'In principle' approval of DGCA, prior to Appointed Date, for construction of the Heliport, to be subsequently followed by a DGCA licence, prior to COD, for operating the Heliport; and

Part B: Applicable Permits prior to COD

- (i) DGCA license for operating the Heliport
- (ii) Permission of the State Government for extraction of boulders from quarry;
- (iii) Permission of Pollution Control Board for installation of crushers; if any
- (iv) Licence for use of explosives;
- (v) Permission of the State Government for drawing water from river/reservoir;
- (vi) Licence from Inspector of factories or other competent authority for setting up Batching Plant;
- (vii) Clearance of Pollution Control Board for setting up Batching Plant;
- (viii) Clearance of Pollution Control Board for Asphalt Plant;
- (ix) Clearance of Pollution Control board for installation of diesel generator sets;
- (x) Permission of State Government for cutting of trees; and
- (xi) Any other permits or clearances required under Applicable Laws.

1.2 Applicable Permits, if any, relating to environmental protection and conservation of the Heliport, shall have been procured by the Authority as a Condition Precedent.

SCHEDULE-F
(See Clause 9.1)

PERFORMANCE SECURITY

CEO, NOIDA Authority

WHEREAS:

- (A) _____ (the "Concessionaire") and the **NEW OKHLA INDUSTRIAL DEVELOPMENT AUTHORITY** represented by its Chairman] (the "Authority") have entered into a Concession Agreement dated..... (the "Agreement") whereby the Authority has agreed to the Concessionaire undertaking the construction, operation, maintenance and management of an Heliport at Noida in the State of Uttar Pradesh on design, build, finance, operate and transfer ("DBFOT") basis, subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Concessionaire to furnish a Performance Security to the Authority in a sum of Rs. 1,29,00,000 (Rupees one crore twenty nine-lakhs only crore) (the "**Guarantee Amount**") as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Construction Period (as defined in the Agreement).
- (C) We,- _____ through our Branch at _____ (the "Bank") have agreed to furnish this Bank Guarantee by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Concessionaire's obligations during the Construction Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums up to an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an Officer not below the rank of****, that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be

conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Construction Period under the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.

3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force until the earlier of the 1st (first) anniversary of the Appointed Date or compliance of the conditions specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the

Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.

- 8. The Performance Security shall cease to be in force and effect when the Concessionaire shall have expended on Project construction an aggregate sum not less than 20% (twenty per cent) of the Total Project Cost which is deemed to be Rs. 8.6 Cr. for the purposes of this Guarantee, and provided the Concessionaire is not in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars required hereunder, duly certified by a statutory auditor of the Concessionaire, the Authority shall release the Performance Security forthwith.
- 9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
- 10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
- 11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of one year and six months or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

Signed and sealed this..... day of....., 20.....at.....

SIGNED, SEALED AND DELIVERED

For and on behalf of

the BANK by:

(Signature)
 (Name)
 (Designation)
 (Code Number)
 (Address)

NOTES:

- (i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- (ii) The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

SCHEDULE-G
(See Clause 12.1)

PROJECT COMPLETION SCHEDULE

1. Project Completion Schedule

During Construction Period, the Concessionaire shall comply with the requirements set forth in this Schedule-G for each of the Project Milestones and the Scheduled Completion Date (the "**Project Completion Schedule**"). Within 15 (fifteen) days of the date of each Project Milestone, the Concessionaire shall notify the Authority of such compliance along with necessary particulars thereof.

2. Project Milestone-I

2.1 Project Milestone-I shall occur on the date falling on the 75th (Seventy fifth) day from the Appointed Date (the "**Project Milestone-I**").

2.2 Prior to the occurrence of Project Milestone-I, the Concessionaire shall have commenced construction of the Heliport and expended not less than 5% (five per cent) of the Total Project Cost set forth in the Financial Package.

3. Project Milestone-II

3.1 Project Milestone-II shall occur on the date falling on the 150th (one hundred and Fifty) day from the Appointed Date (the "**Project Milestone-II**").

3.2 Prior to the occurrence of Project Milestone-II, the Concessionaire shall have commenced construction of the Helipad and the Terminal Building and expended not less than 15% (fifteen per cent) of the Total Project Cost set forth in the Financial Package and conveyed to the Independent Engineer the nature and extent of physical progress comprising such expenditure so as to enable the Independent Engineer to determine that the physical progress is reasonably commensurate with the expenditure incurred. Provided, however, that at least one-half of the expenditure referred to hereinabove shall have been incurred on physical works which shall not include advances of any kind to any person or expenditure of any kind on plant and machinery.

4. Project Milestone-III

4.1 Project Milestone-III shall occur on the date falling on the 225th (Two hundred and twenty fifth) day from the Appointed Date (the "**Project Milestone-III**").

4.2 Prior to the occurrence of Project Milestone-III, the Concessionaire shall have commenced[construction of the taxiways, the apron, the ATC Facility and expended not less than 30% (thirty per cent) of the Total Project Cost set forth in the Financial Package and conveyed to the Independent Engineer the nature and extent of physical progress comprising such expenditure so as to enable the Independent Engineer to determine that the physical progress is reasonably commensurate with the expenditure incurred. Provided, however, that at least one-half of the expenditure referred to hereinabove shall have been incurred on physical works which shall not include advances of any kind to any person or expenditure of any kind on plant and machinery.

5. Project Milestone-IV

5.1 Project Milestone-IV shall occur on the date falling on the 300th (Three Hundred) day from the Appointed Date (the "**Project Milestone-IV**").

5.2 Prior to the occurrence of Project Milestone-IV, the Concessionaire shall have commenced or procured the commencement of the construction of the the Car Park and administrative offices block and cargo facilities, if applicable and expended not less than 50% (fifty per cent)] of the Total Project Cost set forth in the Financial Package.

6. Project Milestone-V

6.1 Project Milestone-V shall occur on the date falling on the 375th (Three Hundred and seventy five) day from the Appointed Date (the "**Project Milestone-V**").

6.2 Prior to the occurrence of Project Milestone-V, the Concessionaire shall have commenced trial runs of the Helipad and expended not less than 75% (seventy-five per cent)] of the Total Project Cost, set forth in the Financial Package.

7. Scheduled Completion Date

7.1 The Scheduled Completion Date shall occur on the 450th (four hundred and fifty) day from the Appointed Date.

7.2 On or before the Scheduled Completion Date, the Concessionaire shall have completed the Heliport in accordance with this Agreement.

8. Extension of period

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

SCHEDULE-H

(See Clause 12.3)

DRAWINGS

1. Drawings

In compliance of the obligations set forth in Clause 12.3 of this Agreement, the Concessionaire shall furnish to the Independent Engineer, free of cost, all Drawings listed in Annex-I of this Schedule-H.

2. Additional drawings

If the Independent Engineer determines that for discharging its duties and functions under this Agreement, it requires any drawings other than those listed in Annex-I, it may by notice require the Concessionaire to prepare and furnish such drawings forthwith. Upon receiving a requisition to this effect, the Concessionaire shall promptly prepare and furnish such drawings to the Independent Engineer, as if such drawings formed part of Annex-I of this Schedule-H.

Annex-I
(Schedule-H)
List of Drawings

The concessionaire shall furnish the following list of drawings:

- Master Plan
- Architectural design for all buildings
- Structural drawings for all buildings and airfield pavements for aircraft movement.
- MEP drawings for all buildings
- Civil Design for all facilities including airside, terminal and landside

The structure drawings to be vetted by reputed agencies.

SCHEDULE-I
(See Clause 14.1.2)

TESTS

1. Schedule for Tests

- 1.1 The Concessionaire shall, no later than [90 (ninety)] days prior to the likely completion of the Heliport, notify the Independent Engineer and the Authority of its intent to subject the Heliport to Tests, and not later than [15 (fifteen)] days prior to the actual date of Tests, furnish to the Independent Engineer and the Authority detailed inventory and particulars of all works and Equipment forming part of the Heliport.
- 1.2 The Concessionaire shall notify the Independent Engineer of its readiness to subject the Heliport to Tests at any time after [7 (seven)] days from the date of such notice, and upon receipt of such notice, the Independent Engineer shall, in consultation with the Concessionaire, determine the date and time for each Test and notify the same to the Authority who may designate its representative to witness the Tests. The Independent Engineer shall thereupon conduct the Tests itself or cause any of the Tests to be conducted in accordance with Article 14 and this Schedule-I.

2. Tests

- 2.1 Tests: Without prejudice to the provisions of this Clause 2, the Independent Engineer shall require the Concessionaire to carry out or cause to be carried out Tests, in accordance with the relevant ICAO Documents and Annexes, the applicable guidelines of DGCA and Good Industry Practice, for determining the compliance of the Heliport with Specifications and Standards, Applicable Laws and the relevant ICAO Documents and Annexes. The Tests would be carried out on a random sample basis and the number or frequency, as the case may be, of such Tests shall, subject to the Applicable Laws and ICAO Documents and Annexes, and to the extent possible, not exceed 10% (ten per cent) of the tests that the owner or builder of such works would normally undertake in accordance with Good Industry Practice.
- 2.2 Visual and physical Test: The Independent Engineer shall conduct a visual and physical check of the Heliport to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.
- 2.3 The Helipad, taxiways, apron, ATC Facility and Terminal Building shall be subjected to non-destructive testing of completed structures or part thereof, to be conducted in accordance with the procedure described in (IS-13311), the relevant ICAO Documents and Annexes and the applicable guidelines of DGCA. The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out the aforesaid testing if it has a reasonable doubt about the adequacy of the strength of such structure for any of the following reasons:

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- (a) Results of compressive strength on concrete test cubes falling below the specified strength;
 - (b) premature removal of formwork;
 - (c) inadequate curing of concrete;
 - (d) over loading during the construction of the structure or part thereof;
 - (e) presence of honey - combed or damaged concrete that may affect the stability of the structure to carry the design load; or
 - (f) any other reason which may result in the structure or any part thereof being of less than the expected strength.

2.4 Tests for Equipment: The Independent Engineer shall conduct or cause to be conducted Tests, in accordance with the relevant ICAO Documents and Annexes, the applicable guidelines of DGCA and Good Industry Practice, for determining the compliance of all equipment with the Specifications and Standards and Safety Requirements.

2.5 Trial run for test flights: Subject to the Concessionaire handing over the ATC Facility to the Authority or the Designated GoI Agency, as the case may be, at least [120 (one hundred and twenty)] days prior to COD and the Authority having equipped the ATC Facility with the CNS/ ATM Equipment for the provision of CNS/ATM Services at least [90 (ninety)] days prior to COD, the [Independent Engineer] shall conduct or cause to be conducted adequate trial runs for flights at the Heliport to determine the compliance of the Heliport with the relevant ICAO Documents and Annexes and the applicable guidelines of DGCA.

2.6 Trial run of Heliport: The Independent Engineer shall conduct or cause to be conducted adequate trial runs of the Heliport to determine the compliance of the Heliport, including the Aeronautical Assets, Terminal Building and Non-Aeronautical Assets, with the Specification and Standards, Maintenance Requirements, the relevant ICAO Documents and Annexes, applicable guidelines of DGCA and Safety Requirements.

2.7 Environmental audit: The Independent Engineer shall carry out a check to determine conformity of the Heliport with the environmental requirements set forth in Applicable Laws and Applicable Permits.

2.8 Other mandatory tests: The Concessionaire shall procure and ensure that all statutory tests required to be undertaken in accordance with Applicable Laws for grant of a Heliport licence by DGCA are undertaken and completed no later than 15 (fifteen) days prior to COD.

3. Agency for conducting Tests

All Tests set forth in this Schedule-I shall be conducted by the Independent Engineer or such other agency or person as it may specify in consultation with the Authority.

4. Tests for Safety Certification

Tests for determining the conformity of the Heliport with the Safety Requirements shall be conducted in accordance with Good Industry Practice and in conformity with Applicable Laws.

5. Completion/Provisional Certificate

Upon successful completion of Tests, the Independent Engineer shall issue the Completion Certificate or the Provisional Certificate, as the case may be, in accordance with the provisions of Article 14.

6. Tests during Construction

Without prejudice to the provisions of this Schedule-I, tests during construction shall be conducted in accordance with the provisions of Clause 13.3.1.

SCHEDULE-J
(See Clause 14.2 & 14.3)

COMPLETION CERTIFICATE

1. I/We,..... (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement dated.....(the "Agreement"), for the *** Heliport in Noida on design, build, finance, operate and transfer (DBFOT) basis, through..... (Name of Concessionaire), hereby certify that the Tests specified in Article 14 and Schedule-I of the Agreement have been successfully undertaken to determine compliance of the Heliport with the provisions of the Agreement, and I am satisfied that the Heliport can be safely and reliably placed in commercial service of the Users thereof.
2. It is certified that, in terms of the aforesaid Agreement, all works forming part of Heliport have been completed, and the Heliport is ready for entry into commercial operation on this the.....day of.....20.....

SIGNED, SEALED AND
DELIVERED

For and on behalf of

INDEPENDENT ENGINEER by:

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

PROVISIONAL CERTIFICATE

1. I/We,.....Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement dated (the "**Agreement**") , for the *** Heliport at Noida on design, build , finance, operate and transfer (DBFOT) basis, through..... (Name of Concessionaire), hereby certify that the Tests specified in Article 14 and Schedule-I of the Agreement have been undertaken to determine compliance of the Heliport with the provisions of the Agreement.

2. Construction Works that were found to be incomplete and/or deficient have been specified in the Punch List appended hereto, and the Concessionaire has agreed and accepted that it shall complete and/or rectify all such works in the time and manner set forth in the Agreement. [Some of the incomplete works have been delayed as a result of reasons attributable to the Authority or due to Force Majeure and the Provisional Certificate cannot be withheld on this account. Though the remaining incomplete works have been delayed as a result of reasons attributable to the Concessionaire,] I am satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the Heliport, pending completion thereof.

3. In view of the foregoing, I am satisfied that the Heliport can be safely and reliably placed in commercial service of the Users thereof, and in terms of the Agreement, the Heliport is hereby provisionally ready for entry into commercial operation on this the.....day of.....20.....

ACCEPTED, SIGNED, SEALED AND DELIVERED

For and on behalf of

CONCESSIONAIRE by:

(Signature)
(Name and Designation)
(Address

SIGNED, SEALED AND DELIVERED

For and on behalf of

INDEPENDENT ENGINEER by:

(Signature)
(Name and Designation)
(Address)

SCHEDULE-K
(See Clause 17.2)

MAINTENANCE REQUIREMENTS

1. Maintenance Requirements

- 1.1 The Concessionaire shall, at all times, operate and maintain the Heliport in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits. In particular, the Concessionaire shall, at all times during the Operation Period, conform to the maintenance requirements set forth in this Schedule-K (the "Maintenance Requirements").
- 1.2 The Concessionaire shall repair or rectify any defect or deficiency set forth in Paragraph 2 of this Schedule-K within the time limit specified therein and any failure in this behalf shall constitute a breach of the Agreement. Upon occurrence of any breach hereunder, the Authority shall be entitled to recover Damages as set forth in Clause 17.8 of the Agreement, without prejudice to the rights of the Authority under the Agreement, including Termination thereof.

2. Repair/rectification of defects and deficiencies

- 2.1 The obligations of the Concessionaire in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies specified in Annex-I of this Schedule-K within the time limit set forth therein.
- 2.2 The Concessionaire shall at all times maintain an adequate inventory of spares and consumables to meet the Maintenance Requirements.

3. Other defects and deficiencies

- 3.1 In respect of any defect or deficiency not specified in Annex-I of this Schedule-K, the Concessionaire shall undertake repair or rectification in accordance with Good Industry Practice.
- 3.2 In respect of any defect or deficiency not specified in Annex-I of this Schedule-K, the Independent Engineer may, in conformity with Good Industry Practice, specify), the permissible limit of deviation or deterioration with reference to the Specifications and Standards, and any deviation or deterioration beyond the permissible limit shall be repaired or rectified by the Concessionaire within the time limit specified by the Independent Engineer.

4. Extension of time limit

Notwithstanding anything to the contrary specified in this Schedule-K, if the nature and extent of any defect or deficiency justifies more time for its repair or rectification than the time specified herein, the Concessionaire shall be entitled to additional time in conformity with Good Industry Practice. Such additional time shall be determined by the Independent Engineer and conveyed to the Concessionaire and the Authority with reasons thereof.

5. Emergency repairs/restoration

Notwithstanding anything to the contrary contained in this Schedule-K, if any defect, deficiency or deterioration in the Heliport poses a hazard to safety or risk of damage to property, the Concessionaire shall promptly take all reasonable measures for eliminating or minimizing such danger

6. Daily Inspection by the Concessionaire

The Concessionaire shall, through its engineer, undertake a daily visual inspection of the Heliport and maintain a record thereof in a register to be kept in such form and manner as the Independent Engineer may specify. Such record shall be kept in safe custody of the Concessionaire and shall be open to inspection by the Authority and the Independent Engineer at any time during office hours.

7. Divestment Requirements

All defects and deficiencies specified in this Schedule-K shall be repaired and rectified by the Concessionaire so that the Heliport conforms to the Maintenance Requirements on the Transfer Date.

8. Display of Schedule-K

The Concessionaire shall display a copy of this Schedule-K at the Terminal Building along with the Complaint Register stipulated in Article 51.

Annex-I

(Schedule-K)

REPAIR/RECTIFICATION OF DEFECTS AND DEFICIENCIES

The Concessionaire shall repair and rectify the defects and deficiencies specified in this Annex-I of Schedule-K within the time limit set forth herein⁹.

Nature of defect or deficiency	Time limit for repair/rectification
I HELIPADS, TAXIWAYS AND APRON	
(i) Breach or blockade	- Temporary restoration of traffic within 8 hours; permanent restoration within 7 days
(ii) Roughness value exceeding [1,500] mm in a stretch of 100 m (as measured by a standardized rough meter/ bump integrator)	- 90 days
(iii) Cracking in more than 5% of Helipad surface in a stretch of 100 m	- 30 days
(iv) Rutting exceeding 10 mm in more than 2% of Helipad surface in a stretch of 100 m (measured with 3 m straight edge)	- 30 days
(v) Damage of pavement edge exceeding 10 cm	- 15 days
(vi) Debris on Helipad, taxiway or apron	- 1 hour
(vii) Damage to shape or position of Helipad furniture, signs and marking; poor visibility or Joss of retro-reflectivity	- 24 hours
(viii) Malfunctioning of signaling system	- [30 Minutes]
(ix) Failure of electric supply of Helipad Lighting System (substitution by UPS/ generator)	- 5 seconds

⁹ The values and periods specified herein may be modified to suit project-specific requirements, items may be deleted or substituted as necessary.

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- | | | | |
|-------|--|---|-------------------------------------|
| (x) | Malfunctioning of Helipad Lighting System | - | As specified in the relevant Manual |
| (xi) | Malfunctioning of Helipad Lighting System (substitution by emergency lights) | - | [5 seconds] |
| (xii) | Any failure, defect or malfunctioning of Aeronautical Assets | - | As specified in the relevant Manual |

II TERMINAL BUILDING

- | | | | |
|---------|---|---|------------|
| (i) | Failure of electric supply (substitution by UPS/generator) | - | 5 seconds |
| (ii) | Lighting level falling below 250 lux | - | 1 hour |
| (iii) | Damage to floor, walls or paint | - | 48 hours |
| (iv) | Breakage of glass | - | 24 hours |
| (v) | Breakage of furniture | - | 24 hours |
| (vi) | Removal of debris and unclaimed materials | - | 1 hour |
| (vii) | Dirt, garbage, stains or dust on floors, walls, fixtures, signage, counters and furniture | - | 1 hour |
| (viii) | Dirt or odour in toilets | - | 30 minutes |
| (ix) | Damage or malfunction of electricity, water and sanitary fittings | - | 4 hours |
| (x) | Discontinuation of drinking water supply | - | 2 hours |
| (xi) | Choking and/or blockage of sewer lines, drains or rain water pipes | - | 2 hours |
| (xii) | Malfunctioning of doors, windows or fixtures | - | 4 hours |
| (xiii) | Malfunctioning of Flight information | - | 1 hour |
| (xiv) | Malfunctioning of signaling, communication systems or public address systems | - | 2 hours |
| (xv) | Malfunctioning of automated systems | - | 1 hour |
| (xvi) | Malfunctioning of lifts, escalators and walkaltors | - | 1 hour |
| (xvii) | Waste bins when 3/4 th full | - | 15 minutes |
| (xviii) | Dirt, garbage, litter, stains or spillage on roads and other public spaces | - | 30 minutes |
-

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- [(xix) Temperature inside the Terminal Building exceeding 25°C when ambient temperature is 40°C or less] - [1 hour]
 - [(xx) Difference between the external ambient temperature and the temperature inside the Terminal Building exceeding 1.5°C when the external ambient temperature is more than 40°C]. - [1 hour]
 - [(xxi) Temperature inside the Terminal Building falling below 1.5°C] - [1 hour]

III APPROACH ROADS AND CAR PARK

- (i) Breach or blockade - Temporary restoration of traffic within 8 hours; permanent restoration within 7 days
- (ii) Roughness value exceeding 2,000 mm in a stretch of 100 m (as measured by a standardized rough meter/ bump integrator) - 180 days
- (iii) Cracking in more than 5% of road surface in a stretch of 1 km - 30 days
- (iv) Rutting exceeding 10 mm in more than 2% of road surface in a stretch of 1 km (measured with 3 m straight edge) - 30 days
- (v) Damage of pavement edge exceeding 10cm - 15 days
- (vi) Debris on Roads or Car Park - 2 hours
- (vii) Damage to shape or position of road side furniture, signs and marking; poor visibility or loss of retro-reflectivity - 24 hours

IV STREET LIGHTING

- (i) Any major failure of the system - 6 hours
 - (ii) Faults and minor failures - 2 hours
 - (iii) Lighting level falling below 200 lux - 1 hour
-

V TREES AND PLANTATION

- (i) Obstruction in a minimum head-room of 5 m above carriageway or obstruction in visibility of road signs - 24 hours
- (ii) Deterioration in health of trees and bushes - Timely watering and treatment
- (iii) Replacement of trees and bushes - 90 days
- (iv) Removal of vegetation affecting sight line and road structures - 15 days

SCHEDULE-L
(See Clause 25. 7)

SERVICE QUALITY REQUIREMENTS

1. Service Quality Requirements

The Concessionaire shall, at all times, procure and ensure that it achieves the Service Quality Requirements as set forth in Annex-I of this Schedule-L.

2. Monthly Compliance Report

The Concessionaire shall, within 7 (seven) days of the closing of each calendar month, furnish a monthly report on compliance of the Service Quality Requirements.

3. Display of Schedule-L

The Concessionaire shall display a copy of this Schedule-L at the Terminal Building along with the Complaint Register stipulated in Article 51.

Annex-I

(Schedule-L)

SERVICE QUALITY REQUIREMENTS

The Concessionaire shall at all times procure and ensure that the services provided at the Heliport conform to the minimum performance standards (the "**Service Quality Requirements**") specified in this Annex-I of Schedule-L.

Performance Indicator	Performance Measure	Minimum Performance Standard
Terminal Services	Handling of complaints	100% of complaints responded to within 2 working days
	Response to phone calls	75% of calls answered within 30 seconds
	Availability of Helicopter Information	98% availability
	Automated services	98% availability
	Lifts, escalators etc.	98% availability in a month
	Repair completion time	95% of high priority complaints within 4 hours, 95% of others within 24 hours
	Baggage trolleys	100% availability
	Cleanliness	Achieve a satisfactory cleanliness rating for 95% of all inspections
	Availability of wheel chairs	100% of time within 5 minutes
	Assistance for the disabled	100% of time within 5 minutes
Check in	Maximum queuing time	5 minutes for business class
		15 minutes for economy
Security check	Waiting time in queue	95% of passengers wait less than 10 minutes
CIQ	Checking time in queue	95% of passengers wait less than 10 minutes
Baggage delivery	Time for bag delivery from Helicopter arrival	First bag 10 minutes, last bag 30 minutes from on blocks time
Helipad system	Delays to arriving/ departing Helicopter	Average annual delay per Helicopter: 4 minutes or better based on provision of

		International Standard ATC procedures and equipment as per provisions of Article [26.2].
Car parking	Average time taken to find parking space	95% of drivers take less than 5 minutes
	Average time to depart Heliport from parking space	95% of drivers take less than 5 minutes
Taxis	Maximum waiting time	95% of passengers wait less than 5 minutes
Gate Lounges	Seating availability	Seats for 70% of gate lounge population
Cargo Facilities	Average dwell time	For imports, maximum processing time of 12 hours For exports, maximum processing time of 12 hours

SCHEDULE-M
(See Clause 22. 1)

SAFETY REQUIREMENTS

1. Guiding principles

- 1.1 Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on the Heliport, irrespective of the person(s) at fault.
- 1.2 Users of the Heliport include staff of the Concessionaire and its contractors working on the Heliport.
- 1.3 Safety Requirements apply to all phases of construction, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.
- 1.4 Safety Requirements include measures associated with safe movement, safety management, safety equipment, fire safety, enforcement and emergency response, with particular reference to the Safety Guidelines specified in Annex - I of this Schedule-M.

2. Obligations of the Concessionaire

The Concessionaire shall abide by the following insofar as they relate to safety of the Users:

- (a) Applicable Laws and Applicable Permits;
- (b) Manual for Safety, issued by the Authority;
- (c) provisions of this Agreement;
- (d) relevant ICAO Documents and Annexes, applicable guidelines of DGCA and other relevant Standards/Guidelines contained in internationally accepted codes; and
- (e) Good Industry Practice.

3. Appointment of Safety Consultant

For carrying out safety audit of the Heliport under and in accordance with this Schedule-M, the Authority shall appoint from time to time, one or more qualified firms or organisations as its consultants (the "Safety Consultant"). The Safety Consultant shall employ a team comprising, without limitation, one Heliport safety expert and one traffic planner to undertake safety audit of the Heliport.

4. Safety measures during Operation Period

- 4.1 The Concessionaire shall develop, implement and administer a surveillance and safety programme for Users, including response to hijacking of Helicopter, correction of safety violations and deficiencies and all other actions necessary to provide a safe environment in accordance with this Agreement.
- 4.2 The Concessionaire shall establish a Heliport Safety Management Unit (the "ASMU") to be functional on and after COD, and designate one of its officers to be in-charge of the ASMU. Such officer shall have specialist knowledge and training in Heliport system safety by having attended a course conducted by a reputed organisation on the subject.
- 4.3 The Concessionaire shall keep a copy of every first information report (the "FIR") recorded by the Police with respect to any accident occurring on the Heliport. In addition, the Concessionaire shall also collect data for all cases of accidents not recorded by the Police. The information so collected shall be summarised in the form prescribed by the Authority for this purpose. The Concessionaire shall also record the exact location of each accident on a route map. The aforesaid data shall be submitted to the Authority at the conclusion of every quarter.
- 4.4 The Concessionaire shall submit to the Authority before the 31st (thirty first) May of each year, an annual report (in ten copies) containing, without limitation, a detailed listing and analysis of all accidents of the preceding Accounting Year and the measures taken by the Concessionaire pursuant to the provisions of Paragraph 6.1 of this Schedule-M for averting or minimising such accidents in future.
- 4.5 Once in every Accounting Year, a safety audit shall be carried out by a Safety Consultant to be appointed by the Authority. It shall review and analyse the annual report and accident data of the preceding year, and undertake an inspection of the Heliport. The Safety Consultant shall complete the safety audit within a period of 1 (one) month and submit a Safety Report recommending specific improvements, if any, required to be made in the Heliport. Such recommendations shall be processed, mutatis mutandis, and acted upon in the manner set forth in Paragraphs 4.3, 4.4 and 4.5 of this Schedule-M.

5. Costs and expenses

Costs and expenses incurred in connection with the Safety Requirements set forth herein, including the provisions of Paragraph 2 of this Schedule-M, shall be met in accordance with Article 23,

Annex-I

(Schedule-M)

Safety Guidelines**1. Safe movement**

In the design, construction and operation of the Heliport, particular care shall be taken to ensure safety of Users. This shall include facilities for safe and efficient evacuation in case of emergency. In particular, the Terminal shall be designed and tested for safe movement.

2. System integrity

In the design of power supply, lighting, signalling, communication and security equipment, particular care shall be taken to minimise the likely incidence of failure.

3. Restoration of service

The Heliport shall be designed such that in the event a fault occurs, a limited service can be provided within a few minutes by isolation of the affected area or equipment, to the extent possible.

4. Contingency and Safety management

4.1 The Concessionaire shall procure and ensure that appropriate contingency arrangements are in place at the Heliport to deal with the following events in accordance with the provisions of the relevant ICAO Documents and Annexes and applicable guidelines of DGCA:

- (a) removal of disabled Helicopter from the Helipad and taxiways;
- (b) bomb threat to a Helicopter or the Heliport, or any acts of terrorism;
- (c) accidents, including Helicopter accidents in and around the vicinity of the Heliport;
- (d) forced landing of a non-scheduled Helicopter;
- (e) fires at the Heliport;
- (f) natural calamities and disasters;
- (g) strikes at the Heliport; and
- (h) unlawful interference with civil aviation.
- (i) Any other emergency at the Heliport.

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- 4.2 The Concessionaire shall procure and ensure that emergency alarm bells are installed and operated to link the ATC Facility to the Heliport Manager and to all emergency services located at the Heliport, including fire services, medical services, CISF and the Police
- 4.3 A safety statement shall be prepared by the Concessionaire once every quarter to bring out clearly the system of management of checks and maintenance tolerances for various assets, and the compliance thereof. The statement shall also bring out the nature and extent of staff training and awareness in dealing with such checks and tolerances. Two copies of the statement shall be sent to the Independent Engineer within 15 (fifteen) days of the close of every quarter.

5. Safety equipment

The following safety equipment shall be provided at the Heliport:

- (a) Fire extinguishers and fire alarms at appropriate locations on the Heliport;
- (b) adequate number of stretchers and standard first aid boxes; and
- (c) such other equipment as may be required in conformity with the relevant ICAO Documents and Annexes, applicable guidelines of DGCA and Good Industry Practice.

6. Emergency

A set of emergency procedures shall be formulated to deal with different emergency situations and the operations staff shall be trained to respond appropriately during emergency through periodic simulated exercises as laid down in a Disaster Management Manual to be prepared and published by the Concessionaire prior to COD.

7. Fire safety

- 7.1 The Concessionaire shall conform to the standards specified in the US National Fire Protection Association (NFPA) on Heliport Terminal Buildings, Fuelling Ramp drainage and loading Walkways.
- 7.2 To prevent fire in the passenger areas, the Concessionaire shall use fire resistant materials in the construction thereof and shall avoid use of materials which are to some extent flammable, or which emit smoke and harmful gases when burning.
- 7.3 Emergency exit should be accessible without any obstructions and the exit doors should be kept locked in the ordinary course. The exit doors shall be easy to open from inside the Terminal Building in case of emergency.
- 7.4 Escape routes shall be clearly marked by arrows in the correct direction and no cryptic symbols shall be used. In complying with the provisions of this Clause 7.4,

the possibility of poor visibility due to smoke shall be duly taken into account. All notices and signages shall be uniform and standardised.

- 7.5 Appropriate categories of rescue and firefighting services shall be made available and maintained in accordance with the provisions of the relevant ICAO Documents and Annexes. 3

8. User safety and information system:

- 8.1 The Concessionaire shall provide the ASMU with the facilities required for supervising passenger areas and the Terminal Building, and shall provide visual information to Users. The Concessionaire shall also provide one-way communication to Users at the Terminal Building through a Public Announcement (PA) system. The User call points should be located at convenient locations to allow Users to contact the ASMU in emergencies.

The User information system shall comprise dynamic visual displays and loudspeakers.

SCHEDULE-N
(See Clause 23. 6)

MONTHLY FEE STATEMENT

Heliport: Month:

Type of Users	For corresponding month of previous year		For preceding month		For the month reported upon	
	No. of Users	Fee Collected (in lakh Rs.)	No. of Users	Fee Collected (in lakh Rs.)	No. of Users	Fee Collected (in lakh Rs.)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
A Helicopters						
B Passengers						
C Vehicles						
D Visitors						
E Cargo						
F Others						

Remarks, if any:

MONTHLY TRAFFIC CENSUS

(See Clause 24.3)

Heliport: Month:

Type of User	No. of Users using the Project Heliport during		
	Corresponding month/last year	Preceding month	Month of report
(1)	(2)	(3)	(4)
A Helicopters			
B Passengers			
C Fee paying Vehicles			
C1 Cars			
C2 LCV/ Mini Truck			
C3 Bus/ Truck			
Total (C)			
D Exempted Vehicles			
D1 Cars			
D2 LCV/Mini Truck			
D3 Bus/ Truck			
Total (D)			
E Total Vehicular Traffic			
(A+B+C+D)			
F Visitors			

Remarks, if any:

MONTHLY CARGO CENSUS

(See Clause 24.3)

Heliport:**Month:**

Type of Cargo	No. of consignments	Gross Weight (In kg)	Value (In '000 Rs.)
A. Incoming			
A1 Bulk Cargo (exceeding 100 kg) A2 Small Cargo			
A3 Perishables			
Total (A)			
B Outgoing			
B1 Bulk Cargo (exceeding 100 kg) B2 Small Cargo			
B3 Perishables			
Total (B)			
C. Grand Total (A+B)			

[Note: Submit separate statements for Cargo Facilities with international and domestic source/destination].

Remarks, if any:

SCHEDULE-O
(See Clause 25.4.1)

TRAFFIC SAMPLING

1. Traffic sampling

The Authority may, in its discretion and at its own cost, undertake traffic sampling, pursuant to Clause 25.4, in order to determine the actual passenger, vehicular, cargo and visitor traffic on the Heliport. Such traffic sampling shall be undertaken through the Independent Engineer in the manner set forth below or in such manner as the Parties hereto may agree upon.

2. Manual traffic count

The Independent Engineer shall employ the required number of enumerators who shall count, classify and record all the Users as they pass by and divide the survey into fixed time periods. The count stations shall be located near the entry gates or at the fee collection points. The survey shall be conducted continuously for a minimum of 24 (twenty-four) hours and maximum of 7 (seven) days at a time. Special surveys may also be undertaken for determining the Peak Hour Traffic and such surveys may be carried out for up to 4 (four) Peak Hours in a day for a continuous period of 7 (seven) days. The count period shall be 15 (fifteen) minutes with results summarised hourly. All surveys shall be conducted substantially in the manner specified in this Schedule-P or in such manner as the Parties may agree upon.

3. Automatic traffic count

For automatic traffic count to be conducted on intermittent (non-continuous) basis, the Independent Engineer shall use suitable and standardised equipment to classify and record the Users passing through the entry or Fee collection points. For this purpose, the counter shall be checked with at least 1,000 (one thousand) Users to ensure that Users are being counted and classified correctly.

4. Variation between manual and automatic count

Average Daily Traffic (ADT) shall be determined separately by the aforesaid two methods and in the event that the number of Users, as counted by the manual method, varies by more than 1 % (one per cent) of the number of such Users as counted by the automatic method, the manual and automatic count shall be repeated, and in the event of any discrepancy between the two counts in the second enumeration, the average thereof shall be deemed to be the actual traffic. For the avoidance of doubt, it is expressly agreed that the Authority may, in consultation with the Concessionaire, adopt modified or alternative processes of traffic sampling for improving the reliability of such sampling, and may, instead of carrying out Manual and Automatic traffic counts, rely only on Automatic traffic counts or any substitute thereof.

SCHEDULE-P
(See Clause 25.11)

PASSENGER CHARTER

1. Service with Safety

It is our aim to provide safety and quality in Heliport Management through state-of-the-art infrastructure for total customer satisfaction. This Charter explains our commitments to the users of our Heliport and what they can expect from us.

2. Contents

1. Introduction
2. Our standards for Passenger Service
3. Availability of Information
4. Passengers who require Assistance
5. Buying a Ticket
6. Lost Property
7. Listening to your views
8. Our promised response times

2.1 Introduction

Customers' Satisfaction is our motto! It is the intention of the Heliport Management to provide quality service to the users of this Heliport through its trained manpower and contractors. We aim to provide:

- (a) Safety and security for the users of the Heliport
- (b) Clean and hygienic environment
- (c) Reliable and easy to understand information
- (d) Polite, customer friendly and helpful staff
- (e) Enjoyable and reasonable shopping and eating experience
- (f) Availability of essential facilities

2.2 Our standards for Passenger Service

We will continue to toil hard at improving our performance to provide you with a reliable and comfortable service at our Heliport.

2.2.1 Approach to the Heliport

We will make all out efforts to make approach within the Heliport area smooth and comfortable. Our traffic plans will be so oriented as to enable easy entry into and exit from the Heliport area. To make your approach comfortable, we will tow away the cars parked unauthorizably on the approach road within the Heliport area.

2.2.2 Entry to the Terminal

We will ensure that the entry into the Terminal Building is hassle free and when multiple entries are available, information will be suitably indicated at the entrances dedicated to specific helicopter operators.

Entry in to the Terminal will be non-discriminatory. However, visitors accompanying passengers will have to pay the entry fee as prescribed. The entry of the visitors may be curtailed or suspended at times as per the needs of security.

2.2.3 Luggage

We will ensure the availability of luggage trolleys to all the passengers who are in need of the same. Paid portage service will also be made available for your convenience.

2.2.4 Parking of vehicles

It will be our endeavour to provide adequate parking space for parking of various vehicles like car, scooter, bus etc. The usage of parking facilities will be available on payment of prescribed fees which may vary according to the vehicles and the type of parking used. It is our aim to ensure that you do not spend more than 5 minutes for parking/taking out your vehicle.

2.2.5 Length of queue

Adequate number of check-in counters, x-ray baggage machines, conveyor belts etc. will be provided so that the time spent on queues is kept at minimum.

2.2.6 Facilities

You are entitled to free facilities like [toilets,] clean drinking water, liquid soap, paper glass and child care room. Of course, all other facilities will be available on payment basis. All the essential facilities for eating, drinking and shopping for traveller's need, will be available in a pleasing atmosphere. In order to ensure availability of reasonably priced basic beverages and food items, vending machines would be installed at convenient locations. We will ensure that the vendors price their items, as per laws relating to MRP. Vending machines of competing vendors will be provided to ensure competition and choice to the passengers. We will also ensure the cleanliness and hygiene of the Terminal Building so that you spend your time in a related and pleasant manner.

Our target will be to ensure that you do not have to stand in a queue for more than 5 minutes for most of the services and not more than 20 minutes for your luggage / baggage.

2.2.7 Seating

The waiting area for the users will be so planned as to ensure that at least [30] %of the peak hour capacity are provided comfortable seats.

Adequate lighting will be provided for your comfort and the temperature inside the Terminal Building will be maintained at 25°C when the outside temperature is below 40°C. In other cases, the difference between the temperature outside the Terminal Building and the temperature inside the Terminal Building will not be less than 15°C. During winter season, the temperature shall not be less than 15°C.

2.2.8 Taxies

We will ensure that prepaid taxies are available when you arrive. Maximum waiting time for at least 95% (ninety-five per cent) of the passengers shall not exceed 5 minutes.

2.2.9 Planned / Unplanned Engineering Works

We will ensure whenever any modification/repair works are carried out, the area is adequately cordoned off, clear signage is available and normal functioning of the Heliport is not affected in anyway.

2.3 Availability of information

Information is power.

We will provide timely information on the arrival and departure times of flights. The information will also be available before you enter the Terminal Building so that you can spend more time with your relatives/friends in case of any delay. We will also provide clear and easy to understand universally accepted signages inside the Terminal Building so that you can avail all the facilities without asking for anybody's help.

However, if you need any help, our trained staff will be there to lend you a helping hand. The accuracy of the flight timings and abnormal delays largely depends on the cooperation by the helicopter operators. We will make all efforts to coordinate with the helicopter operators and update the information immediately on receipt.

2.4 Passengers who require assistance

We are concerned with the needs of the disabled / physically challenged passengers. We are committed to provide:

2.4.1 Assistance to Passengers

Our trained staff will be ready to help you once you bring the requirement to the notice of Terminal in-charge.

2.4.2 Wash rooms

We will provide disabled friendly wash rooms which are easy to use.

2.4.3 Ramps

Wherever feasible, ramps will be provided for the wheel chair passengers.

2.4.4 First Aid Facilities

Facilities will be available for meeting any unforeseen medical emergencies and first aid will be provided by qualified professional.

2.5 Buying a ticket

Buying a ticket is very easy and convenient at our Heliport.

Adequate number of ticketing counters of all major helicopter operators will be provided at the Heliport. They will be open to the public and will have opening to the city side. Passengers coming by air and proceeding to another destination can also purchase their tickets without going out of the Terminal.

2.6 Lost Property

Lost something at Heliport? You may get it back from the Lost Property Office located in the Terminal Building.

All the lost and found items will be sent to the Lost Property Officer in-charge. You may get in touch with him for recovery of your lost items. He can be reached at his email address viz.

2.7 Listening to your views

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

Periodically analyse the User Satisfaction Survey on the different aspects of our service shall be carried out. To record your suggestions/complaints, suggestion books have been made available at various locations. You can also contact us through correspondence or our phone lines or through our website.

2.8 Our promised response times

When you write to us, you should hear from us within seven working days.

- (a) In case it needs a longer time to provide a full reply, we will send you an acknowledgement within 7 (seven) working days and reply within 25 (twenty-five) working days.
- (b) If a full reply cannot be made within 25 (twenty-five) working days, we will contact and update you.
- (c) There are several agencies involved in providing the various services at the Heliport. Some of the services we have promised above may involve interaction and coordination with these agencies who are primarily responsible for the provision of the service. In this case, we shall make best efforts to address your concerns.

If you are unhappy with our reply, we will make all our efforts to make you satisfied with our response. Kindly let us know. This will help us identify weak spots and continually improve our performance.

SCHEDULE-Q
(See Clause 26.1)

SELECTION OF INDEPENDENT ENGINEER

1. Selection of Independent Engineer

- 1.1 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 or any substitute thereof shall apply, mutatis mutandis, for invitation of bids and evaluation thereof save as otherwise provided herein.
- 1.2 The Authority shall invite expressions of interest from consulting engineering firms or bodies corporate to undertake and perform the duties and functions set forth in Schedule-Rand thereupon shortlist 6 (six) qualified firms in accordance with pre-determined criteria. The Authority shall convey the aforesaid list of firms to the Concessionaire for scrutiny and comments, if any. The Concessionaire shall be entitled to scrutinise the relevant records of the Authority to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Authority within 15 (fifteen) days of receiving the aforesaid list of firms. Upon receipt of such comments, if any, the Authority shall, after considering all relevant factors, finalise and constitute a panel of 6 (six) firms (the "Panel of Firms") and convey its decision to the Concessionaire.
- 1.3 The Authority shall invite the aforesaid firms in the Panel of Firms to submit their respective technical and financial offers, each in a separate sealed cover. All the technical bids so received shall be opened and pursuant to the evaluation thereof, the Authority shall shortlist 3 (three) eligible firms on the basis of their technical scores. The financial bids in respect of such 3 (three) firms shall be opened and the order of priority as among these firms shall be determined on the basis of a weighted evaluation where technical and financial scores shall be assigned respective weights of 80:20.
- 1.4 In the event that the Authority shall follow the selection process specified in the Model RFP for selection of Technical Consultants, as published by the Ministry of Finance/ Planning Commission, the selection process specified in this Schedule-Q shall be deemed to be substituted by the provisions of the said Model RFP and the Concessionaire shall be entitled to scrutinise the relevant records forming part of such selection process.

2. Fee and expenses

- 2.1 In determining the nature and quantum of duties and services to be performed by the Independent Engineer during the Development Period and Construction Period, the Authority shall endeavour that payments to the Independent Engineer on account of

fee and expenses do not exceed [1% (one per cent)] of the Total Project Cost. Payments not exceeding such [1% (one per cent)] shall be borne equally by the Authority and the Concessionaire in accordance with the provisions of this Agreement and any payments in excess thereof shall be borne entirely by the Authority.

- 2.2 The nature and quantum of duties and services to be performed by the Independent Engineer during the Operation Period shall be determined by the Authority in conformity with the provisions of this Agreement and with due regard for economy in expenditure. All payments made to the Independent Engineer on account of fee and expenses during the Operation Period, shall be borne equally by the Authority and the Concessionaire.

3. Constitution of fresh panel

No later than 3 (three) years from the date of this Agreement, and every three years thereafter, the Authority shall prepare a fresh panel of firms in accordance with the criteria set forth in this Schedule-Q; provided that the Authority may, at any time, prepare a fresh panel with prior written consent of the Concessionaire.

SCHEDULE-R
(See Clause 26.2. I)

TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

1. Scope

1.1 These Terms of Reference for the Independent Engineer (the "**TOR**") are being specified pursuant to the Concession Agreement dated(the "**Agreement**"), which has been entered into between the Authority and..... (the "Concessionaire") for the Heliport at Noida on design, build, finance, operate and transfer (DBFOT) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.

1.2 This TOR shall apply to construction, operation and maintenance of the Heliport

2. Definitions and interpretation

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

2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.

2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement shall apply, mutatis mutandis, to this TOR.

3. Role and functions of the Independent Engineer

3.1 The role and functions of the Independent Engineer shall include the following:

- (i) review of the Drawings and Documents as set forth in Paragraph 4;
- (ii) review, inspection and monitoring of Construction Works as set forth in Paragraph 5;
- (iii) conducting Tests on completion of construction and issuing Completion/ Provisional Certificate as set forth in Paragraph 5;
- (iv) review, inspection and monitoring of O&M as set forth in Paragraph 6;

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- (v) review, inspection and monitoring of Divestment Requirements as set forth in Paragraph 7;
 - (vi) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
 - (vii) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
 - (viii) assisting the Parties in resolution of disputes as set forth in Paragraph 9; and
 - (ix) undertaking all other duties and functions in accordance with the Agreement.

3.2 The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

4. Development Period

4.1 During the Development Period, the Independent Engineer shall undertake a detailed review of the Drawings to be furnished by the Concessionaire along with supporting data, including the geo-technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys and traffic surveys. The Independent Engineer shall complete such review and send its comments/observations to the Authority and the Concessionaire within 15 (fifteen) days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and Specifications and Standards.

4.2 The Independent Engineer shall review any modified Drawings or supporting Documents sent to it by the Concessionaire and furnish its comments within 7 (seven) days of receiving such Drawings or Documents.

4.3 The Independent Engineer shall review the Drawings in accordance with Schedule-M and furnish its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receiving such Drawings. The Independent Engineer shall also review the Safety Report and furnish its comments thereon to the Authority within 15 (fifteen) days of receiving such report.

4.4 The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and

construction time schedule sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.

- 4.5 Upon reference by the Authority, the Independent Engineer shall review and comment on the EPC Contract or any other contract for construction, operation and maintenance of the Heliport, and furnish its comments within 7 (seven) days from receipt of such reference from the Authority.

5. Construction Period

- 5.1 In respect of the Drawings, Documents and Safety Report received by the Independent Engineer for its review and comments during the Construction Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.
- 5.2 The Independent Engineer shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 5.3 The Independent Engineer shall inspect the Construction Works once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the "Inspection Report") setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works with the Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Heliport. The Independent Engineer shall send a copy of its Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.
- 5.4 The Independent Engineer may inspect the Heliport more than once in a month if any lapses, defects or deficiencies require such inspections.
- 5.5 For determining that the Construction Works conform to Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good industry Practice for quality assurance. For purposes of this Paragraph 5.5, the tests specified in the relevant Manuals specified by the Authority in relation to structures, buildings and equipment (the "Quality Control Manuals") or any modification/substitution thereof shall be deemed to be tests conforming to Good Industry Practice for quality assurance. The Independent Engineer shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.

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- 5.6 The sample size of the tests, to be specified by the Independent Engineer under Paragraph 5.5, shall comprise LO% (ten per cent) of the quantity or number of tests prescribed for each category or type of tests in the Quality Control Manuals; provided that the Independent Engineer may, for reasons to be recorded in writing, increase the aforesaid sample size by up to 10% (ten per cent) for certain categories or types of tests.
- 5.7 The timing of tests referred to in Paragraph 5.5, and the criteria for acceptance/rejection of their results shall be determined by the Independent Engineer in accordance with the Quality Control Manuals. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.
- 5.8 In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the Specifications and Standards, and the provisions of this Paragraph 5 shall apply to such tests.
- 5.9 In the event that the Concessionaire fails to achieve any of the Project Milestones, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Heliport is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which the Project Completion Date shall be achieved. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire forthwith.
- 5.10 If at any time during the Construction Period, the Independent Engineer determines that the Concessionaire has not made adequate arrangements for the safety of workers [and Users] in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers [and the Users], it shall make a recommendation to the Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.
- 5.11 In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works [and Users], it may, by notice in writing, require the Independent Engineer to inspect such works, and within 3 (three) days of receiving such notice, the Independent Engineer shall inspect the suspended works and make a report to the Authority forthwith, recommending whether or not such suspension may be revoked by the Authority.
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- 5.12 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of dates set forth in the Project Completion Schedule, to which the Concessionaire is reasonably entitled, and shall notify the Authority and the Concessionaire of the same.
- 5.13 The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in Schedule-I and issue a Completion Certificate or Provisional Certificate, as the case may be. For carrying out its functions under this Paragraph 5.13 and all matters incidental thereto, the Independent Engineer shall act under and in accordance with the provisions of Article 14 and Schedule-I.
- 5.14 Upon reference from the Authority, the Independent Engineer shall make a fair and reasonable assessment of the costs of providing information, works and services as set forth in Article 16 and certify the reasonableness of such costs for payment by the Authority to the Concessionaire.
- 5.15 The Independent Engineer shall aid and advise the Concessionaire in preparing the Maintenance Manual.

6. Operation Period

- 6.1 In respect of the Drawings, Documents and Safety Rep011 received by the Independent Engineer for its review and comments during the Operation Period, the provisions of Paragraph 4 shall apply, mutatis mutandis.
- 6.2 The Independent Engineer shall review the annual Maintenance Programme furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 15 (fifteen) days of receipt of the Maintenance Programme.
- 6.3 The Independent Engineer shall review the monthly status report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 6.4 The Independent Engineer shall inspect the Heliport, once every month, preferably after receipt of the monthly status report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out an O&M Inspection Report setting forth an overview of the status, quality and safety of O&M including its conformity with the Key Performance Indicators, Maintenance Requirements and Safety Requirements. In a separate section of the O&M Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the Heliport. The Independent Engineer shall send a copy of its O&M Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.

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- 6.5 The Independent Engineer may inspect the Heliport more than once in a month, if any lapses, defects or deficiencies require such inspections.
- 6.6 The Independent Engineer shall in its O&M Inspection Report specify the tests, if any, that the Concessionaire shall carry out, or cause to be carried out, for the purpose of determining that the Heliport is in conformity with the Maintenance Requirements. It shall monitor and review the results of such tests and the remedial measures if any, taken by the Concessionaire in this behalf.
- 6.7 .In respect of any defect or deficiency referred to in Paragraph 3 of Schedule-L, the Independent Engineer shall, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards and shall also specify the time limit for repair or rectification of any deviation or deterioration beyond the permissible limit.
- 6.8 The Independent Engineer shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Agreement, and shall also determine the Damages, if any, payable by the Concessionaire to the Authority for such delay.
- 6.9 The Independent Engineer shall examine the request of the Concessionaire for closure of the Heliport for undertaking maintenance/repair thereof, keeping in view the need to minimise disruption in traffic and the time required for completing such maintenance/repair in accordance with Good industry Practice. It shall grant permission with such modifications, as it may deem necessary, within 3 (three) days of receiving a request from the Concessionaire. Upon expiry of the permitted period of closure, the Independent Engineer shall monitor the re-opening of such section of the Heliport, and in case of delay, determine the Damages payable by the Concessionaire to the Authority under Clause 17.7.
- 6.10 The Independent Engineer shall monitor and review the curing of defects and deficiencies by the Concessionaire as set forth in Clause 23.5.
- 6.11 In the event that the Concessionaire notifies the Independent Engineer of any modifications that it proposes to make to the Heliport, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire within 15 (fifteen) days of receiving the proposal.
- 6.12 Audit of Fee collection system
- The Independent Engineer shall, at least once every month, conduct an audit of the working of the automatic Fee collection system installed by the Concessionaire, to check its accuracy in recording the entry and exit of Users and in recording the Fee.
- 6.13 The Independent Engineer shall undertake traffic sampling, as and when required by the Authority, under and in accordance with Article 19 and Schedule-P.
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7. Termination

7.1 At any time, not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the Independent Engineer shall, in the presence of a representative of the Concessionaire, inspect the Heliport for determining compliance by the Concessionaire with the Divestment Requirements set forth in Clause 42.1 and, if required, cause tests to be carried out at the Concessionaire's cost for determining such compliance. If the Independent Engineer determines that the status of the Heliport is such that its repair and rectification would require a larger amount than the sum set forth in Clause 43.2, it shall recommend retention of the required amount in the Escrow Account and the period of retention thereof.

7.2 The Independent Engineer shall inspect the Heliport once in every 15 (fifteen) days during a period of 90 (ninety) days after Termination for determining the liability of the Concessionaire under Article 43, in respect of the defects or deficiencies specified therein. If any such defect or deficiency is found by the Independent Engineer, it shall make a report in reasonable detail and send it forthwith to the Authority and the Concessionaire.

8. Determination of costs and time

8.1 The Independent Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.

8.2 The Independent Engineer shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

9. Assistance in Dispute resolution

9.1 When called upon by either Party in the event of any Dispute, the Independent Engineer shall mediate and assist the Parties in arriving at an amicable settlement.

9.2 In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

10. Other duties and functions

The Independent Engineer shall perform all other duties and functions specified in the Agreement.

11. Miscellaneous

- 11.1 The Independent Engineer shall notify its programme of inspection to the Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.
- 11.2 A copy of all communications, comments, instructions, Drawings or Documents sent by the Independent Engineer to the Concessionaire pursuant to this TOR, and a copy of all the test results with comments of the Independent Engineer thereon shall be furnished by the Independent Engineer to the Authority forthwith.
- 11.3 The Independent Engineer shall obtain, and the Concessionaire shall furnish in two copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Independent Engineer, whereupon the Independent Engineer shall send one of the copies to the Authority along with its comments thereon.
- 11.4 The Independent Engineer shall retain at least one copy each of all Drawings and Documents received by it, including 'as-built' Drawings, and keep them in its safe custody.
- 11.5 Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list all Drawings, Documents, results of tests and other relevant records, and hand them over to the Authority or such other person as the Authority may specify, and obtain written receipt thereof. Two copies of the said document shall also be furnished in micro film form or in such other medium as may be acceptable to the Authority.

SCHEDULE-S

DELETED

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SCHEDULE-T
(See Clause 35.1.2)

ESCROW AGREEMENT

THIS ESCROW AGREEMENT is entered into on this the day of20

AMONGST

1. Limited, a company incorporated under the provisions of the Companies Act, 1956/2013 and having its registered office at (hereinafter referred to as the "Concessionaire" which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
2. (name and particulars of Lenders' Representative) and having its registered office at.....acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "Lenders' Representative" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
3. (name and particulars of the Escrow Bank) and having its registered office at..... (hereinafter referred to as the "Escrow Bank" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
4. **NEW OKHLA INDUSTRIAL DEVELOPMENT AUTHORITY** represented by its Chairman (the "**Authority**") a constituted under the U.P. Industrial Area Development Act, 1976, and having its principal offices at Noida, UP (hereinafter referred to as the "**Authority**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

WHEREAS:

- (A) The Authority has entered into a Concession Agreement datedwith the Concessionaire (the "**Concession Agreement**") for the Heliport at Noida in the state of Uttar Pradesh on design, build, finance, operate and transfer basis ("DBFOT"), and

a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.

- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) The Concession Agreement requires the Concessionaire to establish an Escrow Account, inter alia, on the terms and conditions stated therein.

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

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

"Agreement" means this Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

"Concession Agreement" means the Concession Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

"Cure Period" means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Concessionaire, and shall commence from the date on which a notice is delivered by the Authority or the Lenders' Representative, as the case may be, to the Concessionaire asking the latter to cure the breach or default specified in such notice;

"Escrow Account" means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

"Escrow Default" shall have the meaning ascribed thereto in Clause 6. I;

"Lenders' Representative" means the person referred to as the Lenders' Representative in the foregoing Recitals;

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

"Payment Date" means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

"Sub-Accounts" means the respective Sub-Accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective Sub Accounts and paid out therefrom on the Payment Date(s).

1.2 Interpretation

- 1.2.1 References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Senior Lenders.
- 1.2.2 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.
- 1.2.3 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- 1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, mutatis mutandis, to this Agreement.

2. ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

- 2.1.1 The Concessionaire hereby appoints the Escrow Bank to act as trustee for the Authority, the Lenders' Representative and the Concessionaire in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.
- 2.1.2 The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority, the Lenders' Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the

Authority, the Lenders' Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of, or as third-party beneficiaries under this Agreement.

2.2 Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Senior Lenders or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, the Lenders' Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

2.3 Establishment and operation of Escrow Account

- 2.3.1 Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Concessionaire shall open and establish the Escrow Account with the (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.
- 2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.
- 2.3.3 The Escrow Bank and the Concessionaire shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Escrow Bank's fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Concessionaire.

For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with Clause 4.1.

2.5 Rights of the parties

The rights of the Authority, the Lenders' Representative and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority, the Lenders' Representative and the Concessionaire shall have no other rights against or to the monies in the Escrow Account.

2.6 Substitution of the Concessionaire

The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Concessionaire under this Agreement on and with effect from the date of substitution of the Concessionaire with the Nominated Company.

3. DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposits by the Concessionaire

3.1.1 The Concessionaire agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

- (a) all monies received in relation to the Project from any source, including the Senior Lenders, lenders of Subordinated Debt and the Authority;
- (b) all funds received by the Concessionaire from its share-holders, in any manner or form;
- (c) all Fee levied and collected by the Concessionaire;
- (d) any other revenues, rentals, deposits or capital receipts, as the case may be, from or in respect of the Heliport; and
- (e) all proceeds received pursuant to any insurance claims.

3.1.2 The Concessionaire may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

3.2 Deposits by the Authority

The Authority agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

- (a) Grant and any other monies disbursed by the Authority to the Concessionaire;
- (b) Revenue Shortfall Loan;
- (c) all Fee collected by the Authority in exercise of its rights under the Concession Agreement; and
- (d) Termination Payments:

Provided that, notwithstanding the provisions of Clause 4.1.1, the Authority shall be entitled to appropriate from the aforesaid amounts, any License Fee and/or Monthly Concession Fee due and payable to it by the Concessionaire, and the balance remaining shall be deposited into the Escrow Account.

3.3 Deposits by Senior Lenders

The Lenders' Representative agrees, confirms and undertakes that the Senior Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project; provided that notwithstanding anything to the contrary contained in this Agreement, the Senior Lenders shall be entitled to make direct payments to the EPC Contractor under and in accordance with the express provisions contained in this behalf in the Financing Agreements.

3.4 Interest on deposits

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Concessionaire in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

4. WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdrawals during Concession Period

- 4.1.1 At the beginning of every month, or at such shorter intervals as the Lenders' Representative and the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not

due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):

- (a) all taxes due and payable by the Concessionaire for and in respect of the Heliport;
- (b) all payments relating to construction of the Heliport, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- (d) O&M Expenses incurred by the Authority, provided it certifies to the Escrow Bank that it had incurred such expenses in accordance with the provisions of the Concession Agreement and that the amounts claimed are due to it from the Concessionaire;
- (e) License Fee due and payable to the Authority;
- (f) Monthly Concession Fee due and payable to the Authority;
- (g) monthly proportionate provision of Debt Service due in an Accounting Year
- (h) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement, including repayment of Revenue Shortfall Loan;
- (i) monthly proportional provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- (j) any reserve requirements set forth in the Financing Agreements;
- (k) and balance, if any, in accordance with the instructions of the Concessionaire.

4.1.2 No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

4.2 Withdrawals upon Termination

Upon Termination of the Concession Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

- (a) all taxes due and payable by the Concessionaire for and in respect of the Heliport;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) outstanding License Fee and /or Monthly Concession Fee;
- (d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement, repayment of Revenue Shortfall Loan and any claims in connection with or arising out of Termination;
- (e) retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in Article 43 of the Concession Agreement;
- (f) outstanding Debt Service including the balance of Debt Due;
- (g) outstanding Subordinated Debt;
- (h) incurred or accrued O&M Expenses;
- (i) any other payments required to be made under the Concession Agreement; and balance, if any, in accordance with the instructions of the Concessionaire: Provided that the disbursements specified in Sub-clause
- (j) of this Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by the Authority.

4.3 Application of insufficient funds

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

4.4 Application of insurance proceeds

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement or

improvement of the Heliport, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

4.5 Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 40 of the Concession Agreement. Any instructions given by the Authority to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

5. OBLIGATIONS OF THE ESCROW BANK

5.1 Segregation of funds

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank.

5.2 Notification of balances

7 (seven) business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire and/or the Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lenders' Representative of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

5.3 Communications and notices

In discharge of its duties and obligations hereunder, the Escrow Bank:

- (a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;
- (b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- (c) shall, within 5 (five) business days after receipt, deliver a copy to the Lenders' Representative of any notice or document received by it in its

capacity as the Escrow Bank from the Concessionaire or any other person hereunder or in connection herewith; and

- (d) shall, within 5 (five) business days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Lenders' Representative in connection herewith.

5.4 No set off

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

5.5 Regulatory approvals

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

6. ESCROW DEFAULT

6.1 Escrow Default

- 6.1.1 Following events shall constitute an event of default by the Concessionaire (an "Escrow Default") unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority or the Lenders' Representative:

- (a) the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;
- (b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or

- (c) the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.

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

7. TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the debt, guarantee or financial assistance received by it from the Senior Lenders, or any of its obligations to the Authority remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

7.2 Substitution of Escrow Bank

The Concessionaire may, by not less than 45 (forty five) days prior notice to the Escrow Bank, the Authority and the Lenders' Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Lenders' Representative and arrangements are made satisfactory to the Lenders' Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank.

The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3 Closure of Escrow Account

The Escrow Bank shall, at the request of the Concessionaire and the Lenders' Representative made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement and the Financing Agreements including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

8. SUPPLEMENTARY ESCROW AGREEMENT

8.1 Supplementary Escrow Agreement

The Lenders' Representative and the Concessionaire shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, inter alia, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant

to Clause 4.1.1 and for matters not covered under this Agreement such as the rights and obligations of Senior Lenders and lenders of Subordinated Debt, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

9. INDEMNITY

9.1 General indemnity

- 9.1.1 The Concessionaire will indemnify, defend and hold the Authority, Escrow Bank and the Senior Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.
- 9.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.
- 9.1.3 The Escrow Bank will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

9.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9 .1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the

other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

10. DISPUTE RESOLUTION

10.1 Dispute Resolution

- 10.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules") or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.
- 10.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Noida and the language of arbitration shall be English.

11. MISCELLANEOUS PROVISIONS

11.1 Governing law and jurisdiction

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

11.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

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

11.3 Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

11.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

The Concessionaire shall not make any deviation, alterations, additions to or omission from the work shown/ described and awarded to the concessionaire except through and with prior approval of the CEO, Authority or any other officer authorized by him, in writing.

11.4.1 The Concessionaire shall be fully responsible for the development and O&M of Heliport as per scope mentioned in the RFP.

11.4.2 The appointment of the Authority's own supervisory staff, if any, does not absolve the Concessionaire of his responsibility of general supervision.

11.4.3 The Concessionaire shall indemnify and keep indemnified the Authority against any such claims and against all cost and expenses paid by the Authority in defending itself against such claims.

11.4.4 It is hereby further agreed between the parties that the stamp duly payable under the law in respect of this agreement shall be borne by the Concessionaire.

11.5 Waiver

11.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

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

11.5.2 Neither the failure by any Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by any Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

11.6 No third-party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

11.7 Survival

11.7.1 Termination of this Agreement:

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of. or

caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

11.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

11.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 10.1 of this Agreement or otherwise.

11.9 Successors and assigns

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

11.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or email shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

11.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

11.12 Authorised representatives

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

11.13 Original Document

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

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

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the..... day of20 hereunto affixed in the presence of, Director, who has signed these presents in token thereof and....., Company Secretary / Authorized Officer who has countersigned the same in token thereof^s:

SIGNED, SEALED AND DELIVERED
For and on behalf of SENIOR LENDERS
by the Lenders' Representative:

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

SIGNED, SEALED AND DELIVERED

For and on behalf of ESCROW BANK by:

- (Signature)
- (Name)

SIGNED, SEALED AND DELIVERED

For and on behalf of THE Authority by:

- (Signature)
- (Name)

^s To be affixed in accordance with the articles of association of the Concessionaire.

(Designation)

(Designation)

(Address)

(Address)

(Fax No.)

(Fax No.)

(e-mail address)

(e-mail address)

In the presence of:

1.

2.

SCHEDULE-U
(See Clause 37.2.1)

PANEL OF CHARTERED ACCOUNTANTS

1. Panel of Chartered Accountants

Pursuant to the provisions of Clause 37.2.1 of the Agreement, the Authority and the Concessionaire shall prepare a mutually agreed panel of 5 (five) reputable firms of Chartered Accountants having their registered offices in India (the "Panel of Chartered Accountants"). The criteria for preparing such Panel and the procedure to be adopted in this behalf shall be as set forth in this Schedule-U.

2. Invitation for empanelment

2.1 The Authority shall invite offers from all reputable firms of Chartered Accountants who fulfil the following eligibility criteria, namely:

- (a) the firm should have conducted statutory audit of the annual accounts of at least one hundred companies registered under the Companies Act, 1956, of which at least ten should have been public sector undertakings;
- (b) the firm should have at least 5 (five) practicing Chartered Accountants on its rolls, each with a minimum experience of IO (ten) years in the profession;
- (c) the firm or any of its partners should not have been disqualified or black-listed by the Comptroller and Auditor General of India or the Authority; and
- (d) the firm should have an office in the State or in an adjacent State with at least 2 (two) practicing Chartered Accountants on its rolls in such State.

2.2 Interested firms meeting the eligibility criteria shall be required to submit a statement of their capability including the bio-data of all the practising Chartered Accountants on its rolls. In particular, each firm shall be required to furnish year-wise information relating to the names of all the companies with an annual turnover exceeding Rs. 25,00,00,000 (Rs. twenty-five crore) whose annual accounts were audited by such firm in any of the preceding 5 (five) Accounting Years.

3. Evaluation and selection

3.1 The information furnished by each firm shall be scrutinised and evaluated by the Authority and 1 (one) point shall be awarded for each annual audit of the companies specified in Paragraph 2.2 above. (For the avoidance of doubt, a firm which has

conducted audit of the annual accounts of any such company for 5 (five) years shall be awarded five points).

- 3.2 The Authority shall prepare a list of all the eligible firms along with the points scored by each such firm and 5 (five) firms scoring the highest points shall be identified and included in the draft Panel of Chartered Accountants.

4. Consultation with the Concessionaire

The Authority shall convey the aforesaid panel of firms to the Concessionaire for scrutiny and comments, if any. The Concessionaire shall be entitled to scrutinise the relevant records of the Authority to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Authority within 15 (fifteen) days of receiving the aforesaid panel.

5. Mutually agreed panel

- 5.1 The Authority shall, after considering all relevant factors including the comments, if any, of the Concessionaire, finalise and constitute a panel of 5 (five) firms which shall be deemed to be the mutually agreed Panel of Chartered Accountants.
- 5.2 After completion of every 5 (five) years from the date of preparing the mutually agreed Panel of Chartered Accountants, or such earlier period as may be agreed between the Authority and the Concessionaire, a new panel shall be prepared in accordance with the provisions of this Schedule-U.

SCHEDULE-V
(See Clause 42.4)

VESTING CERTIFICATE

The **NEW OKHLA INDUSTRIAL DEVELOPMENT AUTHORITY** represented by its Chairman (the "**Authority**") refers to the Concession Agreement dated..... (the "**Agreement**") entered into between the Authority and(the "Concessionaire ") for the Heliport at Noida in the state of Uttar Pradesh on design, build, finance, operate and transfer ("DBFOT") basis.

The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Clause 42.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Heliport shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.

Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

Signed this..... day of....., 20.....at.....

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

SIGNED SEALED AND DELIVERED

For and on behalf of the Authority by:

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

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

In the presence of:

- 1. _____
- 2. _____

SCHEDULE-W
(See Clause 44.3. 1)

SUBSTITUTION AGREEMENT

THIS SUBSTITUTION AGREEMENT is entered into on this the..... day
of.....20

AMONGST

1. **NEW OKHLA INDUSTRIAL DEVELOPMENT AUTHORITY** represented by its Chairman represented by it's Chairman and having its principal offices at Noida, UP (hereinafter referred to as the "**Authority**" which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);
2. [..... Limited], a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at....., (hereinafter referred to as the "**Concessionaire**" which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);
3. (name and particulars of Lenders' Representative) and having its registered office at , acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "**Lenders' Representative**", which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

- (A) The Authority has entered into a Concession Agreement dated with the Concessionaire (the "**Concession Agreement**") for the Heliport at Noida in the state of Uttar Pradesh on design, build, finance, operate and transfer basis ("DBFOT"), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.

- (C) Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.
- (D) In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

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

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

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

"Financial Default" means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months;

"Lenders' Representative" means the person referred to as the Lenders' Representative in the foregoing Recitals;

"Nominated Company" means a company, incorporated under the provisions of the Companies Act, 1956, selected by the Lenders' Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/transfer of the Concession as provided in this Agreement;

"Notice of Financial Default" shall have the meaning ascribed thereto in Clause 3.2.1; and

"Parties" means the parties to this Agreement collectively and "Party" shall mean any of the Parties to this Agreement individually.

1.2 Interpretation

- 1.2.1 References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Senior Lenders.
- 1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- 1.2.3 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.
- 1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, mutatis mutandis, to this Agreement.

2. ASSIGNMENT

2.1 Assignment

The Concessionaire hereby agrees to assign the rights, title and interest in the Concession to, and in favour of, the Lenders' Representative pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

3. SUBSTITUTION OF THE CONCESSIONAIRE

3.1 Rights of substitution

- 3.1.1 Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.
- 3.1.2 The Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. (For the avoidance of doubt. the Senior Lenders or the

Lenders' Representative shall not be entitled to operate and maintain the Heliport as Concessionaire either individually or collectively).

3.2 Substitution upon occurrence of Financial Default

- 3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "Notice of Financial Default") along with particulars thereof, and send a copy to the Authority for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.
- 3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.
- 3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Heliport in accordance with the provisions of Article 40 of the Concession Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days. For the avoidance of doubt, the Authority expressly agrees and undertakes to terminate the Concession Agreement forthwith, upon receipt of a written request from the Lenders' Representative at any time after 240 (two hundred and forty) days from the date of Suspension hereunder.

3.3 Substitution upon occurrence of Concessionaire Default

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- 3.3.1 Upon occurrence of a Concessionaire Default, the Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days' time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.
- 3.3.2 In the event that the Lenders' Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Clause 3.3. J, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

3.4 Procedure for substitution

- 3.4.1 The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Heliport including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.
- 3.4.2 To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Authority for shortlisting the bidders for award of the Concession; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.

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- 3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall request the Authority to:
- (a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Heliport in accordance with the provisions of the Concession Agreement;
 - (b) endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
 - (c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.
- 3.4.4 If the Authority has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority thereupon shall transfer and endorse the Concession within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

3.5 Selection to be binding

The decision of the Lenders' Representative and the Authority in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Authority taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Authority and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Authority or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

4. PROJECT AGREEMENTS

4.1 Substitution of Nominated Company in Project Agreements

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement. in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Company's assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

5. TERMINATION OF CONCESSION AGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 41 of the Concession Agreement.

5.2 Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to the Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2, the Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

5.3 Realisation of Debt Due

The Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement. For realisation of the Debt Due, the Lenders' Representative shall be entitled to make its claim from the Escrow Account in accordance with the provisions of the Concession Agreement and the Escrow Agreement.

6. DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- (a) Termination of the Agreement; or

- (b) no sum remains to be advanced, or is outstanding to the Senior Lenders, under the Financing Agreements.

7. INDEMNITY

7.1 General indemnity

- 7.1.1 The Concessionaire will indemnify, defend and hold the Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.
- 7.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.
- 7.1.3 The Lenders' Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party,

such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8. DISPUTE RESOLUTION

8.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Concessionaire and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "**Rules**") or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.

8.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Noida and the language of arbitration shall be English.

9. MISCELLANEOUS PROVISIONS

9.1 Governing law and jurisdiction

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

9.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;

- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

9.3 Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

9.4 Alteration of terms

Any modification or variation of the terms and conditions of these standard terms, including any modification or variation of the scope of the Services, may only be made by written agreement between the Parties. However, each Party shall give due consideration to any proposals for modification or variation made by the other Party.

9.5 Waiver

9.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

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

9.5.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party

to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

9.6 No third-party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

9.7 Survival

9.7.1 Termination of this Agreement:

(a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and

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

9.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

9.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

9.9 Successors and assigns

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

9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

9.12 Authorised representatives

9.12.1 Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

9.12.2 Any action required or permitted to be taken, and any document required or permitted to be executed under these standard conditions by the Authority or the Concessionaire may be taken or executed by the officials as formally designated by each party as on the effective date of the project.

9.13 Original Document

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

9.14 Effectiveness of Contract

This Contract shall come into effect on the date the Contract is signed by both the parties and such other later date as discussed and agreed with the Authority. The date the Contract comes into effect is defined as the Effective Date.

9.15 Commencement of Services

The Concessionaire shall begin carrying out the Services from the Effective Date or any such date as specified by the Authority.

9.16 Expiration of Contract

Unless terminated earlier pursuant to Clause SC 6.9 hereof, these standard conditions shall expire at the end of such time period after the Effective Date as given in the time schedule in TOR Document.

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

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the..... day of....., 20.... hereunto affixed in the presence of, Director, who has signed these presents in token thereof and....., Company Secretary / Authorized Officer who has countersigned the same in token thereof^s:

SIGNED, SEALED AND DELIVERED

For and on behalf of

THE Authority by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

SIGNED, SEALED AND DELIVERED For and on behalf of SENIOR LENDERS by the Lenders' Representative:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

In the presence of:

1.

2.

^s To be affixed in accordance with the articles of association of the Concessionaire.

SCHEDULE-X
[Deleted]