

(RFP)
Tender ID: 2026_AAI_273005_1
Volume II
Concession Agreement
FOR
Development, Operations & Maintenance of ATF Management
System under open access on DBFOT basis at Chennai
International Airport, Chennai

BETWEEN

AIRPORTS AUTHORITY OF INDIA ("AAI")

AND

M/s

March, 2026

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Part 1
Preliminary
CONCESSION AGREEMENT

THIS AGREEMENT is entered into on this the.....day of 20. __

BETWEEN

- 1 **Airports Authority of India**, a body corporate constituted under the Airports Authority of India Act, 1994, having its registered office at Rajiv Gandhi Bhawan, Safdarjung Airport, Sri Aurobindo Marg, New Delhi-110 003 (India), acting through its Chairman (hereinafter referred to as "**AAI**", which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns), of the First Part;

AND

- 2 _____, 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.

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

WHEREAS:

- A. AAI is a statutory authority established under the Airports Authority of India Act, 1994 (the "**AAI Act**"), which is responsible for the development, operation, management and maintenance of airports in India.
- B. AAI, in the interest of the better management of the Airport (as defined herein) and overall public interest, has resolved to undertake the Development, Operations & Maintenance of ATF Management System under open access on DBFOT basis at _____ Airport ("**Project**").
- C. AAI is accordingly desirous of granting concession to an entity for undertaking the Project on 'open access' basis, and for this purpose shall grant to the entity license rights in respect of the Facility Site (*defined below*), all in accordance with the terms and conditions set forth herein.
- D. The Authority, had prescribed the technical and commercial terms and conditions, and invited Bids ("the Request for Qualification cum Proposal" or "RFQ cum RFP for development, operation and maintenance of the Project on DBFOT basis, and invited applications by its Request for Qualification cum Proposal No. [_____] dated [_____] , as amended from time to time (collectively, "Request for Qualification cum Proposal" or "RFQ cum RFP").

- E. After evaluation of the Bids received, the Authority had accepted the Bid of the {selected bidder/ Consortium}, inter alia, {the selected bidder/consortium comprising..... and (collectively the “Consortium”) with as its lead member (the “**Lead Member**”). Authority 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 45 (forty-five) 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 undertaking 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 implementation of the Project on DBFOT basis, subject to and on the terms and conditions set forth hereinafter.

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

ARTICLE – 1

1. Definitions and Interpretation

1.1. Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 39) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2. Interpretation

1.2.1. In this Agreement, unless the context otherwise requires,

- a. references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- b. references to laws of the State, laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- c. references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- d. the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- e. the words “**include**” and “**including**” are to be construed without limitation and shall be deemed to be followed by “**without limitation**” or “**but not limited to**” whether or not they are followed by such phrases;
- f. references to “**construction**” or “**building**” include, unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “**construct**” or “**build**” shall be construed accordingly;

- g. references to “**development**” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and “**develop**” shall be construed accordingly;
- h. any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- i. any reference to “**hour**” shall mean a period of 60 (sixty) minutes commencing either on the hour or on the half hour of the clock, which by way of illustration means 5.00 (five), 6.00 (six), 7.00 (seven) and so on being hours on the hour of the clock and 5.30 (five thirty), 6.30 (six thirty), 7.30 (seven thirty) and so on being hours on the half hour of the clock;
- j. any reference to day shall mean a reference to a calendar day;
- k. reference to a “**business day**” shall be construed as a reference to a day (other than a Sunday) on which banks in the State are generally open for business;
- l. any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- m. references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- n. any reference to any period commencing “**from**” a specified day or date and “**till**” or “**until**” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- o. the words importing singular shall include plural and vice versa;
- p. references to any gender shall include the other and the neutral gender;
- q. “**lakh**” means a hundred thousand (100,000) and “**crore**” means ten million (10,000,000);
- r. “**indebtedness**” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- s. references to the “**winding-up**”, “**dissolution**”, “**insolvency**”, or “**reorganization**” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which

such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;

- t. save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause (t) shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
 - u. any agreement, consent, approval, authorization, 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 authorized representative of such Party or the Independent Engineer, as the case may be, in this behalf and not otherwise;
 - v. the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
 - w. references to Recitals, Articles, Clauses, Sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisos and Schedules of or to this Agreement; reference to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs; and reference to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;
 - x. the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”); and
 - y. time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.
- 1.2.2. Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to the Authority and/ or the

Independent Engineer shall be provided free of cost and in 3 (three) copies, and if the Authority and/or the Independent Engineer is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

1.2.3. The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

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

1.3. Measurements and arithmetic conventions

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

1.4. Priority of agreements, clauses and schedules

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

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

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

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

Part II

The Concession

ARTICLE – 2

2. Scope of Project

2.1. Scope of Project

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

- (a) design, development, construction, finance, testing and commissioning of the Project on the Site set forth in **Schedule A** and as specified in **Schedule B** together with provision of respective Project Facilities as specified in **Schedule C**, and in conformity with the Specifications and Standards set forth in **Schedule D** and requirements specified in **Schedule T**;
- (b) operation, maintenance and management of the Project in accordance with the provisions of this Agreement;
- (c) provision of services to the Users of the Facility, which includes:
 - i. receipt, storage, handling of ATF at the Fuel Farm Facility and delivery into the Hydrant Refueling System;
 - ii. providing ITP Services to the Users; and
- (d) performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

ARTICLE – 3

3. GRANT OF CONCESSION

3.1. The Concession

- 3.1.1. Subject to and in accordance with the provisions of this Agreement, Applicable Laws and the Applicable Permits, the Authority hereby grants to the Concessionaire, the concession set forth herein including the exclusive right, license and authority to develop, operate and maintain the Project (“Concession”) for a period of **27 (twenty seven) years** commencing from the Appointed Date, and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.

Provided that, for the sake of clarity and avoidance of doubt, it is hereby clarified that the Concessionaire shall get exclusive right, license and authority to develop, operate and maintain ITP Infrastructure and to provide ITP Services to the Users only till the appointment of 2nd ITP service provider as per directives of the Regulator. The Authority reserves the right to appoint other agencies to provide ITP Services to the Users in future during the term of this Agreement. It is further clarified that it is obligatory on the part of Concessionaire to develop, maintain and operate all associated ITP infrastructure to provide ITP Services and fulfill obligations specified in this Agreement.

Provided further that, the Authority shall be free to make any arrangements for provisioning of Fuel Farm facility and other allied and related services at the Airport till COD of the Project to ensure continuity of services at the Airport, and the Concessionaire shall have exclusive right, license and authority to operate and maintain the Fuel Farm Facility and the Hydrant Refuelling System and any other associated or incidental services only from COD of such facilities, and the Concessionaire shall have no right or claim against Authority exercising its rights under the provisions of this Clause 3.1.1.

- 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 license to the Site for the purpose of and to the extent conferred by the provisions of this Agreement;
 - (b) design, finance and construct the Project;
 - (c) operate, manage and maintain the Project and regulate the use thereof by third parties;

- (d) demand, collect and appropriate Fee from Users liable for payment of Fee for using the Project or any part thereof and refuse use of Project by any User if the Fee due is not paid;
- (e) perform and fulfil all of the Concessionaire's obligations under and in accordance with this Agreement;
- (f) save as otherwise expressly provided in this Agreement, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement; and
- (g) neither assign, transfer or sublet or create any lien or encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement.

ARTICLE – 4

4. CONDITIONS PRECEDENT

4.1. Conditions Precedent

4.1.1. Save and except as expressly provided in Articles- 4, 5, 6, 7, 8, 9, 10, 21, 27, 37 and 38, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the “Conditions Precedent”). Provided, however, that a Party may grant waiver from satisfaction of any Condition Precedent by the other Party in accordance with the provisions of Clauses 4.1.2 or 4.1.3, as the case may be, and to the extent of such waiver, that Condition Precedent shall be deemed to be fulfilled for the purposes of this Clause 4.1.1.

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

- a. procured for the Concessionaire the Right of Way to the Site in accordance with the provisions of Clauses 10.3.1 and 10.3.2;
- b. caused the execution of the following relevant agreements:
 - i. Escrow agreement in the form provided in **Schedule P**
 - ii. Substitution Agreement in the form provided in **Schedule S**

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

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

- a. provided Performance Security to the Authority;
- b. executed and procured execution of the Escrow Agreement in the form provided in **Schedule P**;

- c. executed and procured execution of the Substitution Agreement in the form provided in **Schedule S**;
- d. procured all the Applicable Permits as 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;
- e. executed the Financing Agreement for the Project and delivered to the Authority 3 (three) true copies thereof, duly attested by the person authorized by the Board of a Directors of the Concessionaire;
- f. delivered to the Authority 3 (three) true copies of the Financial Package and the Financial Model, duly attested by the person authorized by the Board of Directors 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;
- g. delivered to the Authority {from the selected bidder/ Consortium Members, their/its respective} confirmation of the correctness of the representations and warranties set forth in Sub-clauses (j), (k), (l) and (m) of Clause 7.1 of this Agreement;
- h. 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;

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

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

4.2. Damages for delay by the Authority

In the event that (i) the Authority does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Authority shall pay to the Concessionaire Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum amount equal to the 30% (thirty per cent) of the amount of Performance Security.

4.3. Damages for delay by the Concessionaire

In the event that (i) the Concessionaire does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the period specified in that Clause, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.2 or other breach of this Agreement by the Authority or due to Force Majeure, the Concessionaire shall pay to the Authority Damages in an amount calculated at the rate of 0.3% (zero point three per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum amount equal to the 30% (thirty per cent) of the amount of Performance Security, and upon reaching such maximum, the Authority may, in its sole discretion and subject to the provisions of Clause 9.2, terminate the Agreement. Provided that in the event of delay by the Authority in procuring fulfilment of the Conditions Precedent specified in Clause 4.1.2, no Damages shall be due or payable by the Concessionaire under this Clause 4.3 until the date on which the Authority shall have procured fulfilment of the Conditions Precedent specified in Clause 4.1.2.

4.4. Deemed Termination upon delay

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

ARTICLE – 5

5. OBLIGATIONS OF THE CONCESSIONAIRE

5.1. Obligations of the Concessionaire

- 5.1.1. Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Project, in accordance with the provisions of this Agreement, and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2. The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.3. The Concessionaire shall, at all times during the subsistence of this Agreement, comply with all the conditions stipulated in the Applicable Permits/Approvals including In-Principle Approval or any substitute and/ or consequential approvals necessary to fulfil its obligations under this Agreement.
- 5.1.4. Save and except as otherwise provided in this Agreement or Applicable Laws, as the case may be, the Concessionaire shall, in discharge of all its obligations under this Agreement, conform with and adhere to Good Industry Practice at all times.
- 5.1.5. The Concessionaire shall, 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 Project from time to time at their own cost and with reasonable advance notice to the concessionaire.
- 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 Project, or in respect of the materials stored therein, which may be levied by any Government Instrumentality.
- 5.1.7. The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
 - a. make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits, other than those set forth in Clause 4.1.2, and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws;

- b. procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the Project;
 - c. perform and fulfil its obligations under the Financing Agreements;
 - d. make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
 - e. ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
 - f. always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner be violative of any of the provisions of this Agreement;
 - g. Submit ATF inventory, supply/ receipt and sale statement on monthly basis which may be cross-checked by Authority at site;
 - h. procure that all facilities within the Project 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. provide and realign the requisite operational wall/ perimeter road and associated facilities at its own cost as and when Authority provides direct entry from the city-side;
 - j. support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
 - k. transfer the Project Assets to the Authority upon Termination of this Agreement, in accordance with the provisions thereof.
- 5.1.8. The Concessionaire shall, from time to time, undertake expansion or augmentation of the Project in accordance with the provisions of this Agreement and Good Industry Practice.
- 5.1.9. The Concessionaire shall ensure that any Contractor appointed for undertaking construction of Project/part of the Project shall have experience of undertaking construction/development of at least one work of similar nature. The Concessionaire

shall furnish necessary particulars and details in this respect to the Authority before appointing such Contractor.

5.2. Obligations relating to Project Agreements

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

to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party(s) of each of the Project Agreements, where under such counter party(s) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.

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

5.3. Obligations relating to Change in Ownership

- 5.3.1. The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior written approval of the Authority.

- 5.3.2. Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that:

- a. all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of 25% (twenty-five per cent) or more of the total Equity of the Concessionaire; or
- b. acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him,

shall constitute a Change in Ownership requiring prior approval of the Authority / Government of India (as the case may be) from national security and public interest

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

For the purposes of this Clause 5.3.2:

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

5.4. Obligations relating to 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.

5.5. Obligations relating to employment of trained personnel

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

5.6. Obligations relating to security clearance

Notwithstanding anything to the contrary contained in this Agreement, the engagement of employees, staff and personnel of the Concessionaire and of its Contractors and subcontractors shall always be subject to security clearance by the Designated GOI Agency and only persons having a valid security clearance shall be permitted on the Site. For the avoidance of doubt, it is agreed that refusal of or inability to obtain any such permits and approvals by the Concessionaire or any of its contractors or subcontractors 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.

5.7. Obligations relating to non-discriminatory access

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

5.8. 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 Project equipped to render first aid and to assist in accessing emergency medical aid from hospitals in the vicinity.

5.9. Obligations relating to Capacity Augmentation

The Concessionaire shall, as soon there is an ATF offtake of more than 80% of Designed Capacity of the Project within any given period of 90 days during the term of this Agreement, prepare an augmentation plan for the Project and get it approved from the Authority and proceed with the capacity augmentation of the Project at its own cost

and expense (“**Capacity Augmentation**”). The Concessionaire shall prepare and submit the augmentation plan within 30 days of such capacity utilization and the Authority shall within 15 days thereafter agree or give its comments on the augmentation plan.

The Concessionaire shall complete the augmentation of the Project within a reasonable time as per mutually agreed timelines with the Authority. It is hereby clarified that any augmentation under this Clause 5.9 shall be in accordance with all the provisions of this Agreement and the Concessionaire shall comply with the provisions of this Agreement in respect to any capacity augmentation under this Clause 5.9.

5.10. Obligations Relating to Procurement of Goods and Services

5.10.1. The Concessionaire agrees and undertakes that it shall procure contracts, goods and services for the operations, management and development of the Project in a fair, transparent and efficient manner, and without any undue favour or discrimination in this behalf. In pursuance hereof, it shall, within 6 (six) months from the COD, 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 Users and all interested parties. The policy shall:

- a) be submitted for vetting by the Concessionaire to an independent legal counsel engaged by the Authority in order to determine if such policy is in accordance with the requirements of this Agreement.
 - i. the independent legal counsel shall complete such vetting and either:
 - a. communicate to the Authority and the Concessionaire its approval the policy, or
 - b. provide the Concessionaire with its comments, if any, thereon
- no later 15 (fifteen) days of the policy being submitted by the Concessionaire, failing which the policy shall be deemed to have been approved;
- ii. the Concessionaire shall revise the policy pursuant to the comments, if any, of such independent legal counsel;
 - iii. the provisions of this sub-clause (a) shall apply, mutatis mutandis, until the policy is approved by the independent legal counsel.

5.10.2. For procurement of goods, works, services, or any other rights or privilege where the consideration (including deposits in any form in respect thereof) exceeds Rs.10,00,00,000/- (Rupees Ten Crore) in any Accounting Year (collectively, the “Contracts”), the Concessionaire shall invite offers through open competitive bidding by means of e-tendering and shall select the awardees in accordance with the policy specified under Clause 5.10.1.

- 5.10.3. The Parties agree that the Concessionaire should pre-qualify and short-list the applicants in a fair and transparent manner for ensuring that only experienced and qualified applicants are finally selected on arm's length basis in a manner that is commercially prudent and protects the interests of the Users.
- 5.10.4. The Parties further agree that the Concessionaire may only enter into any Related Party Transaction or a Contract with any Related Party if it is permitted under the Companies Act 2013.

5.11. Sole purpose of the Concessionaire

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

ARTICLE – 6

6. OBLIGATIONS OF THE AUTHORITY

6.1. Obligations of the Authority

- 6.1.1. The Authority shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 6.1.2. The Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and Applicable Laws, the following:
- a) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for construction, operation and management of the Project, at the cost and expense of the Concessionaire;
 - b) upon written request from the Concessionaire, provide reasonable assistance to the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Concessionaire than those generally available to similar utility customers receiving substantially equivalent services;
 - c) procure that no barriers are erected or placed on or about the Project by any Government Instrumentality or persons claiming through or under it, except for reasons of Safety Requirements, Emergency, national security, or law and order;
 - d) 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;
 - e) support, cooperate with and facilitate the Concessionaire in the construction, operation and maintenance of the Project in accordance with the provisions of this Agreement and in accordance with Applicable Laws;
 - f) upon written request from the Concessionaire and subject to the provisions of Clause 5.7, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for discharging their respective obligations under this Agreement and the Project Agreements;
 - g) assist the Concessionaire in procuring at Concessionaire's cost, Right of Way for setting up of water pipes and electric cables to the Site;

- h) endeavour, on a best effort basis, to provide direct entry from the city-side;
- i) undertake expansion of the apron as per Authority's assessment of the apron requirements; and
- j) allocate separate area to the new ITP operator appointed by the Authority as per directives of the Regulator.

6.2. Maintenance obligations prior to Appointed Date

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

6.3. Obligations relating to refinancing

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

ARTICLE – 7

7. REPRESENTATIONS AND WARRANTIES

7.1. Representations and warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

- a) it is duly organized 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 authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- c) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- f) the information furnished in the Bid by the Selected Bidder and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- g) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- h) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such

proceedings that would adversely affect the performance of its obligations under this Agreement;

- i) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- j) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3; and that the {selected bidder/ 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 until 7th anniversary of the COD of the Project; and that no Consortium Member whose technical and financial capacity was evaluated for the purposes of pre-qualification and short-listing in response to the Request for Qualification cum Proposal shall together {with its/their Associates}, for a period of 7 (seven) years from the COD of the Project, hold less than 26% (twenty-six per cent) of such Equity, failing which the Concession Agreement is liable to be terminated;
- k) {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;
- l) {the Selected bidder / each Consortium Member} is duly organized and validly existing under the laws of the jurisdiction of its incorporation or registration, as the case may be, and has requested the Authority to enter into this Agreement with the Concessionaire pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- m) all its rights and interests in the Project 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;
- n) 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;

- o) 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;
- p) 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; and
- q) 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.
- r) 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.

7.2. Representations and warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

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

- f) it has complied with Applicable Laws in all material respects; and
- g) it has good and valid right to the Site, and has power and authority to grant a license in respect thereto to the Concessionaire.

7.3. Disclosure

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

ARTICLE – 8

8. DISCLAIMER

8.1. Disclaimer

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

Part III

Development and Operations

ARTICLE – 9

9. PERFORMANCE SECURITY

9.1. Performance Security

9.1.1. The Performance Security for this Concession Agreement include:

- a. “Construction Performance Security” in the form of Bank Guarantee, for “Construction Period”;
- b. “Operation Performance Security” in the form of Bank Guarantee, for “Operation Period”;

9.1.2. The Concessionaire has, for the performance of its obligations, provided to the Authority an irrevocable and unconditional guarantee of Construction Performance Security in accordance with Clause 4.1.3, valid from the Appointed Date for a period of [36] months from a Bank for an amount of Rs. **25,00,00,000/- (Rupees Twenty-Five Crores only)** or 5% of Total Project Cost (whichever is higher) in the form set forth in **Schedule-F** (the “Construction Performance Security”). The Performance Security shall remain in force and shall be kept in effect by the Concessionaire, during the subsistence of the Concession Agreement and 6 (six) months thereafter.

9.1.3. The Selected Bidder / Concessionaire shall keep the Construction Performance Security, valid at all times during the stipulated period of 36 months from the Appointed Date and any other extended period beyond 36 months, as required by the Authority. The Concessionaire shall renew it 30 (thirty) days prior to the expiry of its validity, as applicable;

9.1.4. The Concessionaire shall provide an Operation Performance Security in the form of Bank Guarantee (the "Operation Performance Security"), no later than 15 days from the Commercial Operation Date (i.e. Phase-I commissioning), for an amount of **Rs. 25,00,00,000/- (Rupees Twenty-Five Crores only)** payable for a period of 3 consecutive years. A renewed Operation Performance Security is to be submitted every third year as specified in Clause 9.1.4 (b), for next three years.

- a. The Concessionaire’s failure to provide /and or maintain the Operation Performance Security, in accordance with the provisions of this Article 9.1 shall (i) entitle the Authority to call in and invoke the Construction Performance Security / subsisting Operation Performance Security, as the case may be and retain and appropriate the

same; and (ii) constitute the same as a Concessionaire Default entitling the Authority to Terminate this Agreement under the provision hereof;

- b. The Selected Bidder / Concessionaire shall keep the Operation Performance Security, valid at all times during the concession period and renew it 30 (thirty) days prior to the expiry of its validity, as applicable;
 - i. Interest @12% per annum on performance guarantee amount will be levied (Non-refundable) for a maximum period of 30 days and shall be deducted from the first bill payable to the Contractor.
 - ii. After delay of 60 days from the date of issue of Purchase Order, AAI reserves the right to forfeit the EMD submitted by the bidder beside debarment and blacklisting of the bidder without assigning any reasons thereof.

9.1.5. Notwithstanding anything to the contrary contained in this Agreement, in the event Construction Performance Security is not provided by the Concessionaire within a period of 180 (one hundred and eighty) days from the date of the LOA or the failure of the Concessionaire to fulfil the Conditions Precedent, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

9.1.6. After completion of the Project (i.e. Phase-II commissioning), the value of the Operation Performance Security shall be revised to an amount equal to 5% (five percent) of the Total Project Cost or Rs. [*] (Rupees _____ only), whichever is higher.

9.2. Appropriation of Performance Security

- 9.2.1. In the event of the Concessionaire being in default in the due and faithful performance of its obligations under this Agreement and failing to remedy such default within the Cure Period, the Authority shall without prejudice to its other rights and remedies hereunder be entitled to encash and appropriate the Performance Security (for Construction Period or Operation period, as the case may be) the amounts due to it for and in respect of such Concessionaire default as Damages for such default. Upon such encashment and appropriation from the Performance Security, Authority shall grant a period of 15 (fifteen) days to the Concessionaire to provide fresh Performance Security or replenish the same, as the case may be, and the Concessionaire shall within the time so granted furnish or replenish to Authority such Performance Security failing which Authority shall be entitled to terminate this Agreement under Clause 30.1.

- 9.2.2. Notwithstanding anything to the contrary contained in clause 9.2.1, upon furnishing of fresh Performance Security or replenishing the same in accordance with clause 9.2.1, the Concessionaire shall be granted an additional period of 60 (Sixty) days as Cure Period for remedying the defaults and complying with his obligations under this Agreement. In the event of the Concessionaire continuing to be in breach of the provisions of this Agreement after such Cure Period, Authority shall be entitled to terminate this Agreement under the provisions of Clause 30.1.

9.3. Release of Performance Security

- a. Upon provision of the Operation Performance Security pursuant hereto, the Authority shall release the Construction Performance Security to the Concessionaire in terms hereof.
- b. The Authority shall release the Operation Performance Security forthwith, upon expiry of 150 (one hundred and fifty) days from the Transfer Date, subject however to deductions towards any outstanding amount payable to Authority by Concessionaire in terms hereof.
- c. The Performance Security shall remain in force and effect by the Concessionaire, throughout the Concession Period. Upon request made by the Concessionaire for release of the Performance Security along with the particulars which establish satisfaction of the requirements, the Authority shall release the Performance Security forthwith.

ARTICLE – 10

10. RIGHT OF WAY

10.1. The Site

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

Provided however that, it is hereby clarified that the Site of the Project shall not include the real estate required for construction and laying of pipelines for Hydrant Refuelling System and the Concessionaire shall not have exclusive licence over the real estate required for construction and laying of pipelines for Hydrant Refuelling System, and any right of the Concessionaire over such real estate shall always be subject to and in derogation to, the right of the Authority over such real estate.

10.2. License, Access and Right of Way

10.2.1. The Authority hereby grants to the Concessionaire, subject to security restrictions and other terms of this Agreement, access to the Site for carrying out any surveys, investigations and soil tests that the Concessionaire may deem necessary during the Development Period, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Concessionaire on or about the Site pursuant hereto in the event of Termination or otherwise.

10.2.2. In consideration of the License Fee and Revenue Share, 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 license rights in respect of all the land comprising the Site which is described, delineated and shown in Schedule-A hereto as the Site, on an “as is where is” basis, free of any Encumbrances, to develop, operate and maintain the said Site, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Site, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.

10.2.3. The license, 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 Project 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 license granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the license, 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, the license in respect of the Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.

10.2.5. The Concessionaire hereby irrevocably appoints the Authority (acting directly or through a nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the license 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 authorized officer of the Authority, and the Concessionaire consents to it being registered for this purpose.

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. Signing of the memorandum, in 2 (two) counterparts (each of which shall constitute an original), by the authorized representatives of the Parties shall, subject to the provisions of Clause 10.2.2, be deemed to constitute a valid license 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.

10.3.2. On and after signing the memorandum referred to in Clause 10.3.1, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over such portion of the Site as has been handed over to the Concessionaire and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.

10.4. Site to be free from Encumbrances

Subject to the provisions of Clause 10.3, the Site shall be made available by the Authority to the Concessionaire pursuant hereto free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to the

Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Concession Period, except insofar as otherwise expressly provided in this Agreement. For the avoidance of doubt, it is agreed that existing rights of way, easements, privileges, liberties and appurtenances to the Site shall not be deemed to be Encumbrances. It is further agreed that the Concessionaire accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Site.

10.5. Protection of Site from Encumbrances

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

10.6. Special / temporary right of way

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

10.7. Access to the Authority and Independent Engineer

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

10.8. Geological and archaeological finds

It is expressly agreed that mining, geological or archaeological rights do not form part of the license granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Site shall vest in and belong to the Authority or the concerned Government Instrumentality. The Concessionaire shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Authority forthwith of the discovery thereof and comply with such instructions as the Authority or the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Concessionaire hereunder shall be reimbursed by the Authority. It is also agreed that

the Authority shall procure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period so as to enable the Concessionaire to continue its Construction Works with such modifications as may be deemed necessary.

10.9. Additional Land

- 10.9.1. Concessionaire may request the Authority for additional real estate (“**Additional Site**”) for operational requirement like for ITP Depot, ITP Parking, truck parking area, etc.
- 10.9.2. The Authority, upon receipt of such request, may provide such Additional Site to the Concessionaire subject to availability and provisions of clause 22.1.2 of this Agreement.

ARTICLE - 11

11. UTILITIES, ASSOCIATED ROADS AND TREES

11.1. Existing utilities and roads

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

11.2. Shifting of obstructing utilities

11.2.1. The Concessionaire shall, subject to Applicable Laws and with assistance of the Authority, undertake shifting of any utility including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Site if and only if such utility causes or shall cause a Material Adverse Effect on the development, operation or maintenance of the Project. The cost of such shifting shall be borne by the Authority in accordance with the payment terms specified in Clause 11.2.2, or by the entity owning such utility, if the Authority so directs, and in the event of any delay in shifting thereof, the Concessionaire shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay on the part of the entity owning such electric lines, water pipes or telephone cables, as the case may be.

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

11.3. Felling of trees

11.3.1. 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 Project. In the event of any delay in felling thereof for reasons beyond the control of the Concessionaire, it shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay in the felling of trees. For the avoidance of doubt, the costs and expense in respect of felling of trees shall be borne by the Concessionaire and any revenues thereof shall be paid to the Authority.

ARTICLE – 12

12. CONSTRUCTION OF THE PROJECT

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 authorized to deal with the Authority and the Independent Engineer in respect of all matters under or arising out of or relating to this Agreement;
- (c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, Applicable Laws and Applicable Permits; and

12.2. Drawings

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

- (a) The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion, 3 (three) three hard copies and 1 (one) soft copy of Drawings to the Independent Engineer for review.
- (b) By submitting the Drawings for review to the Independent Engineer, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering, are in conformity with the Scope of the Project, Specifications and Standards, Applicable Laws and Good Industry Practice.
- (c) Within 15 (fifteen) days of the receipt of the Drawings, the Independent Engineer shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. The Concessionaire shall not be obliged to await the observations of the Independent Engineer on the Drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin or continue Construction Works at its own discretion and risk.

- (d) If the aforesaid observations of the Independent Engineer indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the Concessionaire and resubmitted to the Independent Engineer for review. The Independent Engineer shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings.
- (e) No review and / or observation of the Independent Engineer and/or its failure to review and/or convey its observations on any Drawings shall not relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Engineer or the Authority be liable for the same in any manner.
- (f) Within 90 (ninety) days of COD, the Concessionaire shall furnish to the Authority and the Independent Engineer a complete set of as-built Drawings, in 2 (two) hard copies and in its editable digital format or in such other medium and manner as may be acceptable to the Authority, reflecting the Project as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of Project Facilities.

12.3. Construction of the Project

- 12.3.1. On or after the Appointed Date, the Concessionaire shall undertake construction of the Project as specified in Schedule-B and Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D. The 730th (Seven hundred thirtieth) day from the Appointed Date shall be the scheduled date for completion of Phase I of the Project (the “Scheduled Completion Date for Phase I”) and 1095th (One thousand and ninety fifth) day 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 Project shall be completed on or before the Scheduled Completion Date.
- 12.3.2. The Concessionaire shall construct the Project in accordance with the Project Completion Schedule set forth in Schedule-G. In the event that the Concessionaire fails to achieve any Project Milestone defined for the Project within a period of 90 (ninety) days from the date set forth for such Project Milestone in Schedule-G, unless such failure has occurred due to Force Majeure or for reasons attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Construction Performance Security for delay of each day until such Project Milestone is achieved; provided that if any or all Project Milestones or the Scheduled Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-G shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-G has been

amended as above; provided further that in the event COD for the Project is achieved on or before the Scheduled Completion Date, the Damages paid under this Clause 12.3.2 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 12.3.2 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

- 12.3.3. In the event that the Project is not completed and COD of Phase I or COD of the Project does not occur within [180] (one hundred and eighty) days from the Scheduled Completion Date for Phase I or Scheduled Completion Date for the Project, as the case may be, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.

ARTICLE – 13

13. MONITORING OF CONSTRUCTION

13.1. Monthly progress reports

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

13.2. Inspection

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

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 as per PESO standards and guidelines, at such time and frequency and in such manner as may be specified by PESO from time to time, in accordance with Good Industry Practice, Applicable Laws, Applicable Permits and terms of this Agreement for quality assurance. The size of sample for such tests shall, to the extent possible, not exceed 10% (ten per cent) of the quantity and/or number of tests that the owner or builder of such works would normally undertake in accordance with PESO standards and guidelines, Good Industry Practice, Applicable Laws, Applicable Permits and terms of this Agreement. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests in accordance with PESO standards and guidelines and furnish the results thereof to the Independent Engineer. Provided, however, that the Independent Engineer may, instead of carrying out the tests specified hereunder, at its option decide to witness, or participate in, any of the tests to be undertaken by the Concessionaire for its own quality assurance in accordance with

Good Industry Practice, and in such an event, the Concessionaire shall cooperate with, and provide the necessary assistance to, the Independent Engineer for discharging its functions hereunder. For the avoidance of doubt, the costs to be incurred on any test which is undertaken for determining the rectification of any defect or deficiency in construction shall be borne solely by the Concessionaire.

- 13.3.2. In the event that results of any tests conducted under this Clause 13.3 establish any defects or deficiencies in the Construction Works, the Concessionaire shall carry out remedial measures and furnish a report to the Independent Engineer in this behalf. The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests to determine that such remedial measures have brought the Construction Works into compliance with the Specifications and Standards, and the procedure set forth in this Clause 13.3 shall be repeated until such Construction Works conform to the Specifications and Standards. For the avoidance of doubt, it is agreed that tests pursuant to this Clause 13.3 shall be undertaken in addition to and independent of the tests that shall be carried out by the Concessionaire for its own quality assurance in accordance with PESO standards and guidelines and 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 12.3.2, 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 Project is not likely to be completed by the Scheduled Completion Date, notify the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Authority and the Independent Engineer in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve COD.

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 Project. 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 27.7, 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.

ARTICLE – 14

14. COMPLETION CERTIFICATE

14.1. Tests

- 14.1.1. No later than 90 (ninety) days prior to the likely completion of the Phase I of the Project or the Project, as the case may be, the Concessionaire shall notify the Authority and the Independent Engineer of its intent to subject the Phase I of the Project or the Project, as the case may be, to Tests. The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Concessionaire and in accordance with PESO standards and guidelines, 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 at the cost and expense of the Concessionaire. The Independent Engineer shall observe, monitor and review the results of the Tests to determine compliance of Phase I of the Project or the Project, as the case may be, 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 Phase I of the Project or the Project, as the case may be, or any part thereof does not meet the Specifications and Standards, Applicable Laws, Applicable Permits and terms of this agreement, it shall have the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Independent Engineer shall provide to the Concessionaire and the Authority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent Engineer may require the Concessionaire to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Phase I of the Project or the Project, as the case may be, with Specifications and Standards, Applicable Laws, Applicable Permits and terms of this agreement.

14.2. Completion Certificate

Upon completion of the Construction Works for Phase I of the Project or the Project, as the case may be, 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 for Phase I” or “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 for Phase I” or “Provisional Certificate”) if the Tests are successful and the Phase I of the Project or the Project, as the case may be, can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. In such an event, the Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire (the “Punch List”); provided that the Independent Engineer shall not withhold the Provisional Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the Authority.
- 14.3.2. The Parties hereto expressly agree that a Provisional Certificate under this Clause 14.3 may, upon request of the Concessionaire to this effect, be issued for operating part of the Phase I of the Project or the Project, as the case may be, 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 for Phase I or the Project, as the case may be, the provisions of this Agreement shall apply to such completed part of the Phase I of the Project or the Project, as the case may be, and the rights and obligations of the Concessionaire for and in respect of such completed part of the Project 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 for Phase I or Provisional Certificate, as the case may be, 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 Phase I or Provisional Certificate, as the case may be, for the purposes of Damages, if any, payable for such item under this Clause 14.4.1.

- 14.4.2. Upon completion of all Punch List items, the Independent Engineer shall conduct tests, if required and issue the Completion Certificate for Phase I or Completion Certificate, as the case may be. Failure of the Concessionaire to complete all the Punch List items within the time set forth in Clause 14.4.1 for any reason, other than conditions constituting Force Majeure or for reasons solely attributable to the Authority, shall entitle the Authority to terminate this Agreement.

14.5. Withholding of Provisional or Completion Certificate

- 14.5.1. If the Independent Engineer determines that the Phase I of the Project or the Project, as the case may be, 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 Phase I of the Project or the Project, as the case may be, 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 Phase I of the Project or the Project, as the case may be, and direct the Independent Engineer to withhold issuance of the Provisional Certificate for Phase I Provisional Certificate, as the case may be, or Completion Certificate for Phase I or Completion Certificate, as the case may be. Upon receipt of such notice, the Concessionaire shall remedy and rectify such defects or deficiencies and thereupon Tests shall be undertaken in accordance with this Article 14. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.
- 14.5.2. Notwithstanding anything to the contrary contained in Clause 14.5.1, the Authority may, at any time after receiving a report from the Independent Engineer under that Clause, direct the Independent Engineer to issue a Provisional Certificate for Phase I or Provisional Certificate, as the case may be, under Clause 14.3 or Completion Certificate for Phase I or Completion Certificate, as the case may be, under Clause 14.2, and such direction shall be complied forthwith.

14.6. Rescheduling of Tests

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

ARTICLE – 15

15. ENTRY INTO COMMERCIAL SERVICE

15.1. Commercial Operation Date (COD)

15.1.1. The Phase I of the Project or the Project, as the case may be, shall be deemed to be complete when the Completion Certificate for Phase I or Completion Certificate, or the Provisional certificate for Phase I or Provisional Certificate, as the case may be, is issued under the provision of Article 14, and accordingly the commercial operation date of Phase I of the Project or the Project, as the case may be, shall be the date on which such Completion Certificate for Phase I or Completion Certificate or the Provisional Certificate for Phase I or Provisional Certificate is issued and the Concessionaire shall have obtained the Applicable Permits (“the COD for Phase I” or “COD”). The Phase I of the Project or the Project shall enter into commercial service on COD for Phase I or COD, as the case may be, whereupon the Concessionaire shall be entitled to demand and collect Fee in accordance with the provisions of Article 23.

15.1.2. In the event that the Authority prevents, or causes to be prevented, or in any manner delays the entry of the Phase I of the Project or the Project into commercial service after issuance of Completion Certificate or the Provisional Certificate, as the case may be, or where such delay occurs in the issuance of such certificate by the Independent Engineer for any reason attributable to the Independent Engineer or the Authority, as the case may be, the Concessionaire may declare COD for Phase I or COD, as the case may be, and notify the Authority forthwith. In the event of any Dispute relating to the declaration of COD for Phase I or COD, as the case may be, hereunder, the Dispute Resolution Procedure shall apply.

15.2. Damages for delay

If COD for Phase I or COD, as the case may be, does not occur prior to the 91st (ninety first) day after the Scheduled Completion Date for Phase I of the Project or for the Project, as the case may be, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Construction Performance Security for delay of each day until COD for Phase I or COD, as the case may be, is achieved.

ARTICLE – 16

16. CHANGE OF SCOPE

16.1. Change of Scope

- 16.1.1. Notwithstanding anything to the contrary contained in this Agreement, any addition to or omission from the obligations forming part of the Scope of the Project shall be considered as change of scope (“**Change of Scope**”). Any Change of Scope shall be made in accordance with the provisions of this Article 16.
- 16.1.2. If the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved services to the users, it shall by notice in writing, require the Authority to consider such Change of Scope. The Authority shall, within 15 (fifteen) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings there for in accordance with this Article 16 or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope.
- 16.1.3. Any works or services which are performed as a Change of Scope in accordance with this Article 16 shall form part of the Project and the provisions of this Agreement shall apply *mutatis mutandis* to such works or services.
- 16.1.4. The Concessionaire acknowledges and agree that any expansion of the Project, which is necessary for compliance of the provisions of this Agreement, including Safety requirements, 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, the Authority determining that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder (“**Change of Scope Notice**”).
- 16.2.2. Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary Documentation in support of:
- (a) the impact, if any, which the Change of Scope is likely to have on the 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.

- 16.2.3. Upon receipt of information set forth in Clause 16.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Concessionaire, and the Parties shall, with assistance of the Independent Engineer, thereupon make good faith efforts to agree upon the manner of the implementation of the Change of Scope. Upon reaching an agreement, the Authority shall issue an order (“**Change of Scope Order**”) requiring the Concessionaire to proceed with the performance thereof. In the event, the Parties are unable to agree, the Authority may, by issuing a Change of Scope Order, require the Concessionaire to proceed with the performance thereof pending resolution of the Dispute.
- 16.2.4. The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to the works undertaken by the Concessionaire as a Change of Scope under this Article 16.

Any such Change of Scope shall be made in accordance with the provisions of this Article 16 subject to the approval of the Regulator, including with respect to decision of the Regulator for determination of the tariff. The Authority shall not make any payment to the Concessionaire with regard to works or services forming part of the Change of Scope.

16.3. Power of the Authority to undertake works and services

- 16.3.1. Notwithstanding anything to the contrary contained in this Article 16, the Authority may, after giving notice to the Concessionaire and considering its reply thereto, award any works or services forming part of the Change of Scope, to any person on the basis of open competitive bidding, provided that the Concessionaire has the option of participating in the bid process, subject to payment of 2.50% (two point five zero percent) of the estimated cost of such works or services, to the Authority. The Concessionaire shall be entitled to exercise such one-time option only if it has participated in the bidding process and its bid is within 10% (ten percent) of the first ranked bid thereof. If the Concessionaire is not implementing any such works or services, the Concessionaire shall provide access, assistance and cooperation to the person who undertakes the works or services hereunder.
- 16.3.2. The works or services undertaken in accordance with this Clause 16.3 shall conform to the Specifications and Standards and shall be carried out in a manner that minimises disruption in the operations, management and development of the Project. The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to the works carried out under this Clause 16.3.

16.4. Costs for implementation of Change of Scope

Notwithstanding the award of the works or services forming part of the Change of Scope to the Concessionaire or otherwise pursuant to this Article 16, any costs incurred by the Authority herein, shall be informed by the Authority to the Concessionaire on the completion of such works or services. The Concessionaire shall submit a statement of such costs along with its application for the determination of the tariff to the Regulator, and pay to the Authority, all such amounts in 6 (six) equal monthly instalments thereof.

ARTICLE – 17

17. OPERATION AND MAINTENANCE

17.1. O&M obligations of the Concessionaire

17.1.1. During the Operation Period, the Concessionaire shall operate and maintain the Project in accordance with this Agreement, Applicable Laws and Applicable Permits either by itself, or through O&M Contractors and if required, modify, repair or otherwise make improvements to the Project 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) collecting and appropriating the Fee;
- (b) minimizing disruption to movement of Users and flow of traffic in the event of accidents or other incidents affecting the safety and use of the Project by providing a rapid and effective response and maintaining liaison with emergency services of the State;
- (c) carrying out periodic preventive maintenance of the Project;
- (d) undertaking routine maintenance including prompt repairs of cracks, joints, drainage systems, embankments, structures, buildings, pavement markings, signaling systems, communication systems, lighting, road signs and other equipment;
- (e) undertaking major maintenance such as repairs to structures, repairs and refurbishment of equipment, signaling and communication system and major overhaul of equipment;
- (f) complying with Safety Requirements in accordance with Article 18;
- (g) operation and maintenance of all Project Assets diligently and efficiently and in accordance with Good Industry Practice;
- (h) maintaining punctuality and reliability in operating the Project;
- (i) taking all measures relating to fire precautions in accordance with relevant ICAO standards, Applicable Laws, Applicable Permits and Good Industry Practice; and

- (j) providing all the requisite information, data, operating statistics, etc., as may be required by the Authority, any of the Government Instrumentality, DGCA, GoT or GOI, from time to time.

17.1.2. The Concessionaire shall promptly remove from the Site 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 Project in a clean, tidy and orderly condition, and in conformity with Applicable Laws, Applicable Permits and Good Industry Practice.

17.1.3. Operations

The Concessionaire shall, on and from the COD for Phase I or COD, as the case may be, till the date of expiration of the Concession Period undertake operations and provide services to the Users on open access basis, in respect of:

- (a) the Fuel Farm Facility and Hydrant Refueling System; and
- (b) ITP Services.

17.1.3.1. At any time during the Concession Period, the Authority shall have the right to appoint (1) one or more ITP Service Providers, if so required by the Regulator. The Concessionaire shall not be entitled to any compensation from Authority, in case the Authority elects to appoint any ITP Service Provider in terms of this Agreement.

17.1.4. ITP Services – Service Standards

17.1.4.1. The Concessionaire shall provide the ITP Services on behalf of the Users, in accordance with the terms and conditions of this Agreement and the Project Agreement executed with various Users, including without limitation, any service levels agreed to between the Users and the Concessionaire.

17.1.4.2. The Concessionaire shall ensure that prior to the COD, it shall have procured and mobilized the necessary Aviation Fueling Equipment as may be required for providing ITP Services in a timely and efficient manner and in terms of the Good Industry Practice and the Applicable Laws, as applicable, from time to time.

17.1.4.3. During the Concession Period, it shall be the obligation of the Concessionaire to ensure that the demand for the ITP Services is met at all times, except on account of occurrence of Force Majeure Event. Non-fulfilment of such obligation, would also amount to an event of Default in terms of this Agreement.

17.1.4.4. The Concessionaire shall render the ITP Services to the Users in compliance with the KPI- ITP Services as set out in **Schedule-L**.

17.1.4.5. The Concessionaire shall be liable to pay damages at the rate of 0.1% (point one percent) of Operation Performance Security per week for non-compliance or failure to meet the KPI-ITP as set out in Schedule-L.

17.1.5. ATF Supply

17.1.5.1. The Concessionaire shall, at all times, maintain complete and accurate ATF inventory records on a current and up-to-date basis in accordance with Good Industry Practice and the Applicable Laws.

17.1.5.2. The Concessionaire shall ensure that the ATF delivered into, stored and supplied from the Fuel Farm Facilities are of the quality and meet the specifications and requirements under Applicable Laws and Good Industry Practice, as applicable from time to time.

17.1.5.3. The Concessionaire shall implement practices, procedures and controls in accordance with Good Industry Practice (including by incorporating necessary terms in its agreements with the Users) to ensure that quality of ATF is maintained and that, at all times, there is sufficient quantity to meet the ATF requirements at the Airport. The Concessionaire shall provide to AAI, on a Monthly basis, details of quantity of ATF available at the Fuel Farm Facility, together with records and accounts pertaining to ATF inventory at the Fuel Farm Facility. If, at any time, the quantity and quality of ATF at the Fuel Farm Facility is reasonably expected to be insufficient to meet the requirements at the Airport, the Concessionaire shall intimate AAI sufficiently in advance and take necessary remedial steps and comply with the directions of AAI (if any) in this regard. Notwithstanding anything to the contrary herein, AAI shall be entitled to disclose the details of ATF records and inventory to the Users, the Relevant Authorities or any other person at any time only on a need-to-know basis.

17.1.5.4. The Concessionaire shall ensure that ATF delivered into the Fuel Farm Facility will be permitted to be stored for a fixed period of time for providing ITP Services as per the User Agreement. In no event shall the Fuel Farm Facility be used for long-term storage of ATF or for any fuel other than ATF. Without prejudice to any of its rights under this Agreement and the Applicable Laws, in the event of misuse of the Fuel Farm Facility for long-term storage of ATF or for storage of any fuel other than ATF, AAI shall have the right to immediately terminate this Agreement on account of the Concessionaire Default.

17.1.5.5. ATF shall be stored in the Fuel Farm Facility in a co-mingled state and the Concessionaire shall not segregate or distinguish deliveries of ATF into separate storage.

17.1.6. Fuel Farm Facility - Service Standards

17.1.6.1. The Concessionaire shall ensure that operations and services in respect of the Fuel Farm Facility are undertaken:

- (a) in a manner that complies with the Applicable Laws (including the requirements of Relevant Authorities) and Good Industry Practice;
- (b) in an efficient, prudent and economical manner with the objective of keeping the operating costs to a minimum; and
- (c) in a manner that will promote the safe, and efficient movement of air traffic and other operations at the Airport and in a manner as to not disrupt or interfere with the activities, work or operations carried out by AAI or any other person at the Airport.

17.1.6.2. The Concessionaire shall at all times, employ and engage such experienced, trained, competent and or specialized personnel as may be necessary for undertaking the operations of the Fuel Farm Facility and rendering services and, otherwise, for the proper observance and performance of all of its obligations and liabilities hereunder, and shall be solely responsible for such personnel.

17.1.6.3. The Concessionaire shall ensure that the necessary and requisite security clearance is maintained at all times.

17.1.6.4. The Concessionaire shall ensure that, all contracts, including those entered into with the Users shall be on an arms-length basis.

17.1.6.5. The Concessionaire shall undertake the Fuel Farm Facility Services in compliance with the KPI- Fuel Farm Facility Services as set out in Schedule-L.

17.1.6.6. The Concessionaire shall be liable to pay damages at the rate of 0.1% (point one percent) of Operation Performance Security per week for non-compliance or failure to meet the KPI-Fuel Farm as set out in Schedule-L.

17.1.7 ISO Certification

The Concessionaire shall 30 (thirty) days prior to the COD, obtain and thereafter maintain throughout the Concession Period, necessary ISO 9001,14000 and 45001 certifications ("**ISO Certification**") for delivery, receipt and storage of ATF and provision of ITP Services at the Airport.

17.2. Maintenance Requirements

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

17.3. Maintenance Manual

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

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

17.4. Maintenance Programme

17.4.1. On or before COD for Phase I or COD, as the case may be, 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 Project;
- (e) intervals at which the Concessionaire shall carry out periodic maintenance;
- (f) arrangements and procedures for carrying out safety related measures; and
- (g) intervals for major maintenance works and the scope thereof.

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

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

17.5. Safety, breakdowns and accidents

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

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

17.6. De-commissioning due to Emergency

17.6.1. If, in the reasonable opinion of the Concessionaire, there exists an Emergency which warrants de-commissioning and closure of the whole or any part of the Project, the Concessionaire shall be entitled to de-commission and close the whole or any part of the Project 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 Project 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 Project and shall notify the Authority of the same without any delay.
- 17.6.3. Any decommissioning or closure of any part of the Project and the re-commissioning thereof shall, as soon as practicable, be brought to the notice of affected persons by means of public announcements/notice.
- 17.6.4. No claim or compensation shall be due and payable to the Concessionaire on account of de-commissioning or restricted use of the Project or any part thereof during an Emergency or for reasons of national security and public interest.

17.7. Damages for breach of maintenance obligations

- 17.7.1. In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the higher of (a) 0.5% (zero point five per cent) of Average Daily Revenue, and (b) 0.1% (zero point one per cent) of the cost of such repair or rectification as estimated by the Independent Engineer. Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.
- 17.7.2. The Damages set forth in Clause 17.7.1 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.

17.8. Authority's right to take remedial measures

- 17.8.1. 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% (twenty per cent) of such cost shall be paid by the Concessionaire to the Authority as Damages. For the avoidance of doubt, the right of the Authority under this Clause 17.8.1 shall be without prejudice to its rights and remedies provided under Clause 17.7.

- 17.8.2. The Authority has the right, to recover the costs and Damages specified in Clause 17.8.1 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 17.8.2 and debit the same to O&M Expenses.

17.9. Overriding powers of the Authority

- 17.9.1. 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.
- 17.9.2. In the event that the Concessionaire, upon notice under Clause 17.9.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Clause 17.9.2 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 17.8 along with the Damages specified therein.
- 17.9.3. In the event of a national emergency, civil commotion or any other act specified in Clause 27.3, 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 Project 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 27. 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 17.9, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

17.10. Restoration of loss or damage to the Project

Save and except as otherwise expressly provided in this Agreement, in the event that the Project 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 Project conforms to the provisions of this Agreement.

17.11. Modifications to the Project

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

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

17.12. Excuse from performance of obligations

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

- (a) an event of Force Majeure;

- (b) measures taken to ensure the safe use of the Project 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 Project.

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 Project open, provided they can be operated safely.

17.13. Barriers and diversions

The Authority shall procure that during the Operation Period, no barriers or obstructions are erected or placed by any Government Instrumentality on the Project except for reasons of Emergency, national security, or law and order.

17.14. Electricity and water supply

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

ARTICLE – 18

18. SAFETY REQUIREMENTS

18.1. Safety Requirements

The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Users and other persons on or about the Project. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project, 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”).

18.2. Expenditure on Safety Requirements

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

ARTICLE – 19

19. MONITORING OF OPERATION AND MAINTENANCE

19.1. Quarterly and Monthly status reports

At all times during the Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each quarter, furnish to the Authority and the Independent Engineer a monthly report, in a form acceptable to the Authority, stating in reasonable detail the condition of the Project including its compliance or otherwise with the Maintenance Requirements, Maintenance Manual, Maintenance Programme and Safety Requirements, and shall promptly give such other relevant information as may be required by the Independent Engineer or the Authority. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

19.2. Inspection

The Independent Engineer shall inspect the Project 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.

19.3. Tests

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

19.4. Remedial measures

- 19.4.1. The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Clause 19.3 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.

- 19.4.2. 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 Project into compliance with the Maintenance Requirements and the procedure set forth in this Clause 19.4 shall be repeated until the Project 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.

ARTICLE – 20

20. INDEPENDENT ENGINEER

20.1. Appointment of Independent Engineer

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

20.2. Duties and functions

20.2.1. The Independent Engineer shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule-O.

20.2.2. 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-O.

20.2.3. 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.

20.2.4. 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.

20.3. 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-N, one-half of all of such remuneration, cost and expenses shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receiving a statement of expenditure from the Authority.

20.4. Termination of appointment

20.4.1. 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 20.1.

20.4.2. 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 20.1.

20.5. Authorized 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.

20.6. 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.

20.7. 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 authorize 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 20.7 shall in any manner restrict the rights of the Authority to enforce compliance of the provisions of this Agreement.

Part IV

Financial Covenants

ARTICLE – 21

21. FINANCIAL CLOSE

21.1. Financial Close

21.1.1. The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 180 (one hundred and eighty) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding 120 (one hundred and twenty) days, subject to the submission of a written request describing the reasons for seeking such extension at least 15 (fifteen) days in advance and payment of Damages to the Authority in a sum calculated at the rate of 0.05% (zero point zero five per cent) of the Performance Security for each day of delay; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 180 ((one hundred and eighty) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred as a result of any default or delay by the Authority in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Concessionaire shall be in addition to the Damages, if any, due and payable under the provisions of Clause 4.3.

21.1.2. 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 the person authorized by the Board of Directors 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.

21.2. Termination due to failure to achieve Financial Close

21.2.1. Notwithstanding anything to the contrary contained in this Agreement, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 21.1.1 or the extended period provided thereunder or unless otherwise agreed between the Parties, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the Parties have, by mutual consent, determined the Appointed Date to precede the Financial Close, the provisions of this Clause 21.2.1 shall not apply.

21.2.2. Upon Termination under Clause 21.2.1, the Authority shall be entitled to encash the Construction Performance Security and appropriate the proceeds thereof as Damages; provided, however, that if Financial Close has not occurred due to Force Majeure or as a result of the Authority being in default of any of its obligations under Clause 4.2, it shall, upon Termination, release the Construction Performance Security, forthwith and Damages due and payable under Clause 4.2.

ARTICLE – 22

22. LICENSE FEE AND REVENUE SHARE

22.1. License Fee

22.1.1. In consideration of the grant of Concession, the Concessionaire shall pay to the Authority by way of license fee, on annual basis, ("**License Fee**") from the Appointed Date till the date of transfer of the Project to the Authority. The Concessionaire shall pay a sum of Rs. _____ (Rupee _____ only @ Rs. 9210 per sqm per year for the Site on or before the Appointed Date. The rate of License Fee shall be Rs. 9210 per sqm per year up to 31.03.2028 and thereafter escalation @ 15% every three years. The first such escalation will be applicable on the License Fee with effective from 01.04.2025. The License Fee shall be payable in advance for each year, net of any Taxes, on or prior to 7th day of each year starting from Appointed Date.

22.1.2. Subject to provisions of clause 10.9, License Fee shall be increased pro rata in proportion of the Additional Site provided to the Concessionaire.

22.2. Revenue Share

22.2.1. Upon execution of the Concession Agreement and in further consideration of the Authority providing license rights for the Site for the Project to the concessionaire and granting the rights and access set forth in this Agreement, the concessionaire shall pay to the Authority, a revenue share (the "Revenue Share") equal to ----% (----- per cent) of the Gross Revenue to be payable to Authority, during the Accounting Year, net of any Taxes, quoted by the Selected Bidder, during the Concession Period starting from COD for Phase I.

22.2.2.

- a) The Revenue Share of the forecasted Gross Revenue shall be due and payable in monthly instalments each to be paid every month for the respective Accounting Year. The Concessionaire shall from time to time cause the Escrow Bank to make payment of the monthly Revenue Share to the Authority in advance on or prior to the 7th day of each month by cheque /RTGS/NEFT in favour of the Authority. If the Authority does not receive the payment of every monthly Revenue Share due hereunder by the due date specified herein, the amount owed shall bear interest for the period starting on and including the due date for payment and ending on but excluding the date when payment is made, calculated as SBI MCLR plus 4%(four percent) per annum. Notwithstanding anything contained herein, the Concessionaire shall at all times be liable to pay the monthly Revenue Share in advance prior on or prior to the 7th day of each month.

- b) The Concessionaire shall submit the forecasted Gross Revenue for each Accounting Year to the Authority, 30 days prior to the commencement of the next Accounting Year. The monthly instalments for Revenue Share shall be calculated based on the forecasted Gross Revenue submitted by the Concessionaire for each year. For the Accounting Year in which the COD for Phase I or COD, as the case may be, is achieved, the forecasted Revenue Share for the year shall be submitted 30 days prior to COD for Phase I or COD, as the case may be.
- c) The actual Gross Revenue to be referred for final verification/reconciliation of the Revenue Share shall be the Gross Revenue of the Concessionaire as certified by the Independent Auditor at the end of every Accounting Year. The verification/reconciliation of the Revenue Share shall be completed within 60 days of the commencement of the next Accounting Year.
- d) In the event that in any Accounting Year if the actual Gross Revenue exceeds the forecasted Gross Revenue, then the Concessionaire shall pay to the Authority, the additional Revenue Share attributable to such difference within 75 days of the commencement of the next Accounting Year; and (ii) in the event that the forecasted Gross Revenue in any year exceeds the actual Gross Revenue, then the Authority shall pay to the Concessionaire such portion of the additional Revenue Share received as is attributable to the difference between the forecasted Gross Revenue and the actual Gross Revenue by the way of an adjustment against the Revenue Share payable by the Concessionaire to the Authority in the next Accounting Year.
- e) It is clarified that in the last year of the Concession Period, the additional Revenue Share attributable to the difference between the forecasted Gross Revenue and actual Gross Revenue based on the reconciliation/verification shall be payable by the Concessionaire or the Authority within 30 days at the end of the Concession Period as per the Escrow mechanism set forth in this Agreement.
- f) The Concessionaire shall not be granted any waiver in the Revenue share quoted as % of Gross Revenue by the Selected Bidder during any circumstances including change in the Taxes.
- g) For the avoidance of doubt, GST or any other tax applicable shall be borne by the Concessionaire over and above the accepted License Fee as per clause 22.1.
- h) In the event of delay up to 7 days from the due date in the payment of the License Fee, the Concessionaire shall be liable to pay to the Authority, interest on the due amount at the rate of SBI MCLR plus 4 % (four percent) per annum, for the period from the due date until the date of actual payment.

22.2.3. In the event of failure of the Concessionaire to pay the License Fee and/or Revenue Share within 90 days of the same becoming due, the outstanding License Fee and/or

Revenue Share shall be recovered from the Concessionaire along with penal charges duly appropriated from the performance security.

22.3. Invoice

- 22.3.1. Authority shall submit to the Concessionaire, invoices for the payment of the License Fee and Revenue Share, and these invoices shall also contain the amount of GST which is leviable on payment of the License Fee and Revenue Share under Applicable Law, at least 30 days prior to the date on which License Fee and Revenue Share are payable by the Concessionaire.

ARTICLE – 23

23. USER FEE

23.1. Collection of Fees by the Concessionaire

23.1.1. On and from COD for Phase 1 of the Project, and till the Transfer Date, the Concessionaire has the sole and exclusive right to demand, collect and appropriate Fees from the Users, in accordance with the provisions of this Agreement.

23.1.2. The Concessionaire acknowledges and agrees that upon payment of Fee, any User shall be entitled to use the respective specified facility of the Project, and the Concessionaire shall not place, or cause to be placed, any restriction on such use, except to the extent specified in any Applicable Laws, Applicable Permits or the provisions of this Agreement.

23.2. Principles of Determination and Revision of User Fee

23.2.1. The Parties hereto acknowledge and agree that any and all Fee that the Concessionaire can levy, collect and appropriate from a User shall be determined and revised by the Regulator, by way of an order by the Regulator, in accordance with the Regulatory Framework and this Agreement, pursuant to an application/ petition to be filed by the Parties in accordance with Applicable Laws. It is hereby clarified that the Concessionaire shall be solely responsible and obliged to make and provide all necessary applications, documents and other information required and necessary for determination and revision of User Fee by the Regulator.

23.2.2. Notwithstanding anything contrary contained elsewhere, the Concessionaire shall be entitled to levy, collect and appropriate the Fee with effect from the COD for Phase 1 of the Project, as per Clause 23.1 from the Users of the Project, at the rates of the tariff as approved by the Regulator. Provided that, in the event that the rates of tariff have not been determined by the Regulator for the Project as of the COD for Phase 1 of the Project, the Concessionaire shall be entitled to levy, collect and appropriate the Fee at the rates of the interim tariff allowed by the Regulator. Furthermore, in the event even the rates of interim tariff have not been determined by the Regulator for the Project as of the COD for Phase 1 of the Project, the Concessionaire shall be entitled to levy, collect and appropriate the Fee at the rates of the tariff being levied by the Authority or any service provider as of the COD for Phase 1 of the Project, until such time as the Regulator determines the rates of tariff or interim tariff.

23.2.3. The Concessionaire shall have no recourse whatsoever against the Authority, in respect of any aspect concerning the determination, levy, recovery (including under or over recovery) or appropriation of the Fee.

23.2.4. It is clarified that costs incurred by the Concessionaire with regard to Revenue Share, shall not be considered by the Regulator for the purpose of determining the Fee.

23.2.5. The tariff for new ITP operator, appointed by Authority as per directives of the Regulator, shall also be determined by the Regulator.

23.3. Restraint on revision of User Fee

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

23.3.2. The Parties agree and acknowledge that, in accordance with the directions issued by the Ministry of Civil Aviation, Government of India, vide letter dated 08.01.2020 on 'Rationalisation of Fuel Throughput Charges (FTC)', wherein it has been directed that 'levy of airport operator charge or fuel throughput charge in any manifestation shall be discontinued with immediate effect', the Concessionaire/Agency shall not, directly or indirectly, levy, recover, seek to pass through, or permit to be levied any such charges.

23.4. Review of Fee

23.4.1. The Fee to be levied, collected and appropriated, in accordance with the provisions of Article 23, shall be reviewed by the Regulator, once in every 5 (five) years, in accordance with the Regulatory Framework and this Agreement, provided, however, that such review shall not rely on, examine or consider any events, occurrence, circumstances or grounds for and respect of which revision in the Fee, the Concession Period or any other form of relief or remedy have been provided in this Agreement.

23.4.2. Additional costs, if any, or reduction thereof arising from Change of Scope, change in Specifications and Standards, or compliance with new obligations having the force of Applicable Law may be reviewed by the Regulator, for the purposes of revision of the Fee. Any such review by the Regulator shall include consideration of the revenues for and in respect of Project, in accordance with the Applicable Permits issued for the Project.

23.4.3. Any review of the Fee under the provisions of Clause 23.4.1, shall consider the revenues, adjustments, recoveries or payments, if any, that the Parties may have recovered or made in accordance with the provisions of this Agreement, and the Regulator may determine whether any further recoveries or payments, as the case may

be, are due to, or receivable from the Concessionaire. the Regulator may, as far as may be, give effect to its determination hereunder by an appropriate increase or decrease, as the case may be, in the rate of the Fee and for such period as it may specify, in accordance with the Regulatory Framework and this Agreement. Provided, however, that in the event the Regulator determines that any increase in the Fee is unjustified and prejudicial to the interests of Users, it may waive such increase fully or partly.

23.4.4. The Parties acknowledge that any review of the Fee under the provisions of this Clause 23.4, shall be undertaken in accordance with Applicable Laws and shall be regulated and proceeded accordingly.

23.5. Certain limitations on increase in User Fee

23.5.1. In the event any capital cost is required to be incurred in pursuance of the provisions of Clause 23.4.2, the Concessionaire shall submit the specifications and costs in respect thereof to the Regulator for its scrutiny in consultation with the affected Users or their representative bodies. Upon completion of such scrutiny and consultations, the Regulator shall determine the capital cost required to be incurred by the Concessionaire as per Applicable Laws.

23.5.2. The Concessionaire shall undertake and complete the Construction Works for the Capacity augmentation in accordance with the approval granted by the Regulator and Authority, and the provisions of this Agreement for and in respect of Construction Works shall apply mutatis mutandis to the Construction Works undertaken in pursuance of this Clause 23.5.

23.5.3. The capital cost incurred by the Concessionaire in accordance with this Clause 23.5 shall, upon completion of the relevant Construction Works, be recovered by the Concessionaire in accordance with the Applicable Laws and the terms of this Agreement, including the applicable tariff guidelines of the Regulator.

ARTICLE – 24

24. ESCROW ACCOUNT

24.1. Escrow Account

24.1.1. 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.

24.1.2. The nature and scope of the Escrow Account are fully described in the agreement (“Escrow Agreement”) to be entered into amongst the Concessionaire, the Authority, the Escrow Bank and the Senior Lenders through the Lenders’ Representative, which shall be substantially in the form set forth in Schedule-P.

24.2. Deposits into Escrow Account

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

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

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

24.3. Withdrawals during Concession Period

24.3.1. 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 Project;

- (b) all payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- (c) License Fee and Revenue Share;
- (d) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements, in accordance with the Applicable Laws, Applicable Permits and Good Industry Practice;
- (e) 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;
- (f) monthly proportionate provision of Debt Service due in an Accounting Year;
- (g) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- (h) monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- (i) any reserve requirements set forth in the Financing Agreements; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire.

24.3.2. The Concessionaire shall not in any manner modify the order of payment specified in Clause 24.3.1, except with the prior written approval of the Authority.

24.4. Withdrawals upon Termination

24.4.1. 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 Project;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) outstanding License Fee and Revenue Share;
- (d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;

- (e) retention and payments relating to the liability for defects and deficiencies set forth in Article 32;
- (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 24.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of Article 31.

The provisions of this Article 24 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 24.4.1 have been discharged.

ARTICLE – 25

25. INSURANCE

25.1. Insurance during Concession Period

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

25.2. Insurance Cover

Without prejudice to the provisions contained in Clause 25.1, the Concessionaire shall, during the Concession Period, procure and maintain Insurance Cover including but not limited to the following:

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

25.3. Notice to the Authority

No later than 30 (thirty) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 25. 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.

25.4. Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 25 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, notarized 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.

25.5. 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.

25.6. Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 25 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.

25.7. 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.

25.8. 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 25.3, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement or improvement of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

25.9. 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 – 26

26. ACCOUNTS AND AUDIT

26.1. Audited accounts

26.1.1. The Concessionaire shall maintain books of accounts recording all its receipts (including all Gross Revenue and other revenues derived/collected by it from or on account of the Project and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right either through itself or through any of its authorized representatives, to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.

26.1.2. 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 result by the Companies listed on a stock exchange.

26.1.3. On or before the 31st (thirty-first) day of May each year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on (a) Fee charged and received, Gross Revenue and other revenues derived from the Project and earned directly by the Concessionaire (b) such other information as the Authority may reasonably require.

26.2. Appointment of auditors

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

26.2.2. 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.

26.2.3. 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, realizations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

26.2.4. The Authority shall have the right, but not the obligation, to appoint at its cost, for the duration of the Construction Period, another firm (the “Concurrent Auditors”) from the Panel of Chartered Accountants to undertake concurrent audit of the Concessionaire’s accounts.

26.3. Certification of claims by Statutory Auditors

Any claim or document provided by the Concessionaire to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business including the submission of monthly installment of Revenue Share as per Clause 22.2.

26.4. Set-off

In the event any amount is due and payable by the Authority to the Concessionaire, it may set-off any sums payable to it by the Concessionaire and pay the balance remaining. Any exercise by the Authority of its rights under this Clause 26.4 shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

26.5. 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 - 27

27. FORCE MAJEURE

27.1. Force Majeure

As used in this Agreement, the expression “Force Majeure” or “Force Majeure Event” shall, save and except as expressly provided otherwise, mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 27.2, 27.3 and 27.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “Affected Party”) of its obligations under this Agreement and which act or event (a) is beyond the reasonable control of the Affected Party, and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (c) has Material Adverse Effect on the Affected Party.

27.2. Non-Political Event

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

- (a) act of God, epidemic, pandemic, 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 Project 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 27.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (d) any delay or failure of an overseas contractor to deliver equipment in India if such delay or failure is caused outside India by any event specified in Sub-clause (a) above and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such contractor;
- (e) any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other

than (i) failure of the Concessionaire to comply with any Applicable Laws or Applicable Permits, or (ii) on account of breach of any Applicable Laws or Applicable Permits or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;

- (f) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- (g) any event or circumstances of a nature analogous to any of the foregoing.

27.3. Indirect Political Event

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

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible;
- (c) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty-four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (d) any civil commotion, boycott or political agitation which prevents collection of revenues by the Concessionaire for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (e) failure of the Authority to permit the Concessionaire to continue with the Construction Works, with or without modifications, in the event of stoppage of such works after discovery of any geological or archaeological finds;
- (f) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (g) any Indirect Political Event that causes a Non-Political Event; or
- (h) any event or circumstances of a nature analogous to any of the foregoing.

27.4. 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 Regulatory Philosophy, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 34 and its effect, in financial terms, exceeds the sum specified in Clause 34.1;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;
- (c) unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, 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, license, authorization, 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.

27.5. Duty to report Force Majeure Event

27.5.1. 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 27 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.

27.5.2. 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.

27.5.3. 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 27.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

27.6. Effect of Force Majeure Event on the Concession

27.6.1. Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 21.1.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

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

- (a) before the COD for Phase I or COD, as the case may be, the Construction 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 for Phase I or COD, as the case may be, whereupon the Concessionaire is unable to collect revenues despite making best efforts or it is directed by the Authority or any Government Instrumentality to suspend the collection thereof during the subsistence of such Force Majeure Event, AERA shall consider the impact of any such Force Majeure Event and provide appropriate remedies in accordance with provisions of Applicable Laws.

27.7. Allocation of costs arising out of Force Majeure

27.7.1. 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.

27.7.2. 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.

27.7.3. Save and except as expressly provided in this Article 27, 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.

27.8. 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 27, 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.

27.9. Termination Payment for Force Majeure Event

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.

27.9.1. 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.

27.9.2. If Termination is on account of a Political Event except under Clause 27.4 (a), the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 30.3.2 as if it were an Authority Default.

27.10. 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.

27.11. 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.

27.12. Relief for Unforeseen Events

27.12.1. 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 27.12.

27.12.2. 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.

27.12.3. The conciliation tribunal referred to in Clause 27.12.2 shall conduct its proceedings in accordance with the provisions of Article 37 as if it is an arbitration proceeding under that Article, save and except as provided in this Clause 27.12.

27.12.4. The conciliation tribunal referred to in this Clause 27.12 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 27.12.

27.12.5. Upon completion of the conciliation proceedings referred to in this Clause 27.12, the conciliation tribunal may by a reasoned order make recommendations and setting out the terms of reference which shall be:

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

27.12.6. Within 15 (fifteen) days of receiving the order and terms of reference referred to in Clause 27.12.5, 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 – 28

28. COMPENSATION FOR BREACH OF AGREEMENT

28.1. Compensation for default by the Concessionaire

Subject to the provisions of Clause 28.5, in the event of the Concessionaire being in material breach or default of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material breach or default, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 28.1 for any material breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Authority.

28.2. Compensation for default by the Authority

Subject to the provisions of Clause 28.5, in the event of the Authority being in material breach or default of this Agreement at any time after the Appointed Date, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material breach or default within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses, any increase in capital costs on account of inflation and all other costs directly attributable to such material breach or default but shall not include loss of Fee revenues or debt repayment obligations or other consequential losses, and for determining such compensation, information contained in the Financial Package and the Financial Model may be relied upon to the extent it is relevant.

28.3. Extension of Concession Period

Subject to the provisions of Clause 28.5, in the event that a material breach or default of this Agreement set forth in Clause 28.2 causes delay in achieving COD for Phase I or COD, as the case may be, or leads to suspension of or reduction in the realization of Fee, as the case may be, the Authority shall, in addition to payment of compensation under Clause 28.2, extend the Concession Period, such extension in the Concession Period shall be considered and determined by the Authority at such time. The decision of the Authority in this matter shall be final.

28.4. Compensation to be in addition

Compensation payable under this Article 28 shall be in addition to, and without prejudice to, the other rights and remedies of the Parties under this Agreement including Termination thereof.

28.5. Mitigation of costs and damage

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

ARTICLE – 29

29. SUSPENSION OF CONCESSIONAIRE’S RIGHTS

29.1. Suspension upon Concessionaire’s Default

29.1.1. Upon occurrence of a Concessionaire’s Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (a) suspend all rights of the Concessionaire under this Agreement including the Concessionaire’s right to collect Fee, and other revenues pursuant hereto, and (b) exercise such rights itself and perform the obligations hereunder or authorize 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.

29.2. Authority to act on behalf of Concessionaire

29.2.1. During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect all Fee and revenues under and in accordance with this Agreement and deposit the same in the Escrow Account. The Authority shall be entitled to make withdrawals from the Escrow Account for meeting the costs incurred by it for meeting the O&M Expenses and for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses specified in Clause 24.3.

29.2.2. During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest in the Concessionaire and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period. The Concessionaire hereby licenses and sub-licenses respectively, the Authority or any other person authorized by it under Clause 29.1 to use during Suspension, all Intellectual Property belonging to or licensed to the Concessionaire with respect to the Project and its design, engineering, construction, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

29.3. Revocation of Suspension

- 29.3.1. In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.
- 29.3.2. Upon the Concessionaire having cured the Concessionaire Default within a period not exceeding 90 (ninety) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

29.4. 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 29.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

29.5. Termination

- 29.5.1. At any time during the period of Suspension under this Article 29, 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 29.4, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 30 as if it is a Concessionaire Default under Clause 30.1.
- 29.5.2. 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 29.1, 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 – 30

30. TERMINATION

30.1. Termination for Concessionaire Default

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

- (a) The Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Concessionaire fails to meet any Condition Precedent or cure the Concessionaire Default, as the case may be, for which whole or part of the Performance Security was appropriated, within a Cure Period of 120 (one hundred and twenty) days;
- (c) the Concessionaire does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule-G and continues to be in default during the Cure Period of 120 (one hundred and twenty) days;
- (d) the Concessionaire abandons or manifests intention to abandon the construction or operation of the Project without the prior written consent of the Authority;
- (e) COD for Phase I or COD, as the case may be, does not occur within the period specified in Clause 12.3.3;
- (f) the Punch List items have not been completed within the period set forth in Clause 14.4.1;
- (g) the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;
- (h) the Concessionaire has failed to make any payment to the Authority within the period specified in this Agreement;

- (i) an Escrow Default has occurred and the Concessionaire fails to cure the default within a Cure Period of 15 (fifteen) days;
- (j) upon occurrence of a Financial Default, the Lenders' Representative has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;
- (k) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- (l) the Concessionaire creates any Encumbrance in breach of this Agreement;
- (m) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (n) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- (o) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;
- (p) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- (q) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;
- (r) the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
- (s) a resolution for winding up of the Concessionaire is passed, or any petition for winding-up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by a court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the

Concessionaire under this Agreement and the Project Agreements; and provided that:

- i. the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - ii. the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and
 - iii. each of the Project Agreements remains in full force and effect;
- (t) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;
- (u) the Concessionaire submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
- (v) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;
- (w) the Concessionaire issues a Termination Notice in violation of the provisions of this Agreement; or
- (x) the Concessionaire commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the Authority.

30.1.2. Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Clause 30.1.3.

30.1.3. 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 30.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making

a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement:

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

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

30.2. Termination for Authority Default

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

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

- 30.2.2. 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.

30.3. Termination Payment

- 30.3.1. 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:

90% (ninety per cent) of the 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.

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, save and except as provided in Clause 30.3.3.

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

(a) Debt Due Less Insurance Cover; and

(b) 150% (one hundred and fifty per cent) of the Adjusted Equity.

- 30.3.3. Upon Termination on account of Concessionaire Default during the Construction Period, no Termination Payment shall be due and payable for and in respect of expenditure comprising the first 40% (forty per cent) of the Total Project Cost and in the event of expenditure exceeding such 40% (forty per cent) and forming part of Debt Due, the provisions of Clause 30.3.1 shall, to the extent applicable to Debt Due, apply in respect of the expenditure exceeding such 40% (forty per cent). For the avoidance of doubt and by way of illustration, the Parties agree that if the total expenditure incurred prior to Termination is 90% (ninety per cent) of the Total Project Cost, the expenditure eligible for computation of Termination Payment hereunder shall be 50% (fifty per cent) of the Total Project Cost and the Termination Payment due and payable in such event shall not exceed 45% (forty-five per cent) of the Total Project Cost. The Parties further agree that for the purposes of this Clause 30.3.3, Total Project Cost shall mean

the amount specified in Sub-clause (b) of the definition of Total Project Cost in Clause 39.1. The Parties also agree that for determining the Termination Payment under this Clause 30.3.3, the expenditure comprising the latest Project Milestone shall be reckoned.

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

30.3.5. The Concessionaire expressly agrees that Termination Payment under this Article 30 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.

30.4. Certain limitations on Termination Payment

30.4.1. The Termination Payment due and payable under this Agreement shall be computed with reference to the Debt Due and Adjusted Equity, as the case may be, in accordance with the provisions of this Agreement. For the avoidance of doubt, the Parties agree that within a period of 60 (sixty) days from COD, 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. The Parties further agree that in the event such disaggregation is not notified to the Authority, Equity shall be deemed to be the amount arrived at by subtracting Debt Due from Total Project Cost. The Parties also agree that for the purposes of computing Termination Payment, the Debt Due shall at no time exceed 70% (Seventy per cent) of the Total Project Cost.

30.4.2. 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 30.4.2 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.

30.5. Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

- (a) take possession and control of the Project 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 31.1; 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.

30.6. Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 30.3.5, 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.

30.7. Payment on expiry of Concession Period

Upon expiry of Concession Period, if the Concessionaire is not able to recoup the investment amount, Authority shall also pay/ reimburse the following to the Concessionaire except in the case of Concessionaire's default:

- a) The outstanding Regulatory Asset Base (RAB) as approved the Regulator; and
- b) The value of dead stock as per prevailing regulatory norms after appointment of another concessionaire.

ARTICLE – 31

31. DIVESTMENT OF RIGHTS AND INTEREST

31.1. Divestment Requirements

31.1.1. 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 Project, 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 Project is compliant with the provisions of this Agreement; provided that in the event of Termination during the Construction Period, all Project Assets shall be handed over on 'as is where is' basis after bringing them to a safe condition;
- (d) deliver and transfer relevant records, reports, Intellectual Property and other licenses pertaining to the Project 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 Project and shall be assigned to the Authority free of any Encumbrance;
- (e) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- (f) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project Assets, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and
- (g) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project, free from all Encumbrances, absolutely unto the Authority or to its nominee.

- 31.1.2. Subject to the exercise by the Authority of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Concessionaire, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the issuance of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

31.2. Inspection and cure

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Independent Engineer or any of its nominee shall verify, after giving due notice to the Concessionaire specifying the time, date and place of such verification and/or inspection, compliance by the Concessionaire with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 32 shall apply, mutatis mutandis, in relation to curing of defects or deficiencies under this Article 31.

31.3. Cooperation and assistance on transfer of Project

- 31.3.1. 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.
- 31.3.2. 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 and management 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.
- 31.3.3. 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 31.1.1 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.

31.4. Vesting Certificate

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

31.5. Divestment costs etc.

- 31.5.1. The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project Assets in favour of the Authority upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such divestment shall be borne by the Authority.
- 31.5.2. In the event of any Dispute relating to matters covered by and under this Article 31, the Dispute Resolution Procedure shall apply.

ARTICLE – 32

32. DEFECTS LIABILITY AFTER TERMINATION

32.1. Liability for defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Project 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 Project 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 Project conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the funds retained in the Escrow Account under the provisions of Clause 32.2 or from the Performance Guarantee provided thereunder.

32.2. Retention in Escrow Account

- 32.2.1. Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 32.2.3, a sum equal to 5% (five per cent) of the total Gross Revenue for the year immediately preceding the Transfer Date shall be retained in the Escrow Account for a period of 120 (one hundred and twenty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 32.1
- 32.2.2. Without prejudice to the provisions of Clause 32.2.1, the Independent Engineer shall carry out an inspection of the Project 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 Project is such that a sum larger than the amount stipulated in Clause 32.2.1 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.
- 32.2.3. The Concessionaire may, for the performance of its obligations under this Article 32, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under Clause 32.2.1 or 32.2.2, 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 32. Upon furnishing of a Performance Guarantee under this Clause 32.2.3, the retention of funds in the Escrow Account in terms of Clause 32.2.1 or 32.2.2, as the case may be, shall be dispensed with.

Part VI

Other Provisions

ARTICLE – 33

33. ASSIGNMENT AND CHARGES

33.1. Restrictions on assignment and charges

33.1.1. Subject to Clauses 33.2 and 33.3, 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.

33.1.2. Subject to the provisions of Clause 33.2, 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.

33.2. Permitted assignment and charges

The restraints set forth in Clause 33.1 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 Project;
- (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 Project, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project. For the avoidance of doubt, the Senior Lenders would be entitled to create a lien on the Escrow Account, subject to and without prejudice to the rights of the Authority under this Agreement;
- (c) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and
- (d) liens or encumbrances required by any Applicable Laws.

33.3. Substitution Agreement

33.3.1. 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-S.

- 33.3.2. 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.

33.4. 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 – 34

34. CHANGE IN REGULATORY PHILOSOPHY

- 34.1 It is clarified that, notwithstanding anything to the contrary contained in this Agreement, upon the occurrence of Change in Regulatory Philosophy after the expiry of 7 (seven) years from the COD, the Parties shall jointly appoint an independent third party to determine if such change will cause a Material Adverse Effect on the Concessionaire such that the material financial burden or loss caused thereby is the higher of Rs. 5,00,00,000/- (Rupees Five Crore) and 0.5% (zero point five per cent) of the pre-tax Gross Revenues of the Concessionaire as per its audited books of accounts in immediately preceding Accounting Year.
- 34.2 If such third party determines that the change will cause a Material Adverse Effect on the Concessionaire as aforesaid, the Parties shall meet to discuss and agree upon 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 the event that no such agreement is reached within 30 (thirty) days of the Parties meeting, Concessionaire shall, at its sole discretion, be permitted to terminate this Agreement by giving a notice of 30 (thirty) days.
- 34.3 Upon such Termination, the Authority shall be liable to pay to the Concessionaire an amount equal to 70% (seventy percent) of the Termination Payment as per clause 27.9.1 of this Agreement.

ARTICLE – 35

35. LIABILITY AND INDEMNITY

35.1. General indemnity

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

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

35.2. Indemnity by the Concessionaire

35.2.1. Without limiting the generality of Clause 35.1, the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Government Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- (a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;
- (b) payment of taxes required to be made by the Concessionaire, its assigns or affiliates in respect of the income or other taxes of the Concessionaire’s contractors, suppliers and representatives; or

- (c) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its contractors which are payable by the Concessionaire or any of its contractors.

35.2.2. Without limiting the generality of the provisions of this Article 35, 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 Project, 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 license, at no cost to the Authority, authorizing continued use of the infringing work. If the Concessionaire is unable to secure such license 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.

35.3. 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 35 ("Indemnified Party") it shall notify the other Party ("Indemnifying Party") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

35.4. Defence of claims

35.4.1. 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 35, 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.

35.4.2. If the Indemnifying Party has exercised its rights under Clause 35.3, 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).

35.4.3. If the Indemnifying Party exercises its rights under Clause 35.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

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

Provided that if Sub-clauses (ii), (iii) or (iv) of this Clause 35.4.3 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.

35.5. No consequential claims

Notwithstanding anything to the contrary contained in this Article 35, 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.

35.6. Survival on Termination

The provisions of this Article 35 shall survive Termination.

ARTICLE – 36

36. RIGHTS AND TITLE OVER THE SITE

36.1. 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 Project by third parties in accordance with and subject to the provisions of this Agreement.

36.2. Access rights of the Authority and others

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

36.3. 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.

36.4. 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 Project.

ARTICLE – 37

37. DISPUTE RESOLUTION

37.1. No legal action till Dispute settlement procedure is exhausted

Any and all Disputes shall be settled in accordance with the provisions of Article 37. No action at law concerning or arising out of any Dispute shall be commenced unless and until all applicable Dispute resolution procedures set out in Article 37 shall have been finally exhausted in relation to that Dispute or any Dispute out of which that Dispute shall have arisen with which it may be or may have been connected.

All disputes or differences which may arise out of or in connection with or incidental to the Agreement(s) including any dispute or difference regarding the interpretation of terms and conditions of any clause(s) thereof shall be dealt with as provided hereinafter:

- I. For settlement of disputes, mediation to be adopted as per mediation act 2023 and in matters of High value a High Level Committee (HLC) shall be constituted for the purpose and mediation to be carried out as per guidelines mentioned in circular of Ministry of Finance, Govt. of India Vide No. F.1/2/2024-PPD dated 03.06.2024 and approval of Competent Authority to be obtained for the final accepted solution.
- II. As per department of expenditure, Ministry of Finance Guidelines Govt. of India Vide No. F.1/2/2024-PPD dated 03.06.2024, arbitration to be resorted for disputes with a value less than to Rs. 10 Cr. For disputes with a value of 10 Cr. and above, the arbitration to be resorted after careful application of mind after approval of Secretary or Joint Secretary of MoCA to whom authority is delegated by the Secretary.

(a) **Through Mediation:** All dispute(s), at the first instance, shall be referred to the Mediation Committee of Independent Experts (MCIE) or individual mediator for mediation as per AAI Mediation Policy and applicable laws. All cost of mediation, shall be borne equally by the parties. In case either party withdraws from the Mediation or the dispute(s) is not resolved within 120 days of reference to the Mediation, then the aggrieved party may invoke arbitration through sub para (ii) within 30 days from the date of receipt of Partial Settlement Agreement or Failure Report.

(b) **Adjudication through Arbitration:** In case no final settlement has been arrived at between the parties after mediation or partially settled as per sub Para (i) above, the unresolved dispute(s), on invocation by the aggrieved party shall be referred for adjudication by arbitration.

Arbitration is restricted to disputes with a value of less than Rs. 10 Crores.

The dispute shall be referred to a Sole Arbitrator to be appointed by Chairman/Member, AAI, after obtaining consent of the other party.

Unless the contract has already been repudiated or terminated, the parties shall, in every case, continue to proceed to perform their respective obligations under the agreement.

Arbitration proceedings shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as amended from time to time.

Fee payable to the Arbitrator(s) shall be as per Schedule-JV of the Arbitration & Conciliation Act, 1996 and shall be borne by both the parties equal.

No dispute shall be referred for resolution under this clause through arbitration in matters for which eviction & recovery procedure is provided under Chapter -VA of the Airports Authority of India Act, 1994.

37.2. Settlement of Commercial Disputes between Central 'Public Sector Enterprises (CPSEs) and Government Department/Organization- Administrative Mechanism for resolution of CPSEs Dispute (AMRCD)

In the event of any dispute or difference relating to the interpretation and application of the provisions of the commercial contract(s) between Central Public Sector Enterprises {CPSEs}/Port Trusts inter se and also between CPSEs and Government Organization/ Department (excluding disputes concerning Railways, Income Tax, Customs & Excise Departments), such dispute or difference shall be taken up by either party for resolution through AMRCD as mentioned in OPE OM No.4{1}/2013-DPE{GM}/FTS-1835 dated 22-05-2018."

ARTICLE – 38

38. MISCELLANEOUS

38.1. Governing law and jurisdiction

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

38.2. Sub-Contracting

The Concessionaire may sub-contract any part of the works/ operations/ITP Services in accordance with the Applicable Laws at any time from the Appointed Date till Termination of this Agreement. However, the Concessionaire shall provide prior intimation of such sub-contracting to the Authority and if Authority does not provide its approval/objection within 30 (thirty) days of such intimation, Authority shall be deemed to provide its approval in regard to such sub-contracting. Notwithstanding anything contained herein above, the Concessionaire shall continue to remain responsible for the performance of obligations under this Agreement including its sub-contractors and such approval/deemed approval shall not relieve the Concessionaire from any liability or obligation under this Agreement.

38.3. 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).

38.4. Depreciation

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

38.5. Delayed payments

38.5.1. The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 3% (three per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

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

38.6. Waiver

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

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

38.6.2. Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed

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

38.7. Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by the Authority 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 Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, Applicable Laws and Applicable Permits; and
- (b) the Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

38.8. Exclusion of implied warranties etc.

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

38.9. Survival

38.9.1. Termination shall:

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

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

38.10. Entire Agreement

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

38.11. Severability

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

38.12. No partnership

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

38.13. Third parties

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

38.14. Successors and assigns

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

38.15. Novation

Authority shall be entitled to transfer by way of novation in whole or in part any or all of its rights and obligations under this Agreement to any Person or party without requiring any consent from the Concessionaire and the Concessionaire shall be bound by such novation and shall continue to fulfil and comply with all the provisions of this Agreement including its obligations under this Agreement till the term of the Agreement hereof.

38.16. Notices

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

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

Attention:

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 at the address given below and be addressed to the person named below with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Concessionaire;

provided that if the Concessionaire does not have an office in the same city as the Authority, it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier.

{Name: Airport Director, _____ Airport

Designation: APD, _____

Address: _____

Fax No: _____

Email: _____

- 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.

38.17. Change in Law

Any Change in Law shall not be a ground for any alteration or amendment to any term hereof or of any rights and obligations flowing from this Agreement in favour of the Concessionaire. The rights and obligations hereunder shall not be prejudiced by any Change in Law.

38.18. 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.

38.19. Counterparts

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

ARTICLE – 39

39. DEFINITIONS

39.1. 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 Airports Authority of India, established under the Airport Authority of India Act, 1994;

“**Act**” shall have the meaning assigned to it under clause 37.3;

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

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

“**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 26.2.3;

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

on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in Price Index occurring between the first day of the month of Appointed Date and the Reference Date;

(a) from COD 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 Price Index occurring between COD and the Reference Date; and

(b) after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.17% (zero point one seven per cent) thereof at the commencement of each month following the 4th (fourth)

anniversary of COD and the amount so arrived at shall be revised to the extent of variation in Price Index occurring between COD and the Reference Date;

For the avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the Concession Period is extended, but the revision on account of Price Index shall continue to be made;

“**Affected Party**” shall have the meaning as set forth in Clause 27.1;

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

“**Aircraft Operator**” means any aircraft operator undertaking service for the carriage of passengers, baggage or cargo by air, including without limitation, scheduled and chartered airlines, military flights, general aviation operators and executive jets;

“**Airport**” means the _____ Airport, located at the Airport Site;

“**Airport Site**” shall mean the underlying land located at _____ Airport, and such additional land as may from time to time be acquired by AAI for re-development and or expansion of the _____ Airport;

“**Applicable Laws**” means all laws, brought into force and effect by GOI through various governing bodies or its ministries 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 Project during the subsistence of this Agreement;

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

“**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,

- a) the ownership, directly or indirectly, of more than 50% (fifty per percent) of the voting shares of such person; or
- b) holding more than 50% (fifty percent) of the voting rights of such person by virtue of an agreement; or
- c) the power to govern the policy decisions of such person under statute or an agreement; or
- d) to appoint or remove the majority of the members of the board of directors; or
- e) to cast the majority of votes at a meeting of the board of directors; and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law or by contract or otherwise.

"**ATF**" means aviation turbine fuel which meets the ATF Specifications and complies with the Applicable Laws;

"**ATF Deadstock**" means the minimum ATF required to fill the Hydrant Refueling System, the receipt, transportation and delivery system within the facility and the quantity retained in the storage tanks at the Facility to meet the minimum liquid heel ('Tank Heel'), to a level, to be determined for each storage tank, above the inlet to the floating suction when it is at its lowest operating position;

"**ATF Specifications**" shall mean the specifications relevant to ATF quality meaning, at any time the latest issue of Aviation Fuel Quality Requirements for Jointly Operated Systems for Jet A-1 which currently represents the most stringent requirements of the following two specifications, i.e.;

- (i) British Ministry of Defense Standard DEF STAN 91-91/Issue 10 and Amendment 1 of 25 August, 2008 for Turbine Fuel, Aviation 'Kerosene Type', Jet A-1, NATO Code F-35, Joint Service Designation AVTUR
- (ii) ASTM Standard Specification D1655-08a for Aviation Turbine Fuels 'Jet A-1'.

"**Aviation Fueling Equipment**" means the hydrant dispenser, aircraft re-fueler, pit flushers, related parts and spare-parts used to provide ITP Services;

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

"**Authority Default**" shall have the meaning as set forth in Clause 30.2.1;

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

"**Average Daily Revenue**" means the amount arrived at by dividing the total Fee of the immediately preceding Accounting Year by 365 (three hundred and sixty-five), and

increasing the quotient thereof by 5% (five per cent); provided that the Average Daily Revenue for any period prior to completion of the first Accounting Year following COD for Phase I or COD, as the case may be, shall be a simple average of the Fee collected every day during the period between COD for Phase I or COD, as the case may be, and the last day of the month preceding the date on which the event requiring calculation hereof occurred, and in the event that the Fee payable by any segment of traffic has not been realised for any reason, an assessment thereof shall be made by the Independent Engineer to form part of the Average Daily Revenue for such period;

"Award" shall have the meaning as set forth in Clause 37.3.3;

"BCAS" means the Bureau of Civil Aviation Security;

"Bank" means a bank incorporated in India and having a minimum net worth of Rs.1,000 Crore (Rupees One Thousand crore) or any other bank acceptable to Senior Lenders, 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 in response to the Request for Qualification cum Proposal in accordance with the provisions thereof and **"Bids"** shall mean the bids submitted by any and all bidders;

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

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

"COD for Phase I" shall have the meaning as set forth in Clause 15.1;

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

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

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

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

“Change in Ownership” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes (i) the aggregate holding of the {selected bidder/Consortium Members,} together with {its/their} Associates in the total Equity to decline below 51% (fifty one per cent) thereof until the 7st (seventh) anniversary of COD, and (ii) the equity holding of each Consortium Member {along with its/their Associates} whose technical and financial capacity was evaluated for the purposes of pre-qualification and short-listing in response to the RfQ-cum-RfP, to decline below 26 % (twenty six per cent) until the 7th (seventh) anniversary of 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 a Change in Ownership;

“Change in Regulatory Philosophy” means change in the Regulatory Framework after the date of Bid;

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

"Change of Scope Order" shall have the meaning as set forth in Clause 16.2.3;

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

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

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

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

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

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

“Concessionaire Default” shall have the meaning as set forth in Clause 30.1.1;

"Concurrent Auditors" shall have the meaning as set forth in Clause 26.2.4;

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

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

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

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

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

“Contractor” means the person or persons, as the case may be, with whom the Concessionaire has entered into any of the EPC Contract, the O&M Contracts or any other material agreement or contract for construction, operation and/or maintenance of the Project or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Concessionaire;

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

- a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
- c) not in any way be extended by any period of Suspension under this Agreement;

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

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

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

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

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

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

- c) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost;
provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed to be Debt Due even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

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

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

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

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

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

“Dispute” shall have the meaning as set forth in Clause 37.1.1;

“Dispute Resolution Procedure” means the procedure for resolution of Disputes as set forth in Article 37;

“Divestment Requirements” means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 31.1;

“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 Project as set forth in Schedule-H, and shall include ‘as built’ drawings of the Project;

“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 Project 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 Project 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 Project, 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 Project, where applicable herein but excluding utilities referred to in Clause 11.1;

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

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

“Escrow Agreement” shall have the meaning as set forth in Clause 24.1.2;

“Escrow Bank” shall have the meaning as set forth in Clause 24.1.1;

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

“Fee” means the charge levied on and payable by a User for availing any or all of the services or facilities of the Project, including but not limited to Fuel Infrastructure Charges and Into Plane Fees;

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

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

“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 Project and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements, Subordinated Debt;

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

“Force Majeure” or **“Force Majeure Event”** shall have the meaning ascribed to it in Clause 27.1;

“Force Majeure Costs” shall have the meaning as set forth in Clause 27.7.2;

“Fuel Infrastructure Charges” means the aeronautical charges that the Concessionaire is entitled to collect from the Users of Fuel Farm Facility and Hydrant Refueling System in terms of applicable tariff regulations/AERA guidelines/Applicable Laws in respect of the Fuel Farm Facility and Hydrant Refueling System Operations.

“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 and for providing safe, economic, reliable and efficient services;

“Government” means the Government of the State;

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

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

- a) any insurance proceeds received by the Concessionaire relating to (i) third party liability insurance paid or to be paid to the person whose claim(s) constitute(s) the

- risk or liability insured against; and (ii) any form of physical damage of assets, and the Concessionaire has incurred or will incur an expenditure greater than or equal to such proceeds received for repair, reinstatement or otherwise replacement, promptly and diligently of such assets;
- b) any monies received by the Concessionaire, for or on behalf of any Government Instrumentality (as defined in the Concession Agreement), as an authorized agent of such Government Instrumentality; and
 - c) any revenue recognized for construction or upgrade services under the provisions of Appendix A (Service Concession Arrangements) of the Indian Accounting Standards (Ind-AS) 11, Construction Contracts and references therein, including subsequent amendments thereof in relation to the recognition of revenues/consideration for construction or upgrade services under Ind-AS, as per Applicable Laws

It is expressly clarified that:

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

"Hydrant Refueling System" or "HRS" means the system for delivery of ATF for aircraft refueling at the Airport, comprising the network of hydrant lines laid under the Airport operational area, connected to the hydrant pits and the connector line(s) connecting such network to the aviation fueling station(s); as developed and modified from time to time by Concessionaire, in accordance with the terms of this Agreement.

"IATA" means International Air Transport Association.

"ICAO" means International Civil Aviation Organization.

"Indemnified Party" means the Party entitled to the benefit of an indemnity pursuant to Article 35;

"Indemnifying Party" means the Party obligated to indemnify the other Party pursuant to Article 35;

"Independent Engineer" shall have the meaning as set forth in Clause 20.1;

"Indirect Political Event" shall have the meaning as set forth in Clause 27.3;

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

"Insurance Cover" means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 25, and includes all insurances required to be taken out by the Concessionaire under Clause 25.2 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

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

"Into Plane Fee" means aeronautical charges that the Concessionaire is entitled to collect from the Users of Into Plane equipment and systems in terms of applicable tariff regulations/AERA guidelines/Applicable Laws for rendering Into Plane Services.

"ITP Civil Works" means workshop for maintenance and repair activities of Aviation Fuelling Equipment and parking area for Aviation Fuelling Equipment.

"ITP Infrastructure" means ITP Civil Works and Aviation Fueling Equipment.

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

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

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

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

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

“Maintenance Requirements” shall have the meaning as set forth in Clause 17.2;

“Material Adverse Effect” means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;

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

“Non-Political Event” shall have the meaning as set forth in Clause 27.2;

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

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

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

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

“O&M Inspection Report” shall have the meaning as set forth in Clause 19.2;

“Operation Period” means the period commencing from Scheduled Completion Date of the Phase 1 of the Project and ending on the Transfer Date;

“Panel of Chartered Accountants” shall have the meaning as set forth in Clause 26.2.1;

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

“Performance Guarantee” shall have the meaning as set forth in Clause 32.2.3;

“Performance Security” shall have the meaning as set forth in Clause 9.1;

“Phase I of Project” shall mean design, finance, construction, operation and maintenance of the Fuel Farm Facility and any other associated or incidental services to be carried out, in accordance with the provisions of this Agreement and includes all works, services and equipment relating to or in respect thereof;

“Phase II of Project” shall mean the design, finance, construction, operation and maintenance of all activities except Capacity Augmentation and those defined in Phase I of Project.

“Political Event” shall have the meaning as set forth in Clause 27.4;

“Preservation Costs” shall have the meaning as set forth in Clause 13.5.3;

“Price Index” shall comprise:

- a) 70% (seventy per cent) of WPI; and
- b) 30% (thirty per cent) of CPI (IW),
which constituents may be substituted by such alternative index or indices as the Parties may by mutual consent determine;

“Project” means the design, finance, construction, operation and maintenance of the Fuel Farm Facility, the Hydrant Refuelling System, ITP Civil Works and any other associated or incidental services to be carried out, in accordance with the provisions of this Agreement and includes all works, services and equipment relating to or in respect of the Scope of the Project;

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

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

- a) rights over the Site in the form of license, Right of Way or otherwise;
- b) tangible assets such as civil works and equipment including foundations, storage tanks, Aviation Fueling Equipment, drainage works, electrical systems, communication systems and administrative offices;
- c) Project Facilities situated on the Site;
- d) all rights of the Concessionaire under the Project Agreements;
- e) financial assets, such as receivables, security deposits etc.;
- f) insurance proceeds; and
- g) Applicable Permits and authorizations relating to or in respect of the Project;

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

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

“Project Milestones” means the project milestones as set forth in Schedule-G;

“Provisional Certificate” shall have the meaning as set forth in Clause 14.3;

“Provisional Certificate for Phase I” shall have the meaning as set forth in Clause 14.3;

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

“Regulated Asset Base” or **“RAB”** shall have the meaning set forth in Airports Economic Regulatory Authority (Terms and Conditions for Determination of Tariff for Airport Operators) Guidelines, 2011, as from time to time may be amended, modified, supplemented, extended or re-enacted.

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

“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 Baroda;

“Regulator” means AERA or any other entity as may be designated by GoI for determination of Aeronautical Charges for the Airport as per Applicable Laws, as the case may be;

“Regulatory Framework” means the framework adopted by the Regulator as per the Applicable Laws, including the AERA Act and Airports Economic Regulatory Authority (Terms and Conditions for Determination of Tariff for Airport Operators) Guidelines, 2011;

“Request for Qualification cum Proposals” or **“RFQ cum RFP”** shall have the meaning as set forth in Recital (D);

“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 Project in accordance with this Agreement;

“Safety Requirements” shall have the meaning as set forth in Clause 18.1;

“Scheduled Completion Date” shall have the meaning as set forth in Clause 12.3.1;

“Scheduled Completion Date for Phase I” shall have the meaning as set forth in Clause 12.3.1;

“Scope of the Project” shall have the meaning as set forth in Clause 2.1;

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

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

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

“State” means the State in which the headquarters of the Authority are situated and **“State Government”** means the government of that State;

“Statutory Auditors” means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 2013 including any re-enactment or amendment thereof, for the time being in force, and appointed in accordance with Clause 26.2.1;

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

- a) the principal amount of debt provided by lenders or the Concessionaire’s shareholders for meeting the project cost and subordinated to the financial assistance provided by the Senior Lenders; and
- b) all accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and 6 (six) month LIBOR (London Inter Bank Offer Rate) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due 1 (one) year prior to the Transfer Date;

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

“Substitution Agreement” shall have the meaning as set forth in Clause 33.3;

“Suspension” shall have the meaning as set forth in Clause 29.1;

“Taxes” means any Indian taxes including GST, excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services

incorporated in and forming part of the Project charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever;

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

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

“Termination Payment” means the amount payable by the Authority to the Concessionaire, under and in accordance with the provisions of this Agreement, upon Termination;

“Tests” means the tests as set forth in Schedule-I to determine the completion of Project in accordance with the provisions of this Agreement and the applicable guidelines prescribed by the DGCA;

“Total Project Cost” means the capital cost incurred on construction and financing of the Project, and shall be limited to the lowest of:

- a) the capital cost of the Project, as set forth in the Financial Package; and
- b) An Amount equal to INR [720] crore
provided that in the event Price Index increases, on an average, by more than 3% (three per cent) per annum for the period between the date hereof and COD, the Parties shall meet, as soon as reasonably practicable, and agree upon revision of the amount hereinbefore specified such that the effect of increase in Price Index, in excess of such 3% (three per cent), is reflected in the Total Project Cost;

provided further that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in Price Index or Reference Exchange Rate occurring in respect of Adjusted Equity and Debt Due, as the case may be, in accordance with the provisions of this Agreement;

provided also that the Total Project Cost shall not exceed the actual capital cost of the Construction Works upon completion of the Project;

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

“Unforeseen Event” shall have the meaning as set forth in Clause 27.12.1;

“User” means any entities/persons that uses and/or have access to the services in relation to the Project for the purpose of this Agreement, after entering into a Project Agreement with the Concessionaire, on payment of Fees or in accordance with the provisions of this Agreement and Applicable Laws. For the avoidance of doubt, this expression includes Suppliers and Aircraft Operators and shall include other persons

that may subsequently become Users, including without limitation, ITP Service Providers and other service providers;

“**Vesting Certificate**” shall have the meaning as set forth in Clause 31.4; 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.

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

<p>Signed for and on behalf of:</p> <p>The Authority</p> <p>By:</p> <p>Name:</p> <p>Designation:</p> <p>Email address:</p>	<p>Signed for and on behalf of:</p> <p><i>Concessionaire</i> has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the day of 23.06.2022 hereunto affixed in the presence of 02 (Two) Director(s), who has signed these presents in token thereof and,</p> <p>Company Secretary / Authorized Officer who has countersigned the same in token thereof:</p> <p>Name:</p> <p>Designation:</p> <p>Email address:</p> <p>Name:</p> <p>Designation:</p> <p>Email address:</p>
<p>Signature of the Witness:</p> <p>Name</p> <p>Designation</p>	<p>Signature of the Witness:</p> <p>Name</p> <p>Designation</p>

Schedules

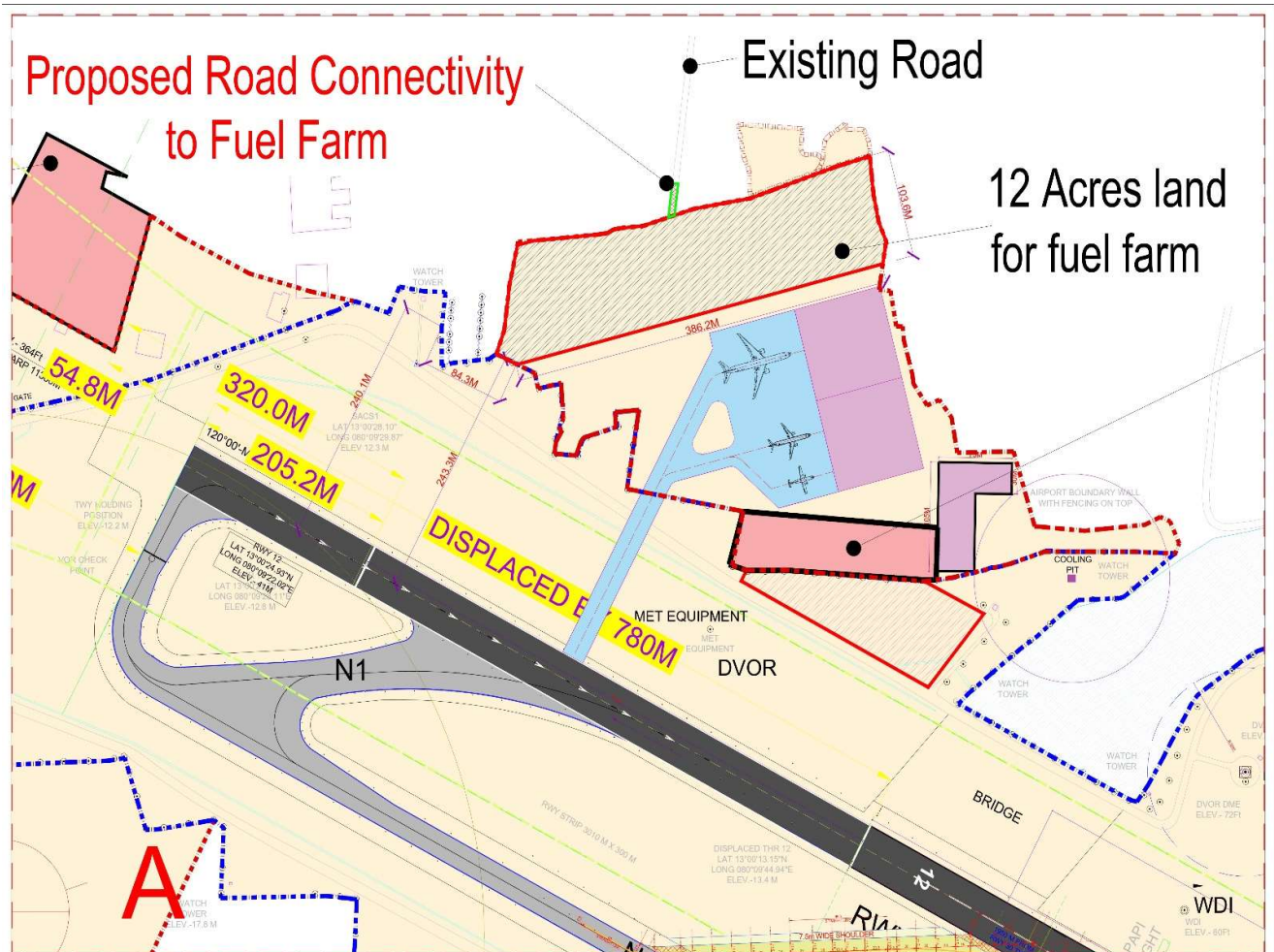
Schedule – A

(See Clause 10.1)

Site of the Project

1. The Site

The layout plan of land admeasuring 48562.30 sq.m. for undertaking the Project on the eastern side of the Airport is given below. Actual demarcation of Site shall be finalized by the Authority on the date of handing over of Site to the Concessionaire.



Master plan Chennai Int. Airport



Schedule – B

(See Clause 2.1)

Development of the Project

1. Development of the Project

The planning approach to be used to facilitate the achievement of a well-developed aviation fuel farm and other facility requirements on the basis of forecasted future traffic. Facility requirements should be the outcome of the application of technical and service level standards to the relevant forecast data throughout the planning period to ensure that sufficient facilities are available to accommodate the forecast traffic volumes from the COD of the Project till the end of the Concession Period.

In addition, regular investments are needed to periodically maintain and upgrade the facilities, replace equipment and meet other requirements in order to ensure the Project infrastructure caters to the projected traffic meeting the service level standards prescribed in this Agreement.

2. Development Philosophy

The purpose of any planning effort is to determine the facilities required to support a forecast demand, with the near-term planning being used as means of identifying the initial development required. However, it is also imperative the planning efforts do not initiate development that precludes or significantly complicates the ability to develop latter stages of the Airport.

Additionally, the planning effort must result in a scheme that remains flexible while also definitely establishing a coordinated plan for the incremental growth of specific elements of the Project.

Sustainability

Environmental conservation is an important element of consideration for all work proposed for the Site. The Concessionaire shall consider this from various lenses, considering overall site sustainability with respect to how the project is situated on the Site, how it impacts the area in and around the Site boundaries, for example through transportation to and lighting of the Site.

- Water: How is water demand managed, and how is water treated on the site?

Sustainable, site-wide water strategies must first promote demand reduction, through management of water demand for building use, irrigation, and fire safety. Building demands should be managed by provision of water efficient fixtures, namely sinks and toilets.

- Materials/resources: How is waste managed on the Site, both during construction and in the course of daily operation, and are new materials selected and installed in sustainable ways?

Materials specified for use on construction should be: low-toxicity, durable, low-maintenance, and use recycled content (to the largest extent possible). Where regional products and materials are available that meet the performance criteria outlined, these products should be considered for use.

- **Waste Management:** How is waste managed on the Site?

A waste management strategy should be developed that minimizes construction waste, which in turn will reduce the amount of transportation energy expended to move materials to and waste from the Site. Once the facilities are complete, a strategy should be developed for limiting landfill waste generated by workers and passengers in the course of daily operation, through promotion of recycling and composting of organic waste, if possible.

3. Development of Project

3.1. Development of Project shall include:

- i. Construction of Aviation Fuel Farm
- ii. Construction of Hydrant Fueling system; and
- iii. Procurement of ITP infrastructure

3.2. Project shall be constructed by the Concessionaire at Site specified in Schedule A as per and the Specifications and Standards as set forth in Schedule D.

Schedule – C

(See Clause 2.1)

PROJECT FACILITIES

Concessionaire shall be responsible to design a suitable system to meet the operational and functional requirements as specified in this Agreement. The indicative list of facilities, but not limited to, to be constructed at the site are as follows:

- ATF storage tanks with minimum 20000 KL (4 x 5000 KL) storage capacity which is the Designed Capacity at the time of commissioning. For 2nd augmentation of storage capacity, storage capacity after 1st augmentation shall be the Designed Capacity.
- Delivery pumps for loading of refuellers & to feed the hydrant refueling system
- Oil Water Separator (OWS)
- Backup power generator
- Firefighting facilities & water storage tanks meeting regulatory norms
- Refueller parking Area
- Tank Truck Parking Area within the Site allocated for the Project
- Administrative Building
- Hydrant Refueling System (12” or appropriate underground pipeline) to connect all existing and upcoming aprons and all necessary systems and installations for effective functioning of Fuel Farm such as construction of electrical duct banks for the Hydraulic Refueling System, leak detection system for the Hydraulic Refueling System, reconstruction of existing apron bays etc.
- Hydrant pits & valve chambers
- Laying and commissioning of hydrant pipeline with all associated works for existing and upcoming aircraft parking stands.
- Into Plane vehicles
 - Hydrant Dispensers
 - Refuellers / Bowsers
- Fuel Farm Utility Vehicles
 - Pit cleaner
 - Pit Flusher

Notwithstanding anything to the contrary provided anywhere in the Agreement, It is hereby clarified that the Concessionaire shall construct and maintain, as per best industry practices and in accordance with all applicable specifications and standards, all facilities required for undertaking the scope of the Project, including any capacity expansion/augmentation, throughout the term of the Concession Agreement, at its own cost and expense, without any recourse to the Authority.

The schedule for handing over of bays for laying HRS shall be finalized by Authority, at the time of work execution based on the operational exigencies and requirement to timely complete the project.

Schedule – D

(See Clause 2.1)

SPECIFICATIONS AND STANDARDS

The Concessionaire shall comply with the Specifications and Standards set forth in this Schedule D for construction of Project. The Concessionaire shall conform to the construction standards and other requirements specified in the following:

- a) ICAO Annex 16 – Environmental Protection;
- b) ICAO Annex 17 – Security;
- c) ICAO Annex 18 - Safe Transport of Dangerous Goods by Air
- d) Any other ICAO Manual and Standards as applicable;
- e) US National Fire Protection Association (NFPA) standards on Fueling Ramp drainage;
- f) The National Building Code of India, 2016;
- g) Relevant Indian Standard Codes published by the Bureau of Indian Standards;
- h) Energy Conservation Building Code, 2007 issued by the Bureau of Energy Efficiency as revised from time to time;
- i) Any other standard or specification as required as per Good Industry Practice or as required by DGCA or under Applicable Laws;

Schedule – E

(See Clause 4.1.3)

APPLICABLE PERMITS

The Concessionaire shall obtain, subject to requirements, the following Applicable Permits prior to the commencement of the relevant activity:

- a) Permission of the State Government for extraction of boulders from quarry;
- b) Permission of the Pollution Control Board for installation of crushers;
- c) License for use of explosives;
- d) License for the storage, usage, transportation of various categories of petroleum;
- e) Permission of the State Government for drawing water from river/reservoir;
- f) License from Inspector of factories or other competent authority for setting up Batching Plant;
- g) Clearance of the Pollution Control Board for setting up Batching Plant;
- h) Clearance of the Pollution Control Board for Asphalt Plant;
- i) Clearance of the Pollution Control board for installation of diesel generator sets;
- j) Clearances required for construction, operation and maintenance of the aircraft fueling and other structures such as fire, BCAS, petroleum, etc.;
- k) Permission of the State Government for cutting of trees;
- l) Any other permits or clearances required under Applicable Laws; and
- m) Clearances from Ministry of Home Affairs, Government of India if in case any foreign proprietor/partner is involved.

Schedule – F

(See Clause 9.1)¹

PERFORMANCE SECURITY

To,

.....
.....
.....

WHEREAS:

- (A) _____ (the “**Concessionaire**”) and the _____ (the “**Authority**”) have entered into a Concession Agreement dated _____ (“**Agreement**”) whereby the Authority has agreed to the Concessionaire undertaking the construction, operation, maintenance and management of the Project on design, build, finance, operate and transfer (the “**DBFOT**”) basis, subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Concessionaire to furnish a Performance Security to the Authority in a sum of Rs _____ cr. (Rupees _____ crore) (the “**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Construction Period (as defined in the Agreement).
- (C) We, _____ through our Branch at _____ (the “**Bank**”) have agreed to furnish this Bank Guarantee by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees and undertakes to pay to the Authority upon occurrence of any failure or default in the due and faithful performance of all or any of the Concessionaire’s obligations during the Construction Period, under and in accordance with the provisions of the Agreement, on its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums upto an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an Officer not below the rank of, that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Construction Period under the Agreement and its decision that the Concessionaire is in default

¹ Heading of the Schedule (i.e. Schedule F) and text in italics may be removed based on the requirement of the Bank issuing the Guarantee.

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 till COD i.e. upto date 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 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.
9. 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.

10. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of [•] from the date hereof or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

Signed and sealed this..... day of , 20..... at

SIGNED, SEALED AND DELIVERED

For and on behalf of the BANK by:

(Signature)

(Name)

(Designation) (Code Number) (Address)

NOTES:

- i. The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- ii. The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

Schedule – G

(See Clause 12.1)

PROJECT COMPLETION SCHEDULE

1 Phase Completion Schedule

- 1.1 The Concessionaire shall comply with the requirements set forth in this Schedule G for Schedule Completion Date for Phase I and the Scheduled Completion Date for Project (the “Project Completion Schedule”). Within 15 (fifteen) days of Schedule Completion Date for Phase I and the Scheduled Completion Date for Project, the Concessionaire shall notify the Authority of such compliance along with necessary particulars thereof.

2 Scheduled Completion Date for Phase I

- 2.1 Scheduled Completion Date for Phase I shall occur on the date falling on the 730th (Seven hundred thirtieth) day from the Appointed Date (the “Scheduled Completion Date for Phase I”).
- 2.2 Scheduled Completion Date for Phase I shall be deemed to be complete when the Completion Certificate for Phase I or the Provisional certificate for Phase I, as the case may be, is issued under the provision of Article 14 of this Agreement.

3 Scheduled Completion Date for the Project

- 3.1 Scheduled Completion Date for Project shall occur on the date falling on the 1095th (One thousand and ninety fifth) day from the Appointed Date (the “Phase Milestone-II”).
- 3.2 Scheduled Completion Date for Project shall be deemed to be complete when the Completion Certificate for Project or the Provisional certificate for Project, as the case may be, is issued under the provision of Article 14 of this Agreement.

4 Extension of period

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

Schedule – H

(See Clause 12.2)

DRAWINGS

(to be submitted by Concessionaire)

Annex – I

(Schedule H)

LIST OF DRAWINGS

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 Phase I of the Project or the Project, as the case may be, notify the Independent Engineer and the Authority of its intent to subject the Phase I of the Project or the Project, as the case may be, to Tests, and not later than 15 (fifteen) days prior to the actual date of Tests, furnish to the Independent Engineer and the Authority detailed inventory and particulars of all works and Equipment forming part of the Airport.

1.2. The Concessionaire shall notify the Independent Engineer of its readiness to subject the Phase I of the Project or the Project, as the case may be, to the Tests at any time, after 7 (seven) days from the date of such notice, and upon receipt of such notice, the Independent Engineer shall, in consultation with the Concessionaire, determine the date and time for each Test and notify the same to the Authority, who may designate its representative to witness the Tests. The Concessionaire shall thereupon conduct the Tests in the presence of the Independent Engineer in accordance with Article 14 and this Schedule I.

2 Tests

In pursuance of the provisions of Clause 14.1.2 of this Agreement, the Concessionaire shall conduct, in the presence of the Independent Engineer, all statutory tests required to be undertaken in accordance with the guidelines of PESO and other relevant are undertaken and completed no later than 15 (fifteen) days prior to COD for Phase I or COD, as the case may be.

3 Agency for conducting Tests

All Tests set forth in this Schedule G shall be conducted by the Concessionaire or such other agency or person as it may specify in consultation with the Authority, in presence of the Independent Engineer and/or the Authority.

4 Tests for Safety Certification

Tests for determining the conformity of the Airport with the Safety Requirements shall be conducted in accordance with PESO guidelines and Good Industry Practice and in conformity with Applicable Laws and Applicable Permits.

5 Completion/ Provisional Report

Upon successful completion of the Tests, the Independent Engineer shall submit its report to the Authority, with respect to the Completion or the Provisional Completion, as the case may be, in accordance with the provisions of Article 14.

6 Tests during Construction

Without prejudice to the provisions of this Schedule I, the tests during the performance of the Construction Works shall be conducted in accordance with the provisions of Clause 13.3.1.

Schedule – J

(See Clause 14.2 & 14.3)

COMPLETION CERTIFICATE

1. I/We, _____ (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement dated (the “**Agreement**”), for development and operation of the Phase 1 of Project/Project on design, build, finance, operate and transfer (the “**DBFOT**”) basis, through (Name of Concessionaire), hereby certify that the Tests specified in Article 14 and Schedule-I of the Agreement have been successfully undertaken to determine compliance of the Phase 1 of Project/Project with the provisions of the Agreement, and I/We am/are satisfied that the Phase 1 of Project/Project 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 Phase 1 of Project/Project have been completed, and the Phase 1 of Project/Project is ready for entry into commercial operation on this the.....day of 20...

SIGNED, SEALED AND DELIVERED

For and on behalf of INDEPENDENT ENGINEER by:

(Signature)

(Name)

(Designation)

(Address)

PROVISIONAL CERTIFICATE

1. I/We, _____ (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement dated (the “**Agreement**”), for development and operation of the Project on design, build, finance, operate and transfer (the “**DBFOT**”) basis, through (Name of Concessionaire), hereby certify that the Tests specified in Article 14 and Schedule-I of the Agreement have been undertaken for the Phase 1 of Project/Project to determine compliance thereof with the provisions of the Agreement.
2. Construction Works forming part of the Phase 1 of Project/Project 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,]⁵ I/We am/are satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the Phase 1 of Project/Project, pending completion thereof.
3. In view of the foregoing, I/We am/are satisfied that the Phase 1 of Project/Project can be safely and reliably placed in commercial service of the Users thereof, and in terms of the Agreement, the Phase 1 of Project/Project is hereby provisionally ready for entry into commercial operation on this the day of 20....

<p>ACCEPTED, SIGNED, SEALED AND DELIVERED For and on behalf of CONCESSIONAIRE by:</p> <p>(Signature) (Name and Designation) (Address)</p>	<p>SIGNED, SEALED AND DELIVERED For and on behalf of INDEPENDENT ENGINEER by:</p> <p>(Signature) (Name and Designation) (Address)</p>
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Schedule – K

(See Clause 17.2)

MAINTENANCE REQUIREMENTS

1 Maintenance Requirements

1.1 The Concessionaire shall, at all times, operate and maintain the Project Facilities in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits. In particular, the Concessionaire shall, at all times during the Concession 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 17.7 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 in accordance with Good Industry Practice within the time limit set forth therein and within the time limit specified by the Independent Engineer.

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, 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 in accordance with Good Industry Practice and within the time limit specified by the Independent Engineer.

4 Extension of time limit

Notwithstanding anything to the contrary specified in this Schedule-K, if the nature and extent of any defect or deficiency justifies more time for its repair or rectification than the time specified herein, the Concessionaire shall be entitled to additional time in conformity with 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 Project Facilities 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 Project Facilities 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 Project Facilities conforms to the Maintenance Requirements on the Transfer Date.

Schedule – L

KEY PERFORMANCE INDICATORS - FUEL FARM AND INTO-PLANE SERVICES

KPI- Fuel Farm

1. Quality of ATF – Jet A-1 kerosene which meets the Specifications and all relevant acceptance criteria set out in joint guidelines (meaning at any time the latest issues of the guidelines for aviation fuel quality control & operating procedures for jointly operated supply and distribution facilities, guidelines for aviation fuel quality control & operating procedures for joint airport depots, guidelines for aviation fuel quality control and operating procedures for joint into-plane fuelling services at that time, together with any amendments or additions thereto in force at that time). In this case, Specifications means specifications relevant to ATF quality meaning at any time the latest issue of aviation fuel quality requirements for jointly operated systems for Jet A-1 which currently represents the most stringent requirements of the following two specifications:
 - a) British Ministry of Defence Standard DEF STAN 91-91/Issue 10 and Amendment 1 of 25 August, 2008 for Turbine Fuel, Aviation 'Kerosene Type', Jet A-1, NATO Code F-35, Joint Service Designation AVTUR
 - b) ASTM Standard Specification D1655-08a for Aviation Turbine Fuels 'Jet A-1'.
2. Monthly report to be submitted by Concessionaire giving details of the quality of all consignments of ATF received at the Fuel Farm Facility from Suppliers
3. Quantity of ATF – Inventory of minimum of 8 (eight) days of uplift on the basis of a rolling 6 (six) month daily average uplift needs to be maintained. Concessionaire to set up a method of informing Authority of the level of inventory in the Fuel Farm Facility on a weekly basis.
4. ISO Certification - The Concessionaire shall always have valid ISO 9001,14000 and 45001 certificates for delivery, receipt and storage of ATF, during operations.

KPI- Into-Plane Services

1. Fulfilment of refuelling requirement – Concessionaire should fulfill refuelling requirements of aircrafts at the Airport at all times. Concessionaire shall provide a weekly report to Authority on uplift airline wise.
2. Refuelling readiness – The Concessionaire should ensure that, for a minimum of 95% (ninety-five per cent) cases, the refueller/ bowser/ disburser as the case may be, should be positioned at the aircraft fuelling location not more than 5 (five) minutes after aircraft engine shutdown and chocks on. Concessionaire shall provide a weekly report to Authority in this regard.

Schedule – M

See Clause 18.1)

SAFETY REQUIREMENTS

1. Guiding principles

- (a) Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on or about the Project, irrespective of the person(s) at fault.
- (b) Users of the Project include staff of the Concessionaire and its contractors working on the Project.
- (c) Safety Requirements apply to construction, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.
- (d) Safety Requirements include measures associated with safe movement, safety management, safety equipment, fire safety, enforcement and emergency response, with particular reference to the Safety Guidelines specified in Annex - I of this Schedule-M.

2. Obligations of the Concessionaire

The Concessionaire shall abide by the following insofar as they relate to safety of the Users:

- (a) Applicable Laws and Applicable Permits;
- (b) Manual for Safety, approved by the Authority;
- (c) provisions of this Agreement;
- (d) relevant ICAO Documents and Annexes, applicable guidelines of DGCA and other relevant Standards/Guidelines contained in internationally accepted codes; and
- (e) Good Industry Practice.
- (f) Procure ISO 45001 certification

3. Safety measures

The Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project, 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.

4. 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 18.

Schedule – N

(See Clause 20.1)

SELECTION OF INDEPENDENT ENGINEER

1. Selection of Independent Engineer

- 1.1 The provisions of the Model Request for Proposals for Selection of Technical Consultants, issued by the Ministry of Finance, GOI vide OM 24(23)/PF-II/2008 dated May 21, 2009, or any substitute thereof shall apply for selection of an experienced firm to discharge the functions and duties of an Independent Engineer. Provided, however, that no entity which is owned or controlled by the Authority shall be eligible for appointment as the Independent Engineer hereunder.
- 1.2 In the event of termination of an Independent Engineer appointed in accordance with the provisions of Paragraph 1.1, the Authority shall appoint another firm of Technical Consultants forthwith or may engage a government-owned entity in accordance with the provisions of Paragraph 5 of this Schedule N.
- 1.3 The Concessionaire may, in its discretion, nominate a representative to participate in the process of selection to be undertaken by the Authority under this Schedule-N.

2. Terms of Reference

The Terms of Reference for the Independent Engineer shall substantially conform with Schedule-O.

3. Fee and expenses

- 3.1 In determining the nature and quantum of duties and services to be performed by the Independent Engineer during the Development Period and Construction Period, the Authority shall endeavour that payments to the Independent Engineer on account of fee and expenses do not exceed 1% (one per cent) of the Total Project Cost. Payments not exceeding such 1% (one per cent) shall be borne equally by the Authority and the Concessionaire in accordance with the provisions of this Agreement and any payments in excess thereof shall be borne by the Authority.
- 3.2 The nature and quantum of duties and services to be performed by the Independent Engineer during the Operation Period shall be determined by the Authority in conformity with the provisions of this Agreement and with due regard for economy in expenditure. All payments made to the Independent Engineer on account of fee and expenses during the Operation Period, shall be borne equally by the Authority and the Concessionaire.

4. Selection every three years

No later than 3 (three) years from the date of appointment of Independent Engineer pursuant to the provisions of Paragraph 1 of this Schedule-N, and every 3 (three) years thereafter, the Authority shall engage another firm in accordance with the criteria set forth in this Schedule-N.

5. Appointment of government entity as Independent Engineer

Notwithstanding anything to the contrary contained in this Schedule, the Authority may in its discretion appoint a government-owned entity as the Independent Engineer; provided that such entity shall be a body corporate having as one of its primary function the provision of consulting,

advisory and supervisory services for engineering projects; provided further that a government-owned entity which is owned or controlled by the Central Government shall not be eligible for appointment as Independent Engineer.

Schedule – O

(See Clause 20.2.1)

TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

1. Scope

1.1. These Terms of Reference for the Independent Engineer (the “**TOR**”) are being specified pursuant to the Concession Agreement dated _____ (the “**Agreement**”), which has been entered into between the Authority and _____ (the “**Concessionaire**”) for the Airport at _____ in city of _____ on design, build, finance, operate and transfer (the “**DBFOT**”) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.

1.2 This TOR shall apply to construction, operation and maintenance of the Project.

2. Definitions and interpretation

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

2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.

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

3. Role and functions of the Independent Engineer

3.1 The role and functions of the Independent Engineer shall include the following:

- a. review of the Drawings and Documents as set forth in Paragraph 4;
- b. review, inspection and monitoring of Construction Works as set forth in Paragraph 5;
- c. supervising Tests on completion of construction and issuing Completion/ Provisional Certificate as set forth in Paragraph 5;
- d. review, inspection and monitoring of O&M as set forth in Paragraph 6;
- e. review, inspection and monitoring of Divestment Requirements as set forth in Paragraph 7;
- f. determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
- g. determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
- h. assisting the Parties in resolution of Disputes as set forth in Paragraph 9; and
- i. Undertaking all other duties and functions in accordance with the Agreement.

3.2 The 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-H 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 Project, 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 Project. 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 Project more than once in a month if any lapses, defects or deficiencies require such inspections.

5.5 For determining that the Construction Works conform to Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance. For purposes of this Paragraph 5.5, the tests specified in the relevant Manuals specified by the Authority in relation to structures, buildings and equipment (the “Quality Control Manuals”) or any modification/substitution thereof shall be deemed to be tests conforming to Good Industry Practice for quality assurance. The Independent Engineer shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.

5.6 The sample size of the tests, to be specified by the Independent Engineer under paragraph 5.5, shall comprise 10% (ten per cent) of the quantity or number of tests prescribed for each category or type of tests in the Quality Control Manuals; provided that the Independent Engineer may, for reasons to be recorded in writing, increase the aforesaid sample size by up to 10% (ten per cent) for certain categories or types of tests.

5.7 The timing of tests referred to in Paragraph 5.5, and the criteria for acceptance/ rejection of their results shall be determined by the Independent Engineer in accordance with the Quality Control Manuals. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.

5.8 In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the Specifications and Standards, and the provisions of this Paragraph 5 shall apply to such tests.

5.9 In the event that the Concessionaire fails to achieve Schedule Completion Date for Phase I or Schedule Completion Date for Project, as the case may be, 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 Phase I of Project/Project is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which COD shall be achieved. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire forthwith.

5.10 If at any time during the Construction Period, the Independent Engineer determines that the Concessionaire has not made adequate arrangements for the safety of workers and Users in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers and the Users, it shall make a recommendation to the Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.

5.11 In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works and Users, it may, by notice in writing, require the Independent Engineer to

inspect such works, and within 3 (three) days of receiving such notice, the Independent Engineer shall inspect the suspended works and make a report to the Authority forthwith, recommending whether or not such suspension may be revoked by the Authority.

5.12 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of dates set forth in the Project Completion Schedule, to which the Concessionaire is reasonably entitled, and shall notify the Authority and the Concessionaire of the same.

5.13 The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in Schedule-I and issue a Completion Certificate for Phase I or Completion Certificate for Project or the Provisional Certificate for Phase I or Provisional Certificate for Project, as the case may be. For carrying out its functions under this Paragraph 5.13 and all matters incidental thereto, the Independent Engineer shall act under and in accordance with the provisions of Article 14 and Schedule-I.

5.14 Upon reference from the Authority, the Independent Engineer shall make a fair and reasonable assessment of the costs of providing information, works and services as set forth in Article 16 and certify the reasonableness of such costs for payment by the Authority to the Concessionaire.

5.15 The Independent Engineer shall aid and advise the Concessionaire in preparing the Maintenance Manual.

6. Operation Period

6.1 In respect of the Drawings, Documents and Safety Report received by the Independent Engineer for its review and comments during the Operation Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.

6.2 The Independent Engineer shall review the annual Maintenance Programme furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 15 (fifteen) days of receipt of the Maintenance Programme.

6.3 The Independent Engineer shall review the quarterly status report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.

6.4 The Independent Engineer shall inspect the Project, 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 Project. The Independent Engineer shall send a copy of its O&M Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection

6.5 The Independent Engineer may inspect the Project 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 as per PESO guidelines, if any, that the Concessionaire shall carry out, or cause to be carried out, for the purpose of determining that the Project 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 Project 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 Project, and in case of delay, determine the Damages payable by the Concessionaire to the Authority under Clause 17.7.

6.10 In the event that the Concessionaire notifies the Independent Engineer of any modifications that it proposes to make to the Project, 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.

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 Project for determining compliance by the Concessionaire with the Divestment Requirements set forth in Clause 43.1 and, if required, cause tests to be carried out at the Concessionaire's cost for determining such compliance. If the Independent Engineer determines that the status of the Project is such that its repair and rectification would require a larger amount than the sum set forth in Clause 44.2, it shall recommend retention of the required amount in the Escrow Account and the period of retention thereof.

7.2 The Independent Engineer shall inspect the Project once in every 15 (fifteen) days during a period of 90 (ninety) days after Termination for determining the liability of the Concessionaire under Article 32, in respect of the defects or deficiencies specified therein. If any such defect or deficiency is found by the Independent Engineer, it shall make a report in reasonable detail and send it forthwith to the Authority and the Concessionaire.

8. Determination of costs and time

8.1 The Independent Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.

8.2 The Independent Engineer shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

9. Assistance in Dispute resolution

9.1. When called upon by either Party in the event of any Dispute, the Independent Engineer shall mediate and assist the Parties in arriving at an amicable settlement.

9.2 In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

10. Other duties and functions

The Independent Engineer shall perform all other duties and functions specified in the Agreement.

11. Miscellaneous

The Independent Engineer shall notify its programme of inspection to the Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.

11.2 A copy of all communications, comments, instructions, Drawings or Documents sent by the Independent Engineer to the Concessionaire pursuant to this TOR, and a copy of all the test results with comments of the Independent Engineer thereon shall be furnished by the Independent Engineer to the Authority forthwith.

11.3 The Independent Engineer shall obtain, and the Concessionaire shall furnish in 2 (two) copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Independent Engineer, whereupon the Independent Engineer shall send 1 (one) of the copies to the Authority along with its comments thereon.

11.4 The Independent Engineer shall retain at least one copy each of all Drawings and Documents received by it, including 'as-built' Drawings, and keep them in its safe custody.

11.5 Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list all Drawings, Documents, results of tests and other relevant records, and hand them over to the Authority or such other person as the Authority may specify, and obtain written receipt thereof. Two copies of the said documents shall also be furnished in their editable digital format or in such other medium or manner as may be acceptable to the Authority.

11.6 Wherever no period has been specified for delivery of services by the Independent Engineer, the Independent Engineer shall act with the efficiency and urgency necessary for discharging its functions in accordance with Good Industry Practice.

Schedule – P

See Clause 24.1.2)

ESCROW AGREEMENT

THIS ESCROW AGREEMENT is entered into on this the ____ day of ____ 20____

AMONGST

1 _____ Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at _____ (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);

2 _____ (insert name and particulars of Lenders’ Representative) and having its registered office at _____ acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);

3 _____ (insert name and particulars of the Escrow Bank) and having its registered office at _____ (hereinafter referred to as the “**Escrow Bank**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and

4 _____ (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

WHEREAS:

- A. The Authority has entered into a Concession Agreement dated ____ with the Concessionaire (“**Concession Agreement**”) for the Project on design, build, finance, operate and transfer basis (the “**DBFOT**”), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- B. Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- C. The Concession Agreement requires the Concessionaire to establish an Escrow Account, *inter alia*, on the terms and conditions stated therein.

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

1. Definitions and interpretation

1.1 Definitions

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

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

“Concession Agreement” means the Concession Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

“Cure Period” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Concessionaire, and shall commence from the date on which a notice is delivered by the Authority or the Lenders’ Representative, as the case may be, to the Concessionaire asking the latter to cure the breach or default specified in such notice;

“Escrow Account” means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

“Escrow Default” shall have the meaning ascribed thereto in Clause 6.1;

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

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

“Payment Date” means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

“Sub-Accounts” means the respective sub-accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective sub-accounts and paid out therefrom on the Payment Date(s).

1.2 Interpretation

1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.

1.2.2 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

1.2.3 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

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

2. Escrow Account

2.1 Escrow Bank to act as trustee

2.1.1 The Concessionaire hereby appoints the Escrow Bank to act as trustee for the Authority, the Lenders’ Representative and the Concessionaire in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically

delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.

- 2.1.2 The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority, the Lenders' Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Authority, the Lenders' Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Agreement.

2.2 Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Senior Lenders or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, the Lenders' Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

2.3 Establishment and operation of Escrow Account

- 2.3.1. Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Concessionaire shall open and establish the Escrow Account with the (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.
- 2.3.2. The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.
- 2.3.3. The Escrow Bank and the Concessionaire shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Escrow Bank's fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Concessionaire. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with Clause 4.1.

2.5 Rights of the parties

Save and except as otherwise provided in the Concession Agreement, the rights of the Authority, the Lenders' Representative and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority, the Lenders' Representative and the Concessionaire shall have no other rights against or to the monies in the Escrow Account.

2.6 Substitution of the Concessionaire

The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Concessionaire under this Agreement on and with effect from the date of substitution of the Concessionaire with the Nominated Company.

3. Deposits into escrow account

3.1 Deposits by the Concessionaire

3.1.1 The Concessionaire agrees and undertakes that it shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:

- (a) all monies received in relation to the Project from Banks, insurance companies, other lenders and shareholders;
- (b) all Fee and any other revenues from or in respect of the Project, including the proceeds of any rentals, deposits, capital receipts or insurance claims; and
- (c) all payments by the Authority, after deduction of any outstanding License Fee and Revenue Share; and

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

3.1.2 The Concessionaire may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

3.2 Deposits by the Authority

The Authority agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

- (a) Any monies disbursed by the Authority to the Concessionaire;
- (b) all Fee collected by the Authority in exercise of its rights under the Concession Agreement; and
- (c) Termination Payments:

Provided that, notwithstanding the provisions of Clause 4.1.1, the Authority shall be entitled to appropriate from the aforesaid amounts, any License Fee and Revenue Share 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 Project excluding City Side Development;
- b) All payments relating to construction of the Project, subject to and in accordance with the conditions if any set forth in the financing agreements;
- c) O&M expenses, subject to the ceiling, if any, set forth in the financing agreements;
- d) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of the Agreement, and certified by the Authority as due and payable to it;
- e) License Fee and Revenue Share due and payable to the Authority;
- f) monthly proportionate provision of Debt Service due in an Accounting Year;
- g) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire.
- h) monthly proportional provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- i) any reserve requirements set forth in the Financing Agreements; and
- j) balance, if any, in accordance with the instructions of the Concessionaire.

4.1.2 No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

4.2 Withdrawals upon Termination

Upon Termination of the Concession Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

- a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- c) outstanding License Fee and Revenue Share;
- d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- e) retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in Article 32 of the Concession Agreement;
- f) outstanding Debt Service including the balance of Debt Due;
- g) outstanding Subordinated Debt;
- h) incurred or accrued O&M Expenses;
- i) any other payments required to be made under the Concession Agreement; and
- j) balance, if any, in accordance with the instructions of the Concessionaire:

Provided that the disbursements specified in Sub-clause (j) of this Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by the Authority.

4.3 Application of insufficient funds

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

4.4 Application of insurance proceeds

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement or improvement of the Project, 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 29 of the Concession Agreement. Any instructions given by the Authority to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

5. Obligations of the escrow bank

5.1 Segregation of funds

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank.

5.2 Notification of balances

7 (seven) business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire and/or the Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lenders' Representative of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

5.3 Communications and notices

In discharge of its duties and obligations hereunder, the Escrow Bank:

- a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;
- b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- c) shall, within 5 (five) business days after receipt, deliver a copy to the Lenders' Representative of any notice or document received by it in its capacity as the Escrow Bank from the Concessionaire or any other person hereunder or in connection herewith; and
- d) shall, within 5 (five) business days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Lenders' Representative in connection herewith.

5.4 No set off

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

5.5 Regulatory approvals

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

6. Escrow default

6.1 Following events shall constitute an event of default by the Concessionaire (an “**Escrow Default**”) unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority or the Lenders' Representative:

- a) the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;
- b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which

such transfer should have been made, within a Cure Period of 5 (five) business days;
or

- c) the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business day

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

7. Termination of escrow agreement

7.1 Duration of the Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the debt, guarantee or financial assistance received by it from the Senior Lenders, or any of its obligations to the Authority remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

7.2 Substitution of Escrow Bank

The Concessionaire may, by not less than 45 (forty-five) days prior notice to the Escrow Bank, the Authority and the Lenders' Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Lenders' Representative and arrangements are made satisfactory to the Lenders' Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank.

The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3 Closure of Escrow Account

The Escrow Bank shall, at the request of the Concessionaire and the Lenders' Representative made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement and the Financing Agreements including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

8. Supplementary escrow agreement

8.1 Supplementary Escrow Agreement

The Lenders' Representative and the Concessionaire shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, *inter alia*, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to Clause 4.1.1 and for matters not covered under this Agreement such as the rights and obligations of Senior Lenders and lenders of Subordinated Debt, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict

or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

9. Indemnity

9.1 General indemnity

9.1.1 The Concessionaire will indemnify, defend and hold the Authority, Escrow Bank and the Senior Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

9.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

9.1.3 The Escrow Bank will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

9.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

10. Dispute resolution

10.1 Dispute resolution

10.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with be the Rules of Arbitration of the International

Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”) or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996 and Arbitration and Conciliation (Amendment) Act, 2015.

10.1.2. The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

11. Miscellaneous provisions

11.1 Governing law and jurisdiction

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

11.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

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

11.3 Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

11.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

11.5 Waiver

11.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

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

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

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

11.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

11.7 Survival

11.7.1 Termination of this Agreement:

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

11.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

11.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 10.1 of this Agreement or otherwise.

11.9 Successors and assigns

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

11.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a

Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

11.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

11.12 Authorised representatives

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

11.13 Original Document

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

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the ____ day of 20__ hereunto affixed in the presence of _____, Director, who has signed these presents in token thereof and _____, Company Secretary/Authorised Officer who has countersigned the same in token thereof.

Signature

Name

Designation

Address

Fax No

Email address

SIGNED, SEALED AND DELIVERED

For and on behalf of SENIOR LENDERS by the Lenders' Representative:

Signature

Name

Designation

Address

Fax No

Email address

Schedule – Q

(See Clause 26.2.1)

PANEL OF CHARTERED ACCOUNTANTS

1. Panel of Chartered Accountants

Pursuant to the provisions of Clause 26.2.1 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-Q.

2. Invitation for empanelment

2.1. The Authority shall invite offers from all reputed firms of Chartered Accountants who fulfil the following eligibility criteria, namely:

- (a) the firm should have conducted statutory audit of the annual accounts of at least one hundred companies registered under the Companies Act, 2013, including any re-enactment or amendment thereof, of which at least ten should have been public sector undertakings;
- (b) the firm should have at least 5 (five) practising Chartered Accountants on its rolls, each with a minimum experience of 10 (ten) years in the profession;
- (c) the firm or any of its partners should not have been disqualified or black-listed by the Comptroller and Auditor General of India or the Authority; and
- (d) the firm should have an office in the State or in an adjacent State with at least 2 (two) practising Chartered Accountants on its rolls in such State.

2.2 Interested firms meeting the eligibility criteria shall be required to submit a statement of their capability including the bio-data of all the practising Chartered Accountants on its rolls. In particular, each firm shall be required to furnish year-wise information relating to the names of all the companies with an annual turnover exceeding Rs. 25,00,00,000 (Rupees Twenty-five crores) whose annual accounts were audited by such firm in any of the preceding 5 (five) Accounting Years.

3. Evaluation and selection

- 3.1 The information furnished by each firm shall be scrutinised and evaluated by the Authority and 1 (one) point shall be awarded for each annual audit of the companies specified in Paragraph 2.2 above. (For the avoidance of doubt and by way of illustration, a firm which has conducted audit of the annual accounts of any such company for 5 (five) years shall be awarded 5 (five) points).
- 3.2 The Authority shall prepare a list of all the eligible firms along with the points scored by each such firm and 5 (five) firms scoring the highest points shall be identified and included in the draft Panel of Chartered Accountants.

4. Consultation with the Concessionaire

The Authority shall convey the aforesaid panel of firms to the Concessionaire for scrutiny and comments, if any. The Concessionaire shall be entitled to scrutinise the relevant records of the Authority to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Authority within 15 (fifteen) days of receiving the aforesaid panel.

5. Mutually agreed panel

- 5.1 The Authority shall, after considering all relevant factors including the comments, if any, of the Concessionaire, finalise and constitute a panel of 5 (five) firms which shall be deemed to be the mutually agreed Panel of Chartered Accountants.
- 5.2 After completion of every 5 (five) years from the date of preparing the mutually agreed Panel of Chartered Accountants, or such earlier period as may be agreed between the Authority and the Concessionaire, a new panel shall be prepared in accordance with the provisions of this Schedule-U.

Concession Agreement

Schedule – R

(See Clause 31.4)

VESTING CERTIFICATE

1. The Chairman of _____ represented by _____ (the “**Authority**”) refers to the Concession Agreement dated _____ (the “**Agreement**”) entered into between the Authority and _____ (the “**Concessionaire**”) for the Project on design, build, finance, operate and transfer (the “**DBFOT**”) basis.
2. The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Clause 31.1 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 Project shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.
3. Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

AGREED, ACCEPTED AND For and on behalf of Concessionaire by:

Signature
Name
Designation
Address

AGREED, ACCEPTED AND For and on behalf of Authority by:

Signature
Name
Designation
Address

In presence of

- A)
- B)

Concession Agreement

Schedule – S

(See Clause 33.3.1)

SUBSTITUTION AGREEMENT

THIS SUBSTITUTION AGREEMENT is entered into on this the day of , 20....

AMONGST

1. _____ and having its principal offices at (hereinafter referred to as the “**Authority**” which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);
2. _____ Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at _____, (hereinafter referred to as the “**Concessionaire**” which expression shall unless repugnant to the context or meaning thereof include its successors, permitted assigns and substitutes);
3. _____ (insert name and particulars of Lenders’ Representative) and having its registered office at _____, acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**”, which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

- A. The Authority has entered into a Concession Agreement dated _____ with the Concessionaire (the “**Concession Agreement**”) for the Project on design, build, finance, operate and transfer basis (the “**DBFOT**”), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- B. Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- C. Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.
- D. In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

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

1. DEFINITIONS AND INTERPRETATION

1.1. Definition

Concession Agreement

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

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

“Financial Default” means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months;

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

“Nominated Company” means a company, incorporated under the provisions of the Companies Act, 2013 including any re-enactment or amendment thereof, selected by the Lenders’ Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/transfer of the Concession as provided in this Agreement;

“Notice of Financial Default” shall have the meaning ascribed thereto in Clause 3.2.1; and

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

1.2. Interpretation

1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.

1.2.2. References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.3 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

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

ASSIGNMENT

2.1 Assignment

The Concessionaire hereby agrees to assign the rights, title and interest in the Concession to, and in favour of, the Lenders' Representative pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

3. SUBSTITUTION OF THE CONCESSIONAIRE

3.1 Rights of substitution

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

The Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. For the avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project 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 Project in accordance with the provisions of Article 29 of the Concession Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days. For the avoidance of doubt, the Authority expressly agrees and undertakes to terminate the Concession Agreement forthwith, upon receipt of a written request from the Lenders' Representative at any time after 240 (two hundred and forty) days from the date of Suspension hereunder.

3.3 Substitution upon occurrence of Concessionaire Default

- 3.3.1 Upon occurrence of a Concessionaire Default, the Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days' time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.
- 3.3.2 In the event that the Lenders' Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days; provided further that the Lenders' Representative may at any time withdraw its representation hereunder and upon such withdrawal, the Concessionaire may terminate this Agreement in accordance with the provisions hereof.

3.4 Procedure for substitution

- 3.4.1 The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.
- 3.4.2 To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Authority for shortlisting the bidders for award of the Concession; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.
- 3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall request the Authority to:
- (a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Project 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

Concession Agreement

of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority shall thereupon transfer and endorse the Concession within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

- 3.4.5 The transfer of Concession hereunder to a Nominated Company may, notwithstanding anything to the contrary in this Agreement and the Concession Agreement, be undertaken by transfer of no less than 75% (seventy-five per cent) of the equity of the Concessionaire to the Nominated Company, and upon such transfer hereunder, the Concessionaire shall be deemed to be the Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

3.5 Selection to be binding

The decision of the Lenders' Representative and the Authority in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Authority taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Authority and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Authority or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

4. PROJECT AGREEMENTS

4.1 Substitution of Nominated Company in Project Agreements

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Company's assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

5. TERMINATION OF CONCESSION AGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 30 of the Concession Agreement.

5.2 Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to the Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2, the Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

5.3 Realisation of Debt Due

The Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement. For realisation of the Debt Due, the Lenders' Representative shall be entitled to make its claim from the Escrow Account in accordance with the provisions of the Concession Agreement and the Escrow Agreement.

6. DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- (a) Termination of the Agreement; or
- (b) no sum remains to be advanced and no sum is outstanding to the Senior Lenders, under the Financing Agreements.

7. INDEMNITY

7.1 General indemnity

- 7.1.1 The Concessionaire will indemnify, defend and hold the Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.
- 7.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.
- 7.1.3 The Lenders' Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the “Indemnified Party”), it shall notify the other Party responsible for indemnifying such claim hereunder (the “Indemnifying Party”) within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8. DISPUTE RESOLUTION

8.1 Dispute resolution

8.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Concessionaire and the Lenders’ Representative. Such arbitration shall be held in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and Arbitration and Conciliation (Amendment) Act, 2015.

8.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be New Delhi and the language of arbitration shall be English.

9. MISCELLANEOUS PROVISIONS

9.1 Governing law and jurisdiction

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

9.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

(a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;

(b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;

(c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

(d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against

Concession Agreement

it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

9.3 Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

9.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

9.5 Waiver

9.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

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

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

9.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

9.7 Survival

9.7.1 Termination of this Agreement:

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

9.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

9.8 Severability

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

Concession Agreement

provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

9.9 Successors and assigns

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

9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

9.12 Authorised representatives

Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

9.13 Original Document

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

Concession Agreement

**IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF
THE DATE FIRST ABOVE WRITTEN**

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the ____ day of 20__ hereunto affixed in the presence of _____, Director, who has signed these presents in token thereof and _____, Company Secretary/Authorised Officer who has countersigned the same in token thereof

Signature
Name
Designation
Address
Fax No
Email address

SIGNED, SEALED AND DELIVERED For and on behalf of AUTHORITY

Signature
Name
Designation
Address
Fax No
Email address

SIGNED, SEALED AND DELIVERED For and on behalf of SENIOR LENDERS by the
Lenders' Representative

Signature
Name
Designation
Address
Fax No
Email address

Concession Agreement

Schedule – T

Format Consent Letter

Dispute Resolution Clause

To,

The Chairman/Member/Regional Executive Director,

Airports Authority of India,

SUB: Request for appointment of arbitrator under Clause _____ of the contract agreement dated _____ for the work _____

Sir/Madam,

1. We state that _____ (contractor/agency) was awarded work/ concession of _____ at _____ 'Airport/ _____ (other location) of Airports Authority of India through Award Letter dated _____

2. Dispute related to _____ arose between us (contractor/agency) and AAI.

3. On -----(date), dispute was referred to Mediation as per AAI Mediation Policy and any settlement on the following claims/disputes was not reached between the parties:

(i)

(ii)

(iii)

4. A concise statement along with claim in respect of each of such disputes is attached herewith.

5. In view of the above, we invoke arbitration under clause -----of the _____ agreement between us and AAI and as per provision to Section-12(5) of the Arbitration & Conciliation Act, 1996, we hereby agree and request the Chairman/Member/Regional Executive Director AAI to appoint arbitrator from AAI 's panel of arbitrators.

6. I/We also give my/ our consent for appointing any of an arbitrator from AAI's approved panel of arbitrators, as per paragraph-5 above.

Thanking you,

Authorized signatory of

Encl: As above