

CIVIL AVIATION DEPARTMENT: GOVERNMENT OF HARYANA

REQUEST FOR PROPOSAL (RFP) BID DOCUMENT

Volume-I

Competitive Single Stage Bidding Process for

**Setting up and Operation of Approved Training Organisation/Type Rating Training Organisation with the facility of Flight Simulation Training Device (Level-D) on Design, Build, Finance, Operate, Maintain and Transfer Basis (DBFOMT) at Integrated Aviation Hub, Hisar, Haryana**



**CIVIL AVIATION DEPARTMENT, HARYANA**

**Tender No: Aviation/CAD/HRY/Hisar/2021/P-1**

**March 2021**

## Table of Contents

<b>CRITICAL DATE SHEET .....</b>	<b>3</b>
<b>DISCLAIMER .....</b>	<b>4</b>
<b>INVITATION FOR BIDS .....</b>	<b>6</b>
<b>PART I. INSTRUCTION TO BIDDERS .....</b>	<b>9</b>
<b>PART II. SCOPE OF WORK .....</b>	<b>31</b>
<b>PART III. APPENDICES .....</b>	<b>35</b>
<b>PART IV. DRAFT LICENSE FEE AGREEMENT .....</b>	<b>52</b>

**CRITICAL DATE SHEET**

Sr.	Event Description	Date and Time
1.	Issue of RFP and Downloading of Bid Document	17.03.2021 (1700 H)
2.	Last date of receiving queries	25.03.2021 (1700 H)
3.	Conduct of Pre-Bid Conference/Meeting	TBN
4.	Reply to queries, Uploading of Amendments to RFP, if any	07.04.2021 (1700 H)
5.	EMD submission end date	15.04.2021 (1700H)
6.	Bid due date/ last date of submission of Tender Document (the “Bid Due Date”)	17.04.2021 (1700 H)
7.	Opening of Technical Bids	19.04.2021 (1100 H)
8.	Opening of financial bids	TBN

Note:

1. In the event of the specified date of opening of bids being declared a holiday for the Purchaser, the bids shall be opened on the next working day at the same time and venue.
2. Completed bids shall be uploaded on the e-procurement platform by the Bidders using their user ID.
3. It is expressly understood that the interested party has subscribed to this document with an express understanding that they will use this document for the sole purpose of participating in the selection process for the **“Setting up and Operation of Approved Training Organisation (ATO)/ Type Rating Training Organisation (TRTO) with Flight Simulation Training Device (Level-D) facility at Integrated Aviation Hub, Hisar”** and this document must not be used for any other purpose. This document must not be passed on to a third party, except professional advisers assisting with the submission of this Bid. This document may not be reproduced or communicated, in whole or in part, and its contents may not be distributed in written or oral or electronic or any other form without written permission from the issuing authority.

**DISCLAIMER**

1. The information contained in this Request for Proposals document (the “RFP”) or subsequently provided to Bidder(s), whether verbally or in documentary or any other form by or on behalf of the Civil Aviation Department, Govt. of Haryana (hereinafter to be referred as “**Authority**”) or any of its employees or advisors, is provided on the terms and conditions set out in this RFP and such other terms and conditions subject to which the information is provided.

2. This RFP is not an agreement and is neither an offer nor invitation to offer by the Authority to prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in the formulation of their proposals pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Authority in relation to “*Setting up and Operation of Approved Training Organisation (ATO)/ Type Rating Training Organisation (TRTO) with Flight Simulation Training Device (Level-D) facility at Integrated Aviation Hub, Hisar*” (hereinafter to be referred as “**The Project**”). Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all persons, and it is not possible for the Authority, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in this RFP may not be complete, accurate, adequate or correct. Therefore, each Bidder should conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources. Information provided in this RFP to the Bidder(s) is on a wide range of matters, some of which may depend upon the interpretation of the law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The Authority accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

3. The Authority, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Bidder, under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise, for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way for participation in this Bid Stage.

4. The Authority also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from a reliance of any Bidder upon the statements contained in this RFP. The Authority may at its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP.

5. The issue of this RFP does not imply that the Authority is bound to select a Bidder or to appoint the Selected Bidder or Lessee, as the case may be, for the Project and the Authority reserves the right to reject all or any of the Bidders or Bids without assigning any reason whatsoever. The Bidder shall bear all costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or

CIVIL AVIATION DEPARTMENT: GOVERNMENT OF HARYANA

presentations which may be required by the Authority or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and the Authority shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

6. The Authority reserves its right to withdraw from the process at any stage of the process and/or modify the process or any part thereof or to vary any terms at any time or stage without assigning any reasons whatsoever. In such an event, no financial obligation of whatsoever nature shall accrue to the Authority or any of its respective officers, employees, advisors or agents.

7. Each Bidder's procurement of this RFP constitutes its agreement to and acceptance of the terms set forth in this Disclaimer. By acceptance of this RFP, the recipient agrees that this RFP and any information herewith supersedes document(s) or earlier information, if any, in relation to the subject matter hereto.

## **Invitation for Bids (IFB)**

**State and Country:** Haryana, India

**Name of Project:** Setting up and Operation of Approved Training Organisation/TRTO {Flight Simulation Training Device (**FSTD**) Level-D facility} at Integrated Aviation Hub Hisar Airport at Hisar Haryana

**Tender No:** CAD/Haryana/Hisar/2021/P-1

1. The **Authority** with a view to give impetus to the Aviation/technical training seeks the participation of private entities for the “Setting up and Operation of Approved Training Organisation/TRTO (FSTD Level-D facility), hereinafter referred to as “**the Project**”, at Integrated Aviation Hub Hisar Airport, through Land Rental Agreement basis (hereinafter referred to as “**Agreement**”) and has decided to carry out the bidding process for selection of the private entities for ‘the **Project**’. As detailed in this Tender document, the scope includes *inter-alia*, all works related to, or incidental to, or required to be undertaken for setting up an ATO/TRTO with Flight Simulation Training Device (Level-D) facility at Integrated Aviation Hub Hisar Airport in accordance with the provisions of the Agreement, applicable laws and DGCA/FAA stipulated guidelines for the conduct of training activities as well as commercial development of Approved Training Organization (ATO/TRTO), from the land provided by the Authority on-Land Rental basis.
2. The Authority invites applications from interested Bidder(s) for the Project on the terms and conditions as contained in this Tender. The Authority will evaluate the proposals submitted and shortlist one or more Bidder(s) for negotiations for an award of the Project contract, as per the terms and conditions of this Tender. The interested Bidders may seek clarifications and obtain further information as per the terms of this Tender from: -

**O/o Adviser, Civil Aviation Department, Haryana**  
**30 Bays Building 3rd Floor, Sector-17B, Chandigarh-160017**  
Tel: **0172-2709386**  
Fax: **0172-2709174]**  
Email: **cavation@hry.nic.in**

3. The online bids are invited in **single-stage two cover system** i.e. Request for Technical Bid comprising of the technical proposal (under Technical Envelope) and Financial Bid comprising of price bid proposal (under Commercial Envelope).
4. Under this process, the online Technical bid, and the online Price Bid shall be invited at single-stage under two covers i.e. Technical and Commercial Envelope. Eligibility and qualification of the Bidder will be examined first, based on the details under the first cover (Technical) with regards to the eligibility and qualification requirements prescribed in this Bidding document. The Price Bid under the second cover shall be opened for only those bidders whose Technical Applications are responsive to eligibility and qualifications requirements as per the bidding document.

5. The interested bidders must deposit Bid Security/EMD, Bid Document Fee, and Bid Processing Fee specified as per **Instructions to Bidder (ITB) Clause 20.1**
6. Bidders have to complete the 'Bid Preparation and Submission' stage on scheduled time as mentioned in the Critical Date Sheet. If any bidder failed to complete the aforesaid stage in the stipulated online schedule for this stage, his/ her bid status will not be allowed to be submitted by the e-Procurement System.
7. Bidders must confirm and check their bid status after completion of all activities for e-Procurement and the bids shall be submitted online in two separate envelopes:

**Envelope 1: Technical Bid**

The bidders shall upload the required eligibility and technical documents online in the Technical Bid.

**Envelope 2: Commercial Bid**

The bidders shall quote the prices in price bid format under Commercial Bid.

8. Conditional bids will not be entertained and are liable to be rejected.
9. In case the opening day of bids happens to be holiday, the bids will be opened on the next working day. The time and place of receipt of bids and other conditions will remain unchanged.
10. The Jurisdiction of the court will be at **Chandigarh**.
11. The bids of the bidders who do not satisfy the qualification requirement in the bidding documents are liable to be rejected summarily without assigning any reason and no claim whatsoever shall be considered on this account.
12. **Other Information**
  - a) The intending Bidder shall fill in price-related information only in the online Price Schedule templates of the bid.
  - b) Bidders must strictly abide by the stipulations outlined in the Bidding Document while bidding.
  - c) Bids quotations which are dependent upon the quotations of another bid shall be summarily rejected.

## **Instructions for Online Bid Submission**

1. The Bid documents can be downloaded online from the **E-Procurement Portal, Haryana** (i.e., <https://etenders.hry.nic.in>). The Company/Operator/firm have to be registered on the Portal, to submit soft copies of their bids electronically, using valid Digital Signature Certificates. The bids to be submitted online are required to be digitally signed (therefore, the bidders are advised to obtain Digital Signature).
2. The details of the Bid Document Cost/EMD, prequalification and other documents are required to be uploaded at the time of online Submission of the Bidders. Therefore, the Bidders are required to keep the scanned copies of Bid Document Cost/ EMD, prequalification and other documents ready for online submission of the bids.
3. **Important Instructions & Help manual for online bidding:** The detailed instruction for online submission of the bid may be seen under “*Bidders Manual Kit*” option available on Home Page of NIC e-Procurement portal i.e. <https://etenders.hry.nic.in>.
4. **Online Submission of bids:** The tender shall be submitted online by the tenderer in the following three separate covers online.
  - a. **Fee:** Online payment of Bid Document Cost / EMD/Processing Fees
  - b. **Technical Bid:** The cover shall contain scanned copies of the prequalification documents, technical parameter / technical bid.
  - c. **Financial Bid:** This cover contains a contract schedule of rates (BOQ) to be submitted mandatory online by the bidder.
5. **Online Payment of Tender Document Fee/e-service Fee/Earnest Money:** Bidders have to pay applicable Earnest Money Deposited (EMD), Tender Document Fee & e-processing Fee online only. For Detailed instruction refer to FAQ for online Payment is available at Home Page of NIC e-Procurement portal i.e. <https://etenders.hry.nic.in>.
6. **Assistance to Bidders**
  - a) Any queries relating to the tender document and the terms and conditions contained therein should be addressed to the Tender Inviting Authority for a tender or the relevant contact person indicated in the tender.
  - b) Any queries relating to the process of online bid submission or queries relating to CPP Portal, Haryana, in general, may be directed to the 24x7 CPP Portal, Haryana Helpdesk.

**Tel:** 0120-4200462/ 4001002/ 4001005/ 6277787

**Mobile:** 8826246593

**E-mail:** Support-eproc[at]nic[dot]in



# PART – I

# INSTRUCTIONS TO BIDDERS

**Table of Content**

1	<b>Background</b>	12
2	<b>Bidding Process</b>	13
3	<b>General Conditions for Bidding</b>	13
4	<b>Change in Ownership of Bidder</b>	15
5	<b>Site visit and verification of information</b>	15
6	<b>Verification and Disqualification</b>	16
7	<b>Documents required for the Bidding process</b>	17
8	<b>Clarifications</b>	18
9	<b>Amendment/ Addendum of tender</b>	18
10	<b>Preparation and Submission of Bids</b>	19
11	<b>Format and Signing of Bid</b>	19
12	<b>Sealing and Marking of Bid</b>	19
13	<b>Bid Submission End Date</b>	19
14	<b>Late Bids</b>	20
15	<b>Withdrawal and modifications of Bids</b>	20
16	<b>Rejection of Bid</b>	20
17	<b>Validity of Bid</b>	20
18	<b>Confidentiality</b>	20
19	<b>Correspondence with the bidders</b>	21
20	<b>Bid Security/ EMD, Bid Document Fee, Bid E-Processing Fee</b>	21
21	<b>Land Rental Agreement</b>	22
22	<b>Eligibility Criteria / Bidder's Qualification</b>	23
23	<b>Performance Parameters</b>	24
24	<b>Facilities to be provided by Govt. of Haryana CAD</b>	25
25	<b>Opening and evaluation of Technical proposals and price proposal</b>	25
26	<b>Award of Contract</b>	26
27	<b>Performance Security</b>	28
28	<b>Fraud and Corrupt Practices</b>	28
29	<b>Liquidated Damages</b>	29
30	<b>Force Majeure</b>	30
31	<b>Miscellaneous</b>	30

**INSTRUCTION TO BIDDERS (ITB)**

**A. INTRODUCTION**

<b>1.</b>	<b>Background</b>
1.1	The <b>Authority</b> (Govt. of Haryana, Civil Aviation Department) seeks the participation of private entities for the Conduct of the <b>Project</b> at Integrated Aviation Hub Hisar Airport, including, <i>inter alia</i> , all works related to, or incidental to, or required to be undertaken up for the purpose, in accordance to the provisions of the Agreement applicable laws and DGCA/FAA guidelines, for the conduct of Simulator training activities and commercial development of the ATO/TRTO with Flight Simulation Training Device (Level-D) facility on the land provided at Sector-II of Integrated Aviation Hub (IAH) Hisar Airport on a “ <b>Land Rental</b> ” basis and has decided to carry out the bidding process for the selection of a private entity to whom the Project may be awarded. The Authority may decide to accommodate more than one ATO/TRTO at IAH Hisar Airport, each ATO/TRTO will be offered minimum space as specified in the Tender document.
1.2	The Selected Bidder, shall undertake to be incorporated under the Companies (Amendment) Act, 2013 (“ <b>Companies Act</b> ”) and Amendments thereon, before the execution of the Agreement to act as the Operator (the “ <b>Operator</b> ”), who shall be responsible for setting up and operation of ATO/TRTO (FSTD Level-D facility) at Integrated Aviation Hub Hisar Airport, under and in accordance with the provisions of the Agreement to be entered into between the Selected Bidder and the Authority in the form provided hereunder as part of the Tender pursuant hereto.
1.3	The <b>Scope of Work</b> will broadly include setting up and operationalization of the DGCA approved ATO/TRTO and conduct of Flight Simulation Training activities from Sector-II of Integrated Aviation Hub Hisar Airport in the terms of the Agreement.
1.4	The Agreement sets forth the detailed terms and conditions for grant of the Project to the operator, including the scope of the Operator’s services and obligations.
1.5	The statements and explanation contained in this Tender are intended to provide a better understanding to the Bidders about the subject matter of this Tender and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Operator as set forth in the draft Agreement or the rights of the Authority to amend, alter, change, supplement or clarify the scope of work, the contract to be awarded in pursuant to this Tender or the terms thereof or herein contained. Consequently, any omissions, conflicts, or contradictions in the bidding documents including this Tender are to be noted, interpreted, and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the Authority.
1.6	The Authority desires that the selected bidder shall have its company’s office registered in the State of Haryana before the commencement of operation/activities from Integrated Aviation Hub Hisar Airport.
1.7	The Authority shall receive bids in accordance with the terms stipulated in this tender and other documents to be provided to the Authority in pursuant to this Tender comprising of the draft Agreement, as modified, altered, amended and clarified from time to time by the Authority (collectively the “ <b>Bidding Documents</b> ”), and all bids shall be prepared and submitted in accordance with such terms on or before the date specified in <b>Critical Date Sheet</b> for submission of bids (the “ <b>Bid Submission End Date</b> ”).

<b>2.</b>	<b>Bidding Process</b>
2.1	The Authority has adopted a single stage two envelope process (referred to as the “ <b>Bidding Process</b> ”) for the selection of the Bidder for the award of the Project. Eligibility of the Bidder will be first examined based on the details submitted under the first cover (“ <b>Technical Bid</b> ”) regarding eligibility and qualifications requirement prescribed in this Tender. The bid under the second cover (“ <b>Financial Bid</b> ”) shall be opened for only those Bidders whose Technical Bid(s) are responsive to eligibility and qualifications requirements as per this Tender. Before bidding, the Bidder shall pay to the Authority a sum of <b>Rs. 50,000/- (₹ Fifty Thousand)</b> as the cost of the Tender document process. The Authority shall open received Financial Bids of those Bidder(s) who are selected through the evaluation of Technical Bids (which shall be intimated separately), in the presence of the Bidders, who choose to attend.
2.2	In the Bidding Process, Bidders, including their successors, (the “ <b>Bidders</b> ”) are being called upon to submit their technical qualification and financial offers (the “ <b>Bids</b> ”) as per the terms specified in the Bidding Documents.
2.3	The Bidding Documents include the draft Agreement (attached as Part IV) for the Project which is enclosed. The aforesaid documents and any addenda issued after this Tender will be deemed to form part of the Bidding Documents.
<b>3.</b>	<b>GENERAL CONDITION FOR BIDDING</b>
3.1	No Bidder shall submit more than one Bid, a Bidder who submits more than one Bid will cause for all those Bids to be rejected.
3.2	The Bidders are expected to carry out their surveys, investigation, and other detailed examination of the Project before submitting their Bids.
3.3	Notwithstanding, anything to the contrary contained in this Tender, the detailed terms specified in the Agreement shall have an overriding effect; provided, however, that any condition or obligations imposed on the Bidder hereinunder shall continue to affect in addition to its obligations under the draft Agreement.
3.4	The Bid should be furnished in the format at <b>Appendix-I</b> , clearly signed by the Bidder’s authorized signatory. In the event of any difference between figures and words anywhere in the bid, the amount indicated in words shall be considered.
3.5	The Bid shall consist of a Premium to be quoted by the Bidder and payable by the Selected Bidder/Operator to the Authority for the award of the Project, as per the terms and conditions of this Tender and the provisions of the draft Agreement.
3.6	The Bidder should submit a Power of Attorney as per the format in <b>Appendix- II</b> , authorizing the signatory of the Bid to execute Bid documents.
3.7	Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.
3.8	The documents including this Tender and all attached documents, provided by the Authority are and shall remain or become the property of the Authority and are transmitted to the Bidders solely for the preparation and submission of the Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for the preparation and submission of their Bid. The provisions of this Clause shall also apply <i>mutatis-mutandis</i> to Bids and all other documents submitted by the Bidders, and the Authority will not return to the Bidders any Bid, document, or any information provided along therewith.

<p>3.9</p>	<p>A Bidder shall not have a conflict of interest (the “<b>Conflict of Interest</b>”) that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Authority shall forfeit and appropriate <b>10 %</b> of the value of the Bid Security or Performance Security, as the case may be, as mutually agreed to genuine pre-estimated compensation and damages payable to the Authority for, <i>inter-alia</i>, the time, cost and effort of the Authority, including consideration of such Bidder’s proposal, without prejudice to any other right or remedy that may be available to the Authority hereunder or otherwise. Without limiting the generality of the above, a Bidder shall be considered to have a Conflict of Interest that affects the Bidding Process, if:</p> <ul style="list-style-type: none"> <li>a) the Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; or</li> <li>b) a constituent of such bidder is also a constituent of another bidder; or</li> <li>c) such Bidder, its Member or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, its Member or Associate, or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Associate thereof; or</li> <li>d) such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or</li> <li>e) such Bidder, or any Associate thereof, has a relationship with another Bidder, or any Associate thereof, directly or through common third-party/ parties, that put either or both of them in a position to have access to each other’s information about, or to influence the Bid of either or each other; or</li> </ul> <p><b><u>Explanation:</u></b> For this Tender, an “Associate” or “Member” means concerning the Bidder, a person who controls, is controlled by or is under the common control with such Bidder. As used in this definition, the expression “Control” means, concerning a person which is a company or corporation, the ownership, directly or indirectly of more than 50% (fifty per cent) of the voting shares of such person, and for a person which is not a company or corporation, the power to direct the management and policies of such person, by operation of law.</p>
<p>3.10</p>	<p>This Tender is not transferable.</p>
<p>3.11</p>	<p>Any award of Project according to this Tender shall be subject to the terms of the Bidding Documents.</p>
<p>3.12</p>	<p>The Agreement between the Authority and the Selected Bidder shall be executed on the payment of stamp duty in terms of provisions contained under, “The Indian Stamp Act, 1899”, to undertake and implement the Project.</p>

<b>4.</b>	<b>Change in Ownership of Bidder</b>
4.1	By submitting the Bid, the Bidder acknowledges that their respective bid will be qualified and shortlisted based on its technical and financial capacity. The Bidder further acknowledges and agrees that the aforesaid obligation shall be the minimum and shall be in addition to such other obligations as may be contained in the draft Agreement, and a breach hereof shall, notwithstanding anything to the contrary contained in the Agreement, be deemed to be a breach of the Agreement and dealt with as such thereunder.
4.2	By submitting the Bid, the Bidder shall also be deemed to have acknowledged and agreed that in the event of a change in control of an Associate whose Technical Capacity and/ or Financial Capacity was taken into consideration for short-listing and qualification under and in accordance with the Tender, the Bidder shall be deemed to have the knowledge of the same and shall be required to inform the Authority forthwith along with all relevant particulars about the same and the Authority may, in its sole discretion, disqualify the Bidder or withdraw the Letter of Award from the Selected Bidder, as the case may be. In the event such change in control occurs after signing the Agreement, it would, notwithstanding anything to the contrary contained in the draft Agreement, be deemed to be a breach of the Agreement, and the same shall be liable to be terminated without the Authority be liable in any manner whatsoever to the bidder. In such an event, notwithstanding anything to the contrary contained in the Tender document/Agreement, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Agreement or otherwise.
<b>5.</b>	<b>Site Visit, Pre-Bid Conference &amp; Verification of Information</b>
5.1	Bidders are encouraged to submit their respective Bids after visiting the Project site and ascertaining for themselves the site conditions, traffic, location, surroundings, climate, availability of power, water and other utilities for construction, access to the site, handling and storage of materials, applicable laws and regulations, and any other matter considered relevant by them.
5.2	The Interested Bidder may conduct the Project site visit, on prior intimation to the Authority preceding the date for submission of the Bid.
5.3	The Authority shall use every effort to procure that the Bidder(s) and any of its personnel or agents are granted permission to enter the Project site for such inspection, but only upon the express condition that the Bidder, its personnel and agents, will exercise due care and will be responsible for personal injury or death, loss of or damage to property and any other loss, damage, costs and expenses incurred as a result of such inspection. The Bidder, its personnel, and agents will release and indemnify the Authority and its personnel and agents from and against all liability in respect thereof.
5.4	<b><u>Pre-Bid Conference</u></b> A Pre-Bid Conference/Meeting (“Pre-Bid Conference”) shall be held to clarify the issues to answer questions on any matter that may be raised at the stage (Video Conference optional) The date and time of the pre-Bid Conference shall be as mentioned in Critical Date sheet. The venue of the pre-bid conference shall be intimated:  Venue: - _____

5.5	<p>It shall be deemed that by submitting a Bid, the Bidder has:</p> <ul style="list-style-type: none"> <li>(i) made a complete and careful examination of the Bidding Documents;</li> <li>(ii) received all relevant information requested from the Authority;</li> <li>(iii) accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Authority relating to any of the matters referred to in Clause 5.1 above;</li> <li>(iv) satisfied itself about all matters, things, and information including matters referred to in Clause 5.1 hereinabove necessary and required for submitting an informed Bid, execution of the Project in accordance to the Bidding Documents and performance of all its obligations thereunder;</li> <li>(v) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of the information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 5.1 hereinabove shall not be a basis for any claim for compensation, damages, an extension of time for performance of its obligations, loss of profits, etc. from the Authority, or a ground for termination of the Agreement by the Operator;</li> <li>(vi) acknowledged that it does not have a Conflict of Interest; and</li> <li>(vii) agreed to be bound by the undertakings provided by it under and in terms hereof.</li> </ul>
5.6	<p>The Authority shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to Tender, the Bidding Documents or the Bidding Process, including any error or mistake therein or in any information or data given by the Authority.</p>
<b>6.</b>	<b>VERIFICATION &amp; DISQUALIFICATION OF BID</b>
6.1	<p>The Authority reserves the right to verify all statements, information, and documents submitted by the Bidder in response to the Tender or the Bidding Documents and the Bidder shall, when so required by the Authority, make available all such information, evidence and documents as may be necessary for such verification. Any such verification, or lack of such verification, by the Authority shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Authority thereunder.</p>
6.2	<ul style="list-style-type: none"> <li>a) The Authority reserves the right to reject any Bid and appropriate the Bid Security if: <ul style="list-style-type: none"> <li>i) at any time, a material misrepresentation is made or uncovered;</li> <li>ii) the Bidder does not provide, within the time specified by the Authority, the supplemental information sought by the Authority for evaluation of the Bid;</li> </ul> </li> <li>b) Such misrepresentation/ improper response shall lead to the disqualification of the Bidder. If such disqualification/rejection occurs after the Bids have been opened and the Highest Bidder gets disqualified/rejected, then the Authority reserves the right to: <ul style="list-style-type: none"> <li>i) invite the remaining Bidders to submit their Bids as per Clauses 25.16 and 25.17, hereinbelow.</li> <li>ii) take any such measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Bidding Process.</li> </ul> </li> </ul>

6.3	<p>In case, it is found during the evaluation or at any time before signing of the Agreement or after its execution and during the period of subsistence thereof, that one or more of the qualification conditions have not been met by the Bidder, or the Bidder has made a material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Operator either by the issue of the Letter of Award or entering into of the Agreement, and if the Selected Bidder has already been issued the Letter of Award or has entered into the Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this Tender, be liable to be terminated, by a communication in writing by the Authority to the Selected Bidder or the Operator, as the case may be, without the Authority be liable in any manner whatsoever to the Selected Bidder or Operator. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Agreement, or otherwise.</p>																					
7.	<p><b>DOCUMENTS REQUIRED FOR THE BIDDING PROCESS</b></p>																					
7.1	<p>This tender comprises the important notice set forth hereinabove, the contents as listed below, the Notice inviting Bids, the Instructions to Bidders, and any addendum issued under the provisions of <b>ITB Clause – 09</b> below.</p> <p><b><u>The bid shall include:</u></b></p> <ul style="list-style-type: none"> <li>i) A <b>delivery schedule</b> following the Authority’s requirements and a proposed method statement demonstrating the methods by which the Bidder intends to implement the Project.</li> <li>ii) A <b>technical proposal</b> containing a business model along with the components of business models is as per Part-II <b>Scope of Work</b> of this tender document.</li> </ul> <p><b>A. <u>Documents required for the Technical Bid:</u></b></p> <table border="1" data-bbox="321 1283 1451 1692"> <tr> <td>(i)</td> <td>Letter comprising the Bid in the format as per;</td> <td><b>Appendix-I</b></td> </tr> <tr> <td>(ii)</td> <td>Power of Attorney for signing the Bid in the format at;</td> <td><b>Appendix-II</b></td> </tr> <tr> <td>(iii)</td> <td>Letter of Undertaking in the format at ;</td> <td><b>Appendix-III</b></td> </tr> <tr> <td>(iv)</td> <td>A copy of the <b>Agreement (Part-IV)</b> with each page signed (initialed) by the person signing the Bid in pursuance to the Power of Attorney referred to in sub-clause (ii) above; and</td> <td><b>RFP Part-IV</b></td> </tr> <tr> <td>(v)</td> <td>Original <b>technical proposal</b> (including Business Model) and the original price proposal and each copy of the technical proposal in separate sealed inner envelopes.</td> <td><b>Business Model</b></td> </tr> <tr> <td>(vi)</td> <td>Submission of Bid Security/ EMD, Bid Document Fee, and Bid Processing Fee.</td> <td><b>Online Payment</b></td> </tr> </table> <p><b>B. <u>Documents required for the Financial Bid:</u></b></p> <table border="1" data-bbox="321 1780 1451 1818"> <tr> <td>(i)</td> <td>Submission of the Financial Proposal as per;</td> <td><b>Appendix-IV</b></td> </tr> </table>	(i)	Letter comprising the Bid in the format as per;	<b>Appendix-I</b>	(ii)	Power of Attorney for signing the Bid in the format at;	<b>Appendix-II</b>	(iii)	Letter of Undertaking in the format at ;	<b>Appendix-III</b>	(iv)	A copy of the <b>Agreement (Part-IV)</b> with each page signed (initialed) by the person signing the Bid in pursuance to the Power of Attorney referred to in sub-clause (ii) above; and	<b>RFP Part-IV</b>	(v)	Original <b>technical proposal</b> (including Business Model) and the original price proposal and each copy of the technical proposal in separate sealed inner envelopes.	<b>Business Model</b>	(vi)	Submission of Bid Security/ EMD, Bid Document Fee, and Bid Processing Fee.	<b>Online Payment</b>	(i)	Submission of the Financial Proposal as per;	<b>Appendix-IV</b>
(i)	Letter comprising the Bid in the format as per;	<b>Appendix-I</b>																				
(ii)	Power of Attorney for signing the Bid in the format at;	<b>Appendix-II</b>																				
(iii)	Letter of Undertaking in the format at ;	<b>Appendix-III</b>																				
(iv)	A copy of the <b>Agreement (Part-IV)</b> with each page signed (initialed) by the person signing the Bid in pursuance to the Power of Attorney referred to in sub-clause (ii) above; and	<b>RFP Part-IV</b>																				
(v)	Original <b>technical proposal</b> (including Business Model) and the original price proposal and each copy of the technical proposal in separate sealed inner envelopes.	<b>Business Model</b>																				
(vi)	Submission of Bid Security/ EMD, Bid Document Fee, and Bid Processing Fee.	<b>Online Payment</b>																				
(i)	Submission of the Financial Proposal as per;	<b>Appendix-IV</b>																				



<b>8.</b>	<b>CLARIFICATION</b>
8.1	<p>Any queries or requests for any additional information concerning only this Tender shall be submitted by e-mail to the officer below.</p> <p><b>Attention of:       The Advisor, Civil Aviation Haryana</b></p> <p><b>Address:             30 Bays Building 3rd Floor, Sector-17B, Chandigarh-160017</b></p> <p><b>FAX No:             0172-2709174   E-Mail: cavation@hry.nic.in</b></p> <p>The email shall bear the following identification/ title in the subject: - <i>“Queries/Request for additional information: Tender for “Setting up and Operation of ATO/TRTO with Flight Simulation Training Device (Level-D) facility” at Integrated Aviation Hub, Hisar Airport.</i></p>
8.2	<p>Queries should be sent on or before the date mentioned in the Schedule of Bidding Process specified in the <b>Critical Date Sheet</b>. The Authority shall endeavor to respond to the queries within the period specified therein, but not later than <b>7 days before the Bid submission end date</b>. The Authority will forward all the queries and its responses thereto, to all Bidders without identifying the source of queries. However, the Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Authority to respond to any question or to provide any clarification.</p>
8.3	<p>The Authority may also on its motion if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Authority shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by the Authority or its employees or representatives shall not in any way or manner be binding on the Authority.</p>
<b>9.</b>	<b>AMENDMENT/ADDENDUM OF TENDER</b>
9.1	<p>At any time before the Bid Submission End Date, the Authority may, for any reason, whether at its initiative or in response to clarifications requested by a Bidder, modify the Tender by the issuance of an Addendum.</p>
9.2	<p>Any Addendum issued hereunder will be in writing and shall be uploaded on the e-tenders Portal and shall form part of the Bidding Documents. Each of the Bidder(s) is requested to check the e-Procurement Portal regularly to remain updated with the information related to Tender.</p>
9.3	<p>To afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Authority may, in its sole discretion, extend the Bid Submission End Date.</p>
9.4	<p>In case after issuance of an Addendum, the Bidders who have already submitted their Bids, do not resubmit their Bids. It shall be deemed that such Bidder(s) do not intend to modify</p>

	their Bids based on the addendum which has been taken into account.
<b>10.</b>	<b>PREPARATION AND SUBMISSION OF BID</b>
10.1	The Bid and all related correspondence and documents concerning the Bidding Process shall be in the English language. Supporting documents and printed literature furnished by the Bidder with the Bid may be in any other language provided that they are accompanied by a translation of all the pertinent passages in the English language, duly authenticated and certified by the Bidder. Supporting materials, which are not translated into English, may not be considered. For interpretation and evaluation of the Bid, the English language translation shall prevail.
10.2	The Bidder shall submit with its Bid a delivery schedule as per the Authority's requirements and a proposed method statement demonstrating the methods by which the Bidder intends to implement the Project. The methods to be employed will be analyzed during the bid evaluation and their description shall be in sufficient detail to allow a full appreciation of the Bidder's proposals concerning all aspects of the Project.
10.3	The technical proposal will contain a business model along with the components of business models are as per Part II i.e. Scope of Work of this tender document.
<b>11.</b>	<b>FORMAT AND SIGNING OF BID</b>
11.1	The Bidder shall provide all the information sought under this Tender. The Authority will evaluate only those Bids that are received in the required formats and complete in all aspects. Incomplete and /or conditional Bids shall be liable to rejection.
11.2	The bid submitted by the Bidder shall comprise the Technical Proposal and the Financial Proposal, both submitted in separate envelopes on the Portal as per <b>ITB Clause 8</b> .
11.3	The bid shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Bidder. All pages of the Bid shall be initialed by the person or persons signing the Bid.
11.4	The Bid shall contain no alterations, omissions, or additions, except those to comply with instructions issued by the Authority, or as necessary to correct errors made by the Bidder, in which case such corrections shall be initialed by the person or persons signing the Bid.
<b>12.</b>	<b>SEALING AND MARKING OF BID</b>
12.1	The bidders shall upload the bid through the e-procurement platform. No other mode of submission is permitted. Telex, Cable, or Facsimile Bids shall be rejected as non-responsive.
<b>13.</b>	<b>BID SUBMISSION END DATE</b>
13.1	Bids should be submitted before the time on the Bid Submission End Date as mentioned in the Critical Date Sheet in the manner and form as detailed in this Tender.
13.2	The Authority may, in its sole discretion, extend the Bid Submission End Date by issuing an Addendum as per the Clause 09, uniformly for all Bidder(s) in which case all rights and

CIVIL AVIATION DEPARTMENT: GOVERNMENT OF HARYANA

	obligations of the Authority and the Bidder(s) previously subject to the original deadline will thereafter be subject to the extended deadline.
<b>14.</b>	<b>LATE BID</b>
14.1	Any bid to be submitted by the bidder after the deadline for submission of bids prescribed by the Authority in the <b>ITB Clause 13</b> will not be allowed to be submitted by the e-Procurement Portal. See <b>Critical Date Sheet</b> for the deadline for bid submission.
<b>15.</b>	<b>WITHDRAWAL AND MODIFICATIONS OF BID</b>
15.1	The Bidder may modify or withdraw its bid after submission before the deadline prescribed for submission of bids. Modification of the submitted bid can be done through the e-Procurement Portal before the deadline prescribed for submission of bids. To withdraw a bid, bidder will have to provide the communication in writing to the purchaser before the deadline prescribed for submission of bids.
15.2	No bid may be modified or withdrawn after the deadline for submission of the bid.
15.3	No bid may be withdrawn in the interval between the bid submission deadline and the expiration of the Bid validity period. Withdrawal of a bid during this interval may result in the forfeiture of the Bidder's EMD.
<b>16.</b>	<b>REJECTION OF BID</b>
16.1	Notwithstanding anything contained in this Tender, the Authority reserves the right to reject any bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection, or annulment, and without assigning any reasons thereof. If the Authority rejects or annuls all the Bids, it may, at its discretion, invite all eligible Bidders to submit fresh Bids hereunder.
16.2	The Authority reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any bid without assigning any reasons.
<b>17.</b>	<b>VALIDITY OF BID</b>
17.1	The Bid shall be valid for not less than <b>180 days</b> from the Bid Submission End Date as specified in the <b>Critical Date Sheet</b> . The validity of Bids may be extended by the mutual consent of the respective Bidders and the Authority. In exceptional circumstances, if the process of award of Agreement is not completed within the validity period of the Bid, the validity of the Bid shall stand extended for a further period of <b>90</b> days and the Authority shall, at least <b>15</b> days before the expiry of the validity period of the Bid, notify the Bidder accordingly.
<b>18.</b>	<b>CONFIDENTIALITY</b>
18.1	Information relating to the examination, clarification, evaluation, and recommendation for the Bidders shall not be disclosed to any person who is not officially concerned with the process, or is not a retained professional advisor advising the Authority about, or matters arising out of, or concerning the Bidding Process. The Authority will treat all information, submitted as part of the Bid, in confidence, and will require all those who have access to such material to treat the same in confidence. The Authority may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory

CIVIL AVIATION DEPARTMENT: GOVERNMENT OF HARYANA

	entity and/ or the Authority or as may be required by law or regarding any legal process.
<b>19.</b>	<b>CORRESPONDENCE WITH THE BIDDER</b>
19.1	Save and except as provided in this Tender, the Authority shall not entertain any correspondence with any Bidder concerning acceptance or rejection of any Bid.
<b>20.</b>	<b>BID SECURITY/EMD, DOCUMENT FEE &amp; E-PROCESSING FEE</b>
20.1	<p>The Bidder shall furnish the following fees online as part of its Bid;</p> <p>(a) Bid Security/EMD of ₹ Four Lacs Only, under the provisions of this tender having a validity period of not <b>less than 180 days</b> from the Bid Submission End Date and may be extended as mutually agreed between the Authority and the Bidder from time to time. <b>-₹ 4,00,000/-</b></p> <p>(b) A non-refundable bid document fee of ₹ Fifty Thousand Only <b>-₹ 50,000/-</b></p> <p>(c) Non-refundable e-processing fee of ₹ One Thousand Only <b>- ₹ 1000/-</b> (Plus GST)</p>
20.2	Any Bid not accompanied by the Bid Security/ EMD, Bid Document Fee, and Bid Processing Fee shall be summarily rejected by the Authority as non-responsive.
20.3	The Bid Security of unsuccessful Bidders will be returned by the Authority, without any interest, as promptly as possible on acceptance of the Bid of the Selected Bidder or when the Bidding process is cancelled by the Authority.
20.4	The Selected Bidder's Bid Security will be returned, without any interest, upon the Operator signing the Agreement and furnishing the Performance Security under the provisions thereof. The Authority may, at the Selected Bidder's option, adjust the amount of Bid Security in the amount of Performance Security to be provided by him under the provisions of the Agreement.
20.5	The Bidder, by submitting its Bid according to this Tender, shall be deemed to have acknowledged and confirmed that the Bidder will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid validity as specified in this Tender. No relaxation of any kind shall be given to any Bidder.
20.6	<p>The Bid Security shall be forfeited and appropriated by the Authority as mutually agreed to genuine pre-estimated compensation and damages payable to the Authority for, <i>inter alia</i>, time, cost and effort of the Authority without prejudice to any other right or remedy that may be available to the Authority hereunder or otherwise, under the following conditions:</p> <p>a) If a Bidder submits a non-responsive Bid subject however in the event of encashment of Bid Security occurring due to operation of this Clause, the damage so claimed by the Authority shall be restricted to <b>10 %</b> of the value of Bid Security;</p> <p>b) If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice;</p> <p>c) If a Bidder withdraws its Bid during the period of Bid validity as specified in this Tender and as extended by mutual consent of the respective Bidder(s) and the</p>

CIVIL AVIATION DEPARTMENT: GOVERNMENT OF HARYANA

	<p>Authority;</p> <p>d) In the case of a Selected Bidder, if it fails within the specified time limit:</p> <p>(i) to sign and return the duplicate copy of the Letter of Award; or</p> <p>(ii) to sign the Agreement; or</p> <p>(iii) to furnish the Performance Security within the period prescribed thereof in the Agreement.</p> <p>e) In case the Selected Bidder, having signed the Agreement, commits any breach thereof before furnishing the performance security.</p> <p>f) In case the Selected Bidder fails to accept the corrections made by the Authority to its price proposal as stated under <b>ITB Clause – 25.14</b>.</p>
<b>21.</b>	<b>Land Rental Agreement</b>
21.1	<p>For the implementation of the Project, the selected Bidder (hereinafter referred to as “<b>Concessionaire</b>”) shall be provided with an area of approx. 4047 Sqm (01 acre) of unpaved land towards the cityside area (Sector-II) at Integrated Aviation Hub Hisar Airport on payment of “<b>Land Rental</b>” in terms of stipulated Space Rental Charges through a Land Rental Agreement basis.</p> <p><b>Agreement period:</b> The term of the Agreement shall be thirty (<b>25</b>) years to be reckoned from the date of execution of the Agreement unless otherwise terminated earlier as per the provisions of the Agreement and may be extended further for a period of fifteen (10) years by mutual consent between the Authority and Concessionaire.</p> <p><b>Lock-in period:</b> The lock-in period of the Agreement will be for <b>05 years</b> and termination can be initiated on 6 months’ Notice Period.</p>
21.2	<p><b>Land Rental:</b> The successful bidder shall have to pay Land Rental of ₹ <b>1,34,900/-</b> (Rupees One lakh Thirty-Four thousand Nine hundred only) Plus GST/Allied Taxes on Monthly basis, to Civil Aviation Department, Haryana, for the Site identified and provided to the Concessionaire/Lessee for the Project at Sector-II of Integrated Aviation Hub Hisar Airport.</p>
21.2	<p>The rate of License Fee is based on the Standard Tariff Charges applicable on the Airstrips/Airports under Govt. of Haryana Civil Aviation Department i.e. @ ₹ 400 Per Sq Meter Per Annum with an escalation rate of 10% per annum, payable to the Authority by the Concessionaire/Lessee on monthly basis (Plus applicable GST/Allied Taxes).</p>
21.3	<p>The Authority will provide the land parcel, more particularly described in Schedule A of the draft Agreement hereto at which infrastructures of the Approved Training Organisation/ TRTO (FSTD Level-D) is proposed to be constructed (“Site”) to the Concessionaire/Lessee in accordance with the terms as stipulated in the Agreement.</p>
21.4	<p>The Concessionaire shall, for securing the performance of its obligation under the Draft Agreement, provide to the Authority, an irrevocable and unconditional bank guarantee towards Performance Security, in accordance with the provisions contained in Clause as</p>

	per the terms of the Agreement set forth in Clause 27 of this RFP.																				
<b>22.</b>	<b>BIDDER'S QUALIFICATION AND BIDDING PARAMETER</b>																				
22.1	<p><b><u>Technical Qualification:</u></b></p> <table border="1"> <tr> <td>(a)</td> <td>For participating in the Bidding Process, the Bidder shall be a registered company/Partnership/Proprietorship firm, Joint Venture or consortium of companies registered under the Indian Company Act, 1956 or Indian Company Act 2013 or The Partnership Act 1932. The Joint Venture with established foreign FTO's/ATO/TRTO or Aircraft Maintenance Institute has more than 05 years' operating experience may apply in collaboration with Indian registered company provided that the Indian company is at least 51% shareholder of the Joint Venture and the Principal bidder should be able to comply with eligibility conditions for this bid.</td> </tr> <tr> <td>(b)</td> <td>For demonstrating technical capacity and experience (the "Technical Qualification"), the bidder should have experience of more than 05 years in any of the below as on the Bid Due Date: <table border="1"> <tr> <td>(i)</td> <td>A Scheduled Operator (SOP), registered/ licensed with/ by Directorate General of Civil Aviation/ Ministry of Civil Aviation; or</td> </tr> <tr> <td>(ii)</td> <td>Non-Scheduled Operator (NSOP), registered/ licensed with/ by Directorate General of Civil Aviation/ Ministry of Civil Aviation; or</td> </tr> <tr> <td>(iii)</td> <td>Experience in setting up and operating a Flying Training Organisation or Approved Training Organisation or Type Rating Training Organisation or Aviation Training Institutes; or</td> </tr> <tr> <td>(iv)</td> <td>Experience in setting up and operating Aircraft Maintenance and Engineering Training Institutes.</td> </tr> <tr> <td>(v)</td> <td>Experience in setting up and operating CAR 145 approved Maintenance Organization/ MROs.</td> </tr> </table> </td> </tr> <tr> <td>(c)</td> <td>The Bidder should have a valid Security Clearance from the Ministry of Home Affairs.</td> </tr> <tr> <td>(d)</td> <td>The technical proposal along with a business model must be submitted along with the bid.</td> </tr> <tr> <td>(e)</td> <td>Submission of documents specified at ITB <b>Clause 8.1.</b></td> </tr> </table>	(a)	For participating in the Bidding Process, the Bidder shall be a registered company/Partnership/Proprietorship firm, Joint Venture or consortium of companies registered under the Indian Company Act, 1956 or Indian Company Act 2013 or The Partnership Act 1932. The Joint Venture with established foreign FTO's/ATO/TRTO or Aircraft Maintenance Institute has more than 05 years' operating experience may apply in collaboration with Indian registered company provided that the Indian company is at least 51% shareholder of the Joint Venture and the Principal bidder should be able to comply with eligibility conditions for this bid.	(b)	For demonstrating technical capacity and experience (the "Technical Qualification"), the bidder should have experience of more than 05 years in any of the below as on the Bid Due Date: <table border="1"> <tr> <td>(i)</td> <td>A Scheduled Operator (SOP), registered/ licensed with/ by Directorate General of Civil Aviation/ Ministry of Civil Aviation; or</td> </tr> <tr> <td>(ii)</td> <td>Non-Scheduled Operator (NSOP), registered/ licensed with/ by Directorate General of Civil Aviation/ Ministry of Civil Aviation; or</td> </tr> <tr> <td>(iii)</td> <td>Experience in setting up and operating a Flying Training Organisation or Approved Training Organisation or Type Rating Training Organisation or Aviation Training Institutes; or</td> </tr> <tr> <td>(iv)</td> <td>Experience in setting up and operating Aircraft Maintenance and Engineering Training Institutes.</td> </tr> <tr> <td>(v)</td> <td>Experience in setting up and operating CAR 145 approved Maintenance Organization/ MROs.</td> </tr> </table>	(i)	A Scheduled Operator (SOP), registered/ licensed with/ by Directorate General of Civil Aviation/ Ministry of Civil Aviation; or	(ii)	Non-Scheduled Operator (NSOP), registered/ licensed with/ by Directorate General of Civil Aviation/ Ministry of Civil Aviation; or	(iii)	Experience in setting up and operating a Flying Training Organisation or Approved Training Organisation or Type Rating Training Organisation or Aviation Training Institutes; or	(iv)	Experience in setting up and operating Aircraft Maintenance and Engineering Training Institutes.	(v)	Experience in setting up and operating CAR 145 approved Maintenance Organization/ MROs.	(c)	The Bidder should have a valid Security Clearance from the Ministry of Home Affairs.	(d)	The technical proposal along with a business model must be submitted along with the bid.	(e)	Submission of documents specified at ITB <b>Clause 8.1.</b>
(a)	For participating in the Bidding Process, the Bidder shall be a registered company/Partnership/Proprietorship firm, Joint Venture or consortium of companies registered under the Indian Company Act, 1956 or Indian Company Act 2013 or The Partnership Act 1932. The Joint Venture with established foreign FTO's/ATO/TRTO or Aircraft Maintenance Institute has more than 05 years' operating experience may apply in collaboration with Indian registered company provided that the Indian company is at least 51% shareholder of the Joint Venture and the Principal bidder should be able to comply with eligibility conditions for this bid.																				
(b)	For demonstrating technical capacity and experience (the "Technical Qualification"), the bidder should have experience of more than 05 years in any of the below as on the Bid Due Date: <table border="1"> <tr> <td>(i)</td> <td>A Scheduled Operator (SOP), registered/ licensed with/ by Directorate General of Civil Aviation/ Ministry of Civil Aviation; or</td> </tr> <tr> <td>(ii)</td> <td>Non-Scheduled Operator (NSOP), registered/ licensed with/ by Directorate General of Civil Aviation/ Ministry of Civil Aviation; or</td> </tr> <tr> <td>(iii)</td> <td>Experience in setting up and operating a Flying Training Organisation or Approved Training Organisation or Type Rating Training Organisation or Aviation Training Institutes; or</td> </tr> <tr> <td>(iv)</td> <td>Experience in setting up and operating Aircraft Maintenance and Engineering Training Institutes.</td> </tr> <tr> <td>(v)</td> <td>Experience in setting up and operating CAR 145 approved Maintenance Organization/ MROs.</td> </tr> </table>	(i)	A Scheduled Operator (SOP), registered/ licensed with/ by Directorate General of Civil Aviation/ Ministry of Civil Aviation; or	(ii)	Non-Scheduled Operator (NSOP), registered/ licensed with/ by Directorate General of Civil Aviation/ Ministry of Civil Aviation; or	(iii)	Experience in setting up and operating a Flying Training Organisation or Approved Training Organisation or Type Rating Training Organisation or Aviation Training Institutes; or	(iv)	Experience in setting up and operating Aircraft Maintenance and Engineering Training Institutes.	(v)	Experience in setting up and operating CAR 145 approved Maintenance Organization/ MROs.										
(i)	A Scheduled Operator (SOP), registered/ licensed with/ by Directorate General of Civil Aviation/ Ministry of Civil Aviation; or																				
(ii)	Non-Scheduled Operator (NSOP), registered/ licensed with/ by Directorate General of Civil Aviation/ Ministry of Civil Aviation; or																				
(iii)	Experience in setting up and operating a Flying Training Organisation or Approved Training Organisation or Type Rating Training Organisation or Aviation Training Institutes; or																				
(iv)	Experience in setting up and operating Aircraft Maintenance and Engineering Training Institutes.																				
(v)	Experience in setting up and operating CAR 145 approved Maintenance Organization/ MROs.																				
(c)	The Bidder should have a valid Security Clearance from the Ministry of Home Affairs.																				
(d)	The technical proposal along with a business model must be submitted along with the bid.																				
(e)	Submission of documents specified at ITB <b>Clause 8.1.</b>																				
22.2	<p><b><u>Financial Capacity</u></b></p> <p><b>The Bidder shall have an Annual average financial turnover of INR 300 crores</b> during the last 05 (five) consecutive financial years ending on 31<sup>st</sup> March 2020. The above-stipulated average annual turnover submitted by the bidder through its Group of companies</p>																				

CIVIL AVIATION DEPARTMENT: GOVERNMENT OF HARYANA

	can be accepted by the Authority.
22.4	<p><b><u>BIDDING PARAMETER</u></b></p> <p>The Bidder shall be required to quote the percentage (%) of Revenue Share which they are willing to offer to the Authority during the Concession period. For the purposes of evaluation of the Financial Proposals, the highest quoted Percentage (%) of revenue share in terms of “<b>Concession Fee</b>” offered to the Authority during the concession period shall be the sole parameter for identification of the <b>Highest bidder</b>.</p>
22.5	<p>The <b>Concession Fee</b> being quoted by Bidders shall be considered for evaluation of Bids. In terms of this Tender, the term “Highest Bidder” shall mean the Bidder who meets the eligibility criteria as stated hereinunder and who is offering the highest Concession Fee and the Highest Bidder shall be the Selected Bidder (hereinafter referred to as the “<b>Concessionaire</b>”).</p>
22.6	<p>The Concessionaire shall be entitled to levy, charge, and collect fees from the trainees/Pilots undergoing training from the Approved Training Organisation/TRTO at Integrated Aviation Hub Hisar Airport (Flight Simulation Training Device Level-D facility i.e. from flying/Aviation/Simulator training candidates).</p>
<b>23.</b>	<b>PERFORMANCE PARAMETERS</b>
23.1	<p><b><u>Conduct of DGCA/FAA Stipulated Training Activities at ATO/TRTO:</u></b> To impart state of the art aviation training and skills to its residents, the ‘Authority’ is desirous that, the selected bidder to conduct Flight Simulation Training and other associated training Activities from the ATO/TRTO at Integrated Aviation Hub Hisar Airport during the term of the Agreement/Contract.as stipulated by relevant CAR issued by DGCA/ DGCA (CAP 7100)/ FAA.</p>
23.2	<p><b>Installation of Large Aircraft Flight Simulation Training Device (Level-D):</b> The bidder shall deploy a minimum of 01 FSTD within <b>18 months</b> of award of the bid (or as mutually agreed with the Authority) with the requisite staff to operate Approved Training Organisation at their full capacity and shall continue to do so for the full period of contract.</p>
23.3	<p>Payment of Land Rental (stipulated at ITB Clause 21.2), Electricity &amp; Water Supply Charges (on actuals usage of services) on monthly basis and payment of annual Concession fees as per the rate quoted by the Concessionaire in Clause 22.5, to the Authority.</p>
23.4	<p>It is expected that the successful bidder shall deploy adequately trained staff for training, services, operation, and maintenance. Foreign collaborations with world-class institutes TRTOs and Simulator companies would be considered advantageous. Extension/continuation would be based on the Quality of Training and Output quality of the product.</p>
23.5	<p>The selected Bidder shall register its office in the State of Haryana, within six months of Letter of Award.</p>

CIVIL AVIATION DEPARTMENT: GOVERNMENT OF HARYANA

23.6	To obtain the necessary permissions/clearances/approvals/Licenses etc. from different statutory authorities for operation of the Approved Training Organisation for the conduct of Flight Simulator Training and related activities.
23.7	Adherence to all Safety norms for the conduct of training activities as per DGCA CAR-Section 7 / CAR Section 7-Series D/CAP 7100 (Approved Training Organisation Manual) and the other relevant latest guidelines being issued by Director General of Civil Aviation, (DGCA) Government of India from time to time.
23.8	The Concessionaire shall use the Site only for the permitted use as granted by the Authority in terms of the draft Land Rental Agreement between the Authority and the Concessionaire/Lessee.
<b>24.</b>	<b>Facilities to be provided by Govt. of Haryana, Civil Aviation Department</b>
24.1	Facilities to be provided by the Government of Haryana, Civil Aviation Department, to the successful bidder shall be: <ul style="list-style-type: none"> <li>a) An area of <b>4047 Sqm</b> (01 Acre) of unpaved Space towards the cityside area at Integrated Aviation Hub Hisar Airport (Sector-II) for Installation of Large Aircraft Full Flight Simulation Devices (e.g. B-737/A-320 etc.) for Ground Simulation Training classes and official works.</li> <li>b) The selected bidder may conduct the allied ground training along with Flight Simulation Training as permitted by DGCA/FAA guidelines.</li> <li>c) Provision of Water and Electricity services on an actual usage cost basis.</li> <li>d) The successful bidder may also utilize additional space over and above the minimum area as mentioned in this tender. For this, the bidder will have to pay the additional charges to the Government of Haryana, Civil Aviation Department (i.e. as per the standard Non-Aeronautical Tariff Charges stipulated by the Government of Haryana, Civil Aviation Department)</li> </ul>
24.2	<b>“Gestation Period or Development Period”</b> means the period commencing from the date of issue of Letter of Award (LoA) to the end of 18 (Eighteen) months / 548 (Five Hundred and forty-Eight day) days <b>or</b> , from the date of issue of Letter of Award (LoA/LoI) to the commencement of commercial/operational/training activities, whichever is earlier unless extended by the Authority. The Monthly License Fee will not be levied from the Concessionaire during this <b>“Gestation Period”</b> .
<b>B.</b>	<b>Evaluation of Bid &amp; Award of Contract</b>
<b>25.</b>	<b>Opening and Evaluation of Technical and Financial Proposal</b>
25.1	The Authority will open the technical proposals of each and every Bidder after the deadline of submission of the Bid. The revenue share being quoted by Bidders shall be considered for the evaluation of Bids. In terms of this Tender the term <b>“Highest Bidder”</b> shall mean the Bidder who meets the eligibility criteria as stated hereinunder and who is offering the



CIVIL AVIATION DEPARTMENT: GOVERNMENT OF HARYANA

	highest Revenue Share along with the payment of fixed monthly License fee as set forth in Clause 21 of this RFP.
25.2	The financial proposal(s) will only be opened for the bidders which qualify technically. Financial bids will not be opened for technically non-qualified bidders.
25.3	Information relating to the examination, clarification, evaluation, and comparison of the technical proposals and recommendations for the award of a contract shall not be disclosed to the Bidders or any other persons not officially concerned with such process.
25.4	Before the detailed evaluation of the Bids, the Authority will examine the Bids to determine whether they are complete, whether the documents have been properly signed, whether the Bid Security is included, and whether the Bids are generally in order. Any Bids found to be non-compliant will be rejected by the Authority and not included for further consideration.
25.5	The Authority will evaluate the Bids to determine whether the technical aspects substantially comply with the requirements outlined in the Bidding Documents. To reach such a determination, the Authority will examine all the information supplied by the Bidders and other requirements in the Bidding Documents.
25.6	To assist in the examination, evaluation, and comparison of the Bids, the Authority may, at its absolute discretion, ask any Bidder for clarification of its Bid. The request for clarification and the response shall be in writing, or by email by facsimile unless the Authority believes, in its absolute discretion, that a clarification meeting with the Bidder is required. The Authority may conduct such clarification meetings with each or any Bidder as it deems fit.
25.7	At the end of the evaluation of technical proposals, the Employer will notify in writing such Bidders whose technical proposals are not substantially compliant.
25.8	A substantially compliant technical proposal is one that conforms to the terms, conditions, and requirements of the Bidding Documents, without deviations or exceptions, and includes the changes, if any, requested by the Authority during the evaluation of the Bidders' technical proposals.
25.9	The Authority will open the price proposal(s) of each Bidder who submitted a substantially compliant technical proposal, after evaluation of the technical proposal.
25.10	Information relating to the examination, clarification, evaluation, and comparison of the price proposals and recommendation for the award of the contract shall not be disclosed to Bidder(s) or any other persons.
25.11	To assist in the examination, evaluation, and comparison of price proposals, the Authority may, at its discretion, ask any Bidder for clarification of its Bid. The request for clarification and the response shall be in writing or by email.
25.12	The Authority will examine the Bids to determine whether they are complete, whether the documents have been properly signed, whether the Bids are substantially compliant to the requirements of the Bidding Documents; and whether the Bidders have provided any clarification and/or substantiation that the Authority may require.
25.13	If a financial proposal is not substantially compliant, it will be rejected by the Authority, and may not subsequently be made compliant by correction or withdrawal of the nonconforming deviation or exception.

CIVIL AVIATION DEPARTMENT: GOVERNMENT OF HARYANA

25.14	Financial proposals determined to be substantially compliant will be checked by the Authority for any arithmetic/clerical errors. In case of any discrepancy, corrections may be carried out by the Authority which may be binding upon the Bidder. If such corrections are not accepted by the Bidder, its Bid will be rejected, and the Bid Security may be forfeited under the provisions of the ITB Clause 21.7 (vi).
25.15	The Authority will evaluate Bids based upon an evaluation of the technical and price criteria. The Employer may in its absolute discretion, invite for discussions such Bidder(s) who shall have submitted substantially compliant price proposals, to achieve better quality.
25.16	If the Highest Bidder withdraws or is not selected for any reason in the first instance (the " <b>first round of bidding</b> "), the Authority may either annul the Bidding Process or invite all the remaining Bidders to revalidate or extend their respective Bid Security, as necessary, and match the Bid of the aforesaid Highest Bidder (the " <b>second round of bidding</b> "). If in the 2 <sup>nd</sup> round of bidding, only one Bidder matches the Highest Bidder, it shall be the Selected Bidder. If two or more Bidders match the said Highest Bidder in the second round of bidding, then the Bidder whose Bid was higher as compared to other Bidder(s) in the first round of bidding shall be the Selected Bidder. For example, if the 3 <sup>rd</sup> and 5 <sup>th</sup> Highest Bidders in the first round of bidding offer to match the said Highest Bidder in the second round of bidding, the said third-highest Bidder shall be the Selected Bidder.
25.17	If no Bidder offers to match the Highest Bidder in the second round of bidding, the Authority may, in its discretion, invite fresh Bids (the " <b>third round of bidding</b> ") from all Bidders except the Highest Bidder of the first round of bidding, or annul the Bidding Process, as the case may be. In case, the Bidders are invited in the third round of bidding to revalidate or extend their Bid Security, as necessary, and offer fresh Bids, they shall be eligible for submission of fresh Bids provided, however, that in such third round of bidding only such Bids shall be eligible for consideration which is higher than the Bid of the second-highest bidder in the first round of bidding.
<b>26.</b>	<b>Award of Contract</b>
26.1	The Authority, at its discretion, will award the Project to the Bidder whose Bid has been determined to be substantially compliant and who has offered the most advantageous Bid to the Authority, as per the terms of this Tender.
26.2	The Authority reserves the right to accept or reject any Bid, award only a part of the Project and to annul the Bidding Process and reject all Bids, at any time before award of the Project, without thereby incurring any liability to the affected Bidder or Bidder(s) or any obligation to inform the affected Bidder or Bidder(s) of the grounds for the Authority's action.
26.3	The Authority will notify the successful Bidder, and upon the furnishing by the successful Bidder of a Performance Security as per the Agreement, the Authority will promptly notify the other Bidders that their Bids have been unsuccessful and return their Bid Security.
26.4	After selection, a Letter of Award shall be issued, in duplicate, by the Authority to the Selected Bidder and the Selected Bidder shall, within 15 days of the receipt of the Letter of Award, sign and return the duplicate copy of the Letter of Award in acknowledgement thereof. In the event the duplicate copy of the Letter of Award duly signed by the Selected Bidder is not received by the stipulated date, the Authority may unless it consents to the

CIVIL AVIATION DEPARTMENT: GOVERNMENT OF HARYANA

	extension of time for submission thereof, appropriate the Bid Security of such Bidder as mutually agreed genuine pre-estimated compensation and damages payable to the Authority for, <i>inter alia</i> , time, cost and effort of the Authority on account of the failure of the Selected Bidder to acknowledge the Letter of Award, and the next eligible Bidder may be considered.
26.5	Within <b>15 days</b> of issuance of the Letter of Award, the Selected Bidder shall submit acknowledgement thereof be in writing to the Civil Aviation Department, and within <b>15 days</b> of acknowledgement of the Letter of Award (LoA/LoI) from the Selected Bidder, an Agreement shall be executed between the Authority and the Selected Bidder.
<b>27.</b>	<b>Performance Security</b>
27.1	<p>Within <b>30</b> (thirty) days of receipt of the Letter of Award, the Selected Bidder shall furnish to the Authority the Performance Security of the amount Rs 16,18,800/- (Rupees Sixteen Lacs Eighteen Thousand Eight Hundred Only) for Setting up and Operation of Approved Training Organisation/TRTO (<b>FSTD Level-D facility</b>) at Integrated Aviation Hub Hisar Airport at Hisar.</p> <p>a) In the event of any amendment issued to the Agreement, the Selected Bidder shall, within thirty (30) days of issue of the amendment, furnish the corresponding amendment to the Performance Security (as necessary) rendering the same valid in all respects in terms of the Agreement, as amended.</p> <p>b) The performance security shall be valid until 90 days after the date of completion of all contractual obligations.</p>
27.2	The performance security shall be denominated in Indian Rupees and shall be in the form of unconditional, irrevocable Bank Guarantee issued by a nationalized/ scheduled bank in India, in the favor of Authority and tenable/payable at Chandigarh.
27.3	In case of forfeiture of the performance security, the successful bidder will be required to re-submit fresh performance security of the value mentioned above for the continuation of the engagement.
<b>28.</b>	<b>Fraud and Corrupt Practices</b>
28.1	The Bidders and their respective officers, employees, agents, and advisers shall observe the highest standard of ethics during the Bidding Process and after the issue of the Letter of Award and during the subsistence of the Agreement. Notwithstanding anything to the contrary contained herein, or in the Letter of Award or the Agreement, the Authority may reject a Bid, withdraw the Letter of Award, or terminate the Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder or Operator, as the case may be, if it determines that the Bidder or Operator, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Agreement, or otherwise.
28.2	Without prejudice to the rights of the Authority under Clause 26.1 hereinabove and the rights and remedies which the Authority may have under the Letter of Award or the

CIVIL AVIATION DEPARTMENT: GOVERNMENT OF HARYANA

	<p>Agreement, or otherwise, if a Bidder or Operator, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the Letter of Award or the execution of the Agreement, such Bidder or Operator shall not be eligible to participate in any Bid or Tender issued by the Authority within 2 (two) years from the date such Bidder or Operator, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.</p>
28.3	<p>For this tender, the following terms shall have the meaning hereinafter respectively assigned to them:</p> <ul style="list-style-type: none"> <li>(i) <b>“corrupt practice”</b> means (a) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the Letter of Award or has dealt with matters concerning the Agreement or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (b) save and except as permitted under the terms of this Tender, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the Letter of Award or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the Letter of Award or the Agreement, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Project;</li> <li>(ii) <b>“fraudulent practice”</b> means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, to influence the Bidding Process;</li> <li>(iii) <b>“coercive practice”</b> means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;</li> <li>(iv) <b>“undesirable practice”</b> means (a) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (b) having a Conflict of Interest; and</li> <li>(v) <b>“restrictive practice”</b> means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.</li> </ul>
<b>29.</b>	<b>Liquidated Damages</b>

CIVIL AVIATION DEPARTMENT: GOVERNMENT OF HARYANA

29.1	In case of setting up and operation of Approved Training Organisation/TRTO at Integrated Aviation Hub Hisar Airport, the bidder shall deploy at least 01 Large Flight Simulation Training Device within 18 months of award of the bid (or as mutually agreed with the Authority), with the requisite staff required to operate training facility at their full capacity and shall continue to do so for the full period of contract failing which a penalty of 1% of the annual value of contract per week or part thereof will be levied as liquidated damage to a maximum of 6 weeks after which the contract will be liable to be terminated.
29.2	In case the bidder fails or is not able to pay the monthly premium charges on or before the prescribed date of payment, and in the event of a delay beyond such period, the Lessee shall pay a delayed fee as per Clause 34.4 of the Agreement. The default for 3 months after the due payment date will lead to the termination of the contract and forfeiture of the performance security.
29.3	In event of physical or material damage (other than Force Majeure) by the concessionaire to the infrastructure being provided by the Authority, the repair cost will be borne completely by the concessionaire. Repair charges will be determined by the Authority based on the estimates of PWD (B&R) rates for damage to the civil works. Equipment charges will be as per the cost of acquisition from the same OEM for the damaged equipment. Any denial of use due to such breakdown/ damage will not be the responsibility of the Authority, Haryana, and full rent will be payable.
<b>30.</b>	<b>Force Majeure</b>
30.1	For this tender, "Force Majeure" means an event which is beyond the reasonable control of a Bidder, and which makes a Bidder's performance of its obligations hereunder impossible or so impracticable as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood, epidemic, pandemic or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation by Government agencies. Moreover, the term Force Majeure is further defined in Clause 20 of the draft Agreement of this Tender.
30.2	Force Majeure shall not include;  <ul style="list-style-type: none"> <li>(i) any event which is caused by the negligence or intentional action of a Party or such Party's Sub-consultants or agents or employees, nor</li> <li>(ii) any event which a diligent Party could reasonably have been expected to both (A) take into account at the time of the conclusion of this Agreement and (B) avoid or overcome in the carrying out of its obligations hereunder.</li> </ul>
30.3	Force Majeure shall not include the insufficiency of funds or failure to make any payment required hereunder.

<b>31.</b>	<b>Miscellaneous</b>
31.1	The Bidding Process shall be governed by, and construed by, the laws of India, and the Courts at <b>Chandigarh</b> shall have exclusive jurisdiction over all disputes arising under, according to and/ or in connection with the Bidding Process.
31.2	<p>The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to:</p> <p>(i) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;</p> <p>(ii) consult with any Bidder to receive clarification or further information.</p> <p>(iii) retain any information and/ or evidence submitted to the Authority by, on behalf of, and/ or about any Bidder; and</p> <p>independently verify, disqualify, reject and/ or accept any or all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.</p>
31.3	It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Authority, its employees, agents, and advisers, irrevocably, unconditionally, fully and finally from any or all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection with the Bidding Process and waives, to the fullest extent permitted by applicable laws, any or all rights and/or claims it may have in this respect, whether actual or contingent, whether present or in future.

# PART – II.

# SCOPE OF WORK

### **Scope of Work for the Project**

1. The Authority seeks the participation of private entities for the Conduct of the Project at Integrated Aviation Hub Hisar Airport, including inter alia all works related to, or incidental to, or required to be undertaken up for the purpose, in accordance to the provisions of the Agreement and applicable laws, including the commercial development of the Approved Training Organizations and conduct Flight Simulation Training activities from the land provided by the Authority at Integrated Aviation Hub Hisar Airport, on payment of ‘**License Fee**’ in terms of space rental through a license fee Agreement basis and has decided to carry out the bidding process for the selection of a private entity to whom the Project may be awarded. The Authority may decide to accommodate more than one Operator at Integrated Aviation Hub Hisar Airport, each ATO/TRTO operator will be offered land spaces as specified in the Tender document.

2. The scope of work will broadly include “***Setting up and Operation of Approved Training Organisation/Type Rated Training Organisation with Flight Simulation Training Device (Level-D) facility at Integrated Aviation Hub, Hisar***” at Integrated Aviation Hub Hisar Airport (but not limited to) to the following term of the Agreement. The Selected Bidder will be responsible for the following: -

- i) Development of DGCA approved Approved Training Organisation/TRTO with Flight Simulation Training Device (FSTD Level-D) facility.
- ii) Construction of building for Installation, Testing, Commissioning, Operating and Maintenance of large aircraft Flight Simulation Training Device (FSTD Level-D).
- iii) Approvals and Clearances for the building and installation of Equipment from respective regulatory bodies as per applicable laws & regulations.
- iv) To Install, Integrate, Configure and Commission all equipment, items, authentic and authorised software as required for the functioning of Flight Simulation Training Device (Level-D) of large aircraft as per stipulated technical details.
- v) To conduct Flight Simulator training of cadets with the current civil license (ATPL/CPL) with no prior large aircraft experience (e.g. B-737/A-320).
- vi) Recency Training of large aircraft (e.g. B-737/A-320) qualified pilots with a break in flying.
- vii) Conduct of DGCA (CAP 7100) /CAA/ICAO approved training syllabus.
- viii) Maintenance of the training records as per DGCA/CAA/ICAO guidelines.



**3. Components of Business Model:** The technical proposal must contain a Business model along with the financial model and the submitted models must be elaborative with clear and detailed mention of the following components:

- a) Project scope
- b) Project sizing
- c) Proposed Approach and methodology for setting up an Approved training organization.
- d) Proposed Fee Structure.
- e) Organization structure, team composition, and staffing.
- f) Qualification and Experience of the key persons
- g) Detailed month-wise work plan.
- h) Demand and supply analysis.
- i) Financial model for the duration of the Agreement
- j) Financing gap analysis
- k) Periodic capital investment
- l) The regulatory framework for current regulations
- m) Plan for the conduct of aero-sports/ aero-adventure activities throughout the year
- n) Demand supply analysis to justify the projected revenues and the financial returns
- o) The component wise break-up of project cost with clear mention of assumptions and benchmarks.
- p) Training course structure including timeline, the fee structure of the course, and whether the course will be daytime or night-time.
- q) Proposed benefits/ relaxations to be offered for female candidates under Beti Bachao Beti Padhao initiative of Government of India Campaign.
- r) Proposed benefits/ relaxations for Haryana State Domicile candidates.
- s) The business model submitted as part of the bid will be evaluated to ascertain the technical eligibility of the bidder.
- t) The technical bids may be accepted or rejected based on the decision of the evaluation committee particularly on the relevance and quality of the proposed business model to the scope mentioned in this bid.

# PART – III.

# APPENDICES

**LETTER COMPRISING THE BID**

**[On the Letter Head of the Bidder]**

Dated:

To,

Civil Aviation Department,  
Government of Haryana,  
Haryana Civil Secretariate, Sector-1, Chandigarh,  
Haryana, India

**Sub:- Bid for Setting up and Operation of Approved Training Organisation as hitherto TRTO (Flight Simulation Training Device Level-D facility) at Integrated Aviation Hub, Hisar, Haryana.**

Dear Sir,

1. Regarding your Tender document dated ..... I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.
2. I /We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Operator for the aforesaid Project, and we certify that all information provided therein is true and correct and nothing has been omitted which renders such information misleading and all documents accompanying the Bid are true copies of their respective originals.
3. This statement is made for the express purpose of our selection as Operator for the operation, maintenance, development, and management of the aforesaid Project.
4. I/We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Bid.
5. I/We acknowledge the right of the Authority to reject our Bid without assigning any reasons or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
6. I/We certify that in the last three years, we have neither failed to perform on any contract, as evidenced by the imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
7. All blank spaces shall be suitably filled up by the Bidder to reflect the particulars relating to such Bidder.
8. I/We declare that:
  - (i) I/We have examined and have no reservations to the Bidding Documents, including any Addendum issued by the Authority;
  - (ii) I/We do not have any Conflict of Interest as per the terms and conditions of the Tender;

## CIVIL AVIATION DEPARTMENT: GOVERNMENT OF HARYANA

- (iii) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in the Tender, in respect of any Bid or request for proposal issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State;
  - (iv) I/We hereby certify that we have taken steps to ensure that in conformity with the provisions of Part IV of the Tender, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice;
  - (v) the undertakings given by us along with the Bid in response to the Tender for the Project are true and correct as on the date of making the Bid and are also true and correct as on the Bid Due Date and I/We shall continue to abide by them.
9. I/We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, as per the terms and conditions of the Tender.
  10. I/We believe that we satisfy(s) the Financial Capacity criteria and meet(s) the requirements as specified in the Tender.
  11. I/We certify that regarding matters other than security and integrity of the country, we or any of our Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
  12. I/We further certify that regarding matters relating to security and integrity of the country, we or any of our Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
  13. I/We further certify that no investigation by a regulatory authority is pending either against us or against our Associates or any of our directors/managers/employees.
  14. I/We acknowledge and undertake that we were qualified and short-listed based on our Technical Capacity and Financial Capacity. We further agree and acknowledge that the aforesaid obligation shall be in addition to the obligations contained in the Agreement in respect of Change in Ownership.
  15. I/We acknowledge and agree that in the event of a change in control of an Associate whose Technical Capacity and/or Financial Capacity was taken into consideration for short-listing and qualification as per the terms of the Tender, I/We shall inform the Authority forthwith along with all relevant particulars and the Authority may, in its sole discretion, disqualify us or withdraw the Letter of Award, as the case may be. I/We further acknowledge and agree that in the event such change in control occurs after signing of the Agreement, it would, notwithstanding Anything to the contrary contained in the Agreement, be deemed a breach of thereof and the Agreement shall be liable to be terminated without the Authority being liable to us in any manner whatsoever.
  16. I/We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above-

CIVIL AVIATION DEPARTMENT: GOVERNMENT OF HARYANA

mentioned Project and the terms and implementation thereof.

17. In the event of our being declared as the Selected Bidder, I/we agree to enter into an Agreement as per the draft that has been provided to us along with the Tender document and forming a part of the Tender. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
18. I/We have studied all the Bidding Documents carefully and also surveyed the Project. We understand that except to the extent as expressly outlined in the Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or relating to the Bidding Process including the award of Agreement.
19. I/We offer a Bid Security of Rs. **4,00,000/-** to the Authority as per the terms of the Tender.
20. The Bid Security in the form of a Demand Draft/ Bank Guarantee (strike out whichever is not applicable) is attached.
21. I/We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/We shall have any claim or right of whatsoever nature if the Project/Agreement is not awarded to us or our Bid is not opened or rejected.
22. The Premium has been quoted by me/us after taking into consideration all the terms and conditions stated in the Tender, draft form of the Agreement, our estimates of costs and after a careful assessment of the site and all the conditions that may affect the Project cost and implementation of the Project.
23. I/We agree and undertake to abide by all the terms and conditions of the Tender.
24. I/ We certify that in terms of the Tender, my/our Net Worth is Rs.  
(Rupees .....).
25. I/We shall keep this offer valid for .....from the Bid Due Date specified in the Tender.
26. I/We hereby submit our Bid and offer a Premium in the form as mentioned in our Financial Bid out of the gross revenues of the Project as a share of the Authority for undertaking the aforesaid Project as per the Bidding Documents and the Agreement.

In witness thereof. I/We submit this Bid under and as per the terms and conditions of the Tender.

Yours faithfully

Date: (Signature, name, and designation of the Authorized signatory)

Place: Name and seal of Bidder

**(Annexure-I)**

**DETAILS OF THE BIDDER**

1. Name:
2. Address of the corporate office and registered office of the Bidder:
3. Date of Incorporation and/or commencement of business:
4. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project:
5. Details of the individual(s) who will serve as the point of contact/ communication for the Authority:
  - (i) Name:
  - (ii) Designation:
  - (iii) Address:
  - (iv) Tel:
  - (v) E-Mail:
  - (vi) Fax:
6. Particulars of Authorized Signatory of the Bidder:
  - (i) Name:
  - (ii) Designation:
  - (iii) Address:
  - (iv) Tel:
  - (v) E-Mail:
  - (vi) Fax:
7. The following information shall also be furnished by the Bidder:

S.No.	Criteria	Yes	No
1.	Has the Bidder been barred by the Central/State Government or any entity controlled by it, from participating in any project on a rental/lease basis?		
2.	If the answer to (1) is yes, does such bar still subsist as on date		

8. A statement by the Bidder disclosing material non-performance or contractual non-compliance in past projects, contractual disputes, and litigation/arbitration in the recent past is given below (attach extra sheets if necessary).

Yours faithfully

Date: (Signature, name and designation of the Authorized signatory)

Place: Name and seal of Bidder

**(Annexure-II)**

**FORM I**

**EXPERIENCE STATEMENT OF THE BIDDER/TECHNICAL CAPACITY**

- (a) List of satisfactorily completed Projects including the development of a World-class Approved training organization or approved training organization or conduct of MRO activities from Integrated any airport as per the guidelines of the Director-General of Civil Aviation, India and Department of Civil Aviation similar to the Project herein.

<b>Sl. No.</b>	<b>Name of the Approved Training Organisation/FTO/TRTO/ CAR 145 Maintenance Organisation</b>	<b>Description of scope of Works</b>	<b>Start Date and Date of completion</b>	<b>Value of Bidders scope of Works (INR)</b>

- (b) Experience in operating approved training institute/aircraft maintenance school/commercial airline, approved/certified by DGCA/ICAO or such statutory body, for a minimum period of .....years.

**Note:**

Certified true copies of the documents evidencing (a) and (b) above to be provided. The same shall be duly notarized.

Yours faithfully

Date:

(Signature, name, and designation of the Authorized signatory)

Place:

Name and seal of Bidder

**(Annexure-III)****FORM II****FINANCIAL CAPACITY OF THE BIDDER**

<b>Financial Information in INR</b>	<b>Historical Information for previous 3 (three) financial years</b>				
<b>Year</b>	<b>FY 2017-18</b>	<b>FY 2018 -19</b>	<b>FY 2019 -20</b>	<b>Average Annual Turnover</b>	<b>Net worth in Indian Rupees as of 31 March 2020</b>
<b>Information from the Balance sheet</b>					
Total Assets					
Total Liabilities					
Net Worth					
Liquid Resources (Cash and Bank balances)					
Current Liabilities					
<b>Information from Income Statement</b>					
Total Revenue (Annual Turnover)					
Profit Before Taxes					

**Note:**

- Please attach audited financial accounts of the Bidder (and Associates, if applicable) for the last 3 financial years.
- Contents of this Form II should be certified by the Statutory Auditor of the Bidder/practicing Chartered Accountant.

Yours faithfully

Date:

(Signature, name, and designation of the Authorized signatory)

Place:

Name and seal of Bidder



(Annexure-IV)

STATEMENT OF LEGAL CAPACITY

Dated:

To,

Civil Aviation Department,  
Government of Haryana,  
Haryana Civil Secretariat, Sector 1, Chandigarh,  
Haryana, India

**Sub:- Bid for Setting up and Operation of Approved Training Organisation as hitherto TRTO (Flight Simulation Training Device Level-D facility) at Integrated Aviation Hub, Hisar, Haryana.**

Dear Sir,

We hereby confirm that we satisfy the terms and conditions laid out in the Tender document.

We confirm that ..... (insert individual's name) will act as our representative and has been duly authorized to submit the Tender. Further, the authorized signatory is vested with requisite powers to furnish such a letter and authenticate the same.

Thanking you,

(Signature, name, and designation of the authorized signatory)

For and on behalf of.....

FORM OF POWER OF ATTORNEY

**KNOW ALL MEN BY THESE PRESENTS**, that [name of the Bidder], having its registered office at [please provide address] and acting through its [please insert designation], [please insert name], hereby authorize and appoint

[Name of Authorized Signatory]

[Address]

with the full power of substitution, and as its agent and attorney-in-fact and confer upon such agent and attorney, in fact, all the powers and authority in the name and on behalf of [name of the Bidder], to do the following acts:

- (i) To finalize, execute and deliver the Bid and any documents, certificates and details on behalf of [name of the Bidder] with the Authority in response to the Invitation to Tender issued by the Authority for **Setting up and Operation of Approved Training Organisation / TRTO with Flight Simulation Training Device (Level-D facility at Integrated Aviation Hub, Hisar, Haryana, Haryana** dated [Please insert date].
- (ii) To make corrections, alterations, execute and sign any documents/certificates and to enter into discussions and negotiations with the Authority, make alterations to the Bid and any documents, certificates and make commitments and undertakings for the selection of [name of the Bidder] for undertaking the Project in response to the Tender issued by the Authority.
- (iii) To undertake all such other actions as may be required in furtherance of (i) and (ii) above.

**IN WITNESS WHEREOF**, I have hereunto set my hands, on this [please insert day] day of [please insert month], 2020.

By: \_\_\_\_\_

Name: [please insert name]

Designation:

Address:

Notary Public

LETTER OF UNDERTAKING

[On the letterhead of the Bidder]

Dated:

To,

Civil Aviation Department,  
Government of Haryana,  
Haryana Civil Secretariat, Sector 1, Chandigarh,  
Haryana, India

**Sub:- Bid for Setting up and Operation of Approved Training Organisation as hitherto TRTO (Flight Simulation Training Device Level-D facility) at Integrated Aviation Hub, Hisar, Haryana.**

The undersigned Bidder acknowledges that the Tender issued to the Bidder is confidential and personal to the undersigned Bidder and the undersigned Bidder hereby undertakes and agrees as follows:

1. “**Confidential Information**” means the Tender and everything contained therein, all documentation, data, particulars of the works and technical or commercial information made by (or on behalf of) the Authority or obtained directly or indirectly from the Authority or its representatives by the undersigned Bidder or which is generated by the undersigned Bidder or any information or data that the undersigned Bidder receives or has access to, as a result of the Tender, as being confidential information of the Authority, provided that such term does not include information that (i) was publicly known or otherwise known to undersigned Bidder before the time of such disclosure, (ii) subsequently becomes publicly known through no act or omission by undersigned Bidder or any person acting on undersigned Bidder’s behalf.
2. The undersigned Bidder shall maintain the confidentiality of Confidential Information as per the procedures adopted by the undersigned Bidder in good faith to protect the confidential information of third parties delivered to undersigned Bidder, provided that the undersigned Bidder may deliver or disclose Confidential Information to the undersigned Bidder’s authorized representatives who agree to hold confidential the Confidential Information substantially following the terms of this Undertaking.
3. The undersigned Bidder shall not at any time whatsoever:
  - (i) Disclose, in whole or in part, any Confidential Information received directly or indirectly from the Authority to any third party.
  - (ii) Reproduce, publish, transmit, translate, modify, compile, or otherwise transfer the Confidential Information.
4. In case the Bid of the undersigned Bidder is not accepted and immediately upon the acceptance of the Bid of any of the other Bidder, the undersigned Bidder, shall:
  - (i) Return all Confidential Information including without limitation, all originals, copies, reproductions, and summaries of Confidential Information; and /or

CIVIL AVIATION DEPARTMENT: GOVERNMENT OF HARYANA

- (ii) Destroy all copies of Confidential Information in its possession, power or control, which are present on magnetic media, optical disk or other storage devices, in a manner that ensures that the Confidential Information is rendered unrecoverable.
- 5. The undersigned Bidder shall certify to the Authority that it has returned or destroyed such Confidential Information to the Authority within two (2) days of such a request being made by the Authority.

(Signature, name, and designation of the authorized signatory)

**FINANCIAL PROPOSAL**

(On the Bidder's Letterhead)

Date:

To,

Civil Aviation Department,  
Government of Haryana,  
Haryana Civil Secretariat, Sector 1, Chandigarh,  
Haryana, India

**Sub:- Bid for Setting up and Operation of Approved Training Organisation as hitherto TRTO (Flight Simulation Training Device Level-D facility) at Integrated Aviation Hub, Hisar, Haryana.**

Dear Sirs,

We, the undersigned, offer to perform and undertake the Project following the terms of the Tender dated [*Insert Date from Tender*] and our Technical Proposal No. \_\_\_\_ Dt. \_\_\_\_\_ for a total fee in the sum of [*Insert amount(s) in words and figures*] per month over and above the Base Price as well as operating costs in INR (exclusive of all taxes and leaves).

We have assessed the Project site conditions and requirements of the Tender and confirm that our price includes all costs for aforesaid Project and this is exclusive of any taxes payable. We confirm compliance with all statutory rules and regulations and include the cost of all such statutory payments in the Price quoted by us.

Our Financial Proposal shall be binding upon us subject to the modifications resulting from contract negotiations, up to the expiration of the validity period of the proposal.

We understand you are not bound to accept any proposal you receive.

Thanking you,

Yours sincerely,

For (Insert Name of the Bidder)

Signature \_\_\_\_\_

in the capacity of \_\_\_\_\_

Duly authorized to sign Bid for and on behalf of the Bidder (Insert Name of the Bidder)

Address: \_\_\_\_\_

**SCHEDULE OF PRICES**

Financial proposal format:

<b>S. No.</b>	<b>BIDDING PARAMETER</b>	<b>“CONCESSION FEE” in terms of Highest Percentage of Revenue Share Quoted by the Interested Bidder</b>
1	<i>HIGHEST PERCENTAGE OF REVENUE SHARE</i>	

**Note:** In addition to the above License Fee and Operating costs (electricity, security, housekeeping, on an actual basis etc.) will be paid on monthly basis to the Government of Haryana, Civil Aviation Department for the period of the Agreement.

# PART – IV

## DRAFT AGREEMENT

(Attached as Vol. II)

REQUEST FOR PROPOSAL (RFP) BID DOCUMENT

**Competitive Single Stage Bidding Process for**  
**Setting up and Operation of Approved Training Organisation/Type Rating Training**  
**Organisation with the facility of Flight Simulation Training Device (Level-D) on Design,**  
**Build, Finance, Operate, Maintain and Transfer Basis (DBFOMT)**  
**at Integrated Aviation Hub, Hisar, Haryana**

**Volume -II**

**DRAFT AGREEMENT**



**CIVIL AVIATION DEPARTMENT,  
GOVERNMENT OF HARYANA**

**March 2021**



## CONTENTS

<b>Sr No.</b>	<b>Subject</b>	<b>Page No</b>
1	Definitions and Interpretations	04
2	Lease Rights	15
3	Conditions Precedent	16
4	Obligations of the Lessee	18
5	Obligations of the Authority	23
6	Representations and Warranties	24
7	Disclaimer	26
8	Performance Security	29
9	Lease and Access to the Site	30
10	Utilities and Associated Roads	33
11	Lessee's Covenants	33
12	Construction of the Infrastructure of ATO/TRTO	36
13	Monitoring and Supervision of Construction	37
14	Completion of Construction	38
15	Maintenance Requirements	39
16	Safety Requirements	41
17	Monitoring of Lessee's Obligations	42
18	Payments to be made by the Lessee to the Authority	46
19	Insurance	47
20	Force Majeure	51
21	Compensation for Breach of Agreement	55
22	Supervision of Lessee's Rights	55
23	Termination	56
24	Divestment of Rights and Interest	60
25	Defects Liability	62
26	Assignment and Charges	63
27	Change in Law	64
28	Liability and Indemnity	66
29	Rights and Title Over the Site	68
30	Dispute Resolution	69
31	Disclosure and Confidentiality	71
32	Term, Renewal and Expiry	71
33	Surrender/ Transfer Provisions	72
34	Miscellaneous	73

## **PART I – PRELIMINARY**

## AGREEMENT

This AGREEMENT (“**Agreement**”) is entered into on this [●] day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_

### **BETWEEN**

1) **The Governor of Haryana**, acting through Civil Aviation Department, Haryana having its office at 3<sup>rd</sup> Floor, 30 Bays Building, Sector 17-B Chandigarh (hereinafter referred to as "Government of Haryana, Civil Aviation Department" or “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns); of One 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 “**Lessee**” which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part.

### **WHEREAS:**

- A. The Authority had resolved to establish Approved Training Organizations (hereinafter referred to as “ATO”) on Design, Build, Finance, Operate, Maintain and Transfer basis by leasing the land at [\_\_\_\_] Airport on a land parcel admeasuring [4047 Sqm] at Integrated Aviation Hub Hisar Airport constituting the Site. Pursuant to the above resolution of the Authority, the Authority has decided to appoint an agency/operator to develop Approved Aviation Training Organisation as hitherto / Type Rating Training Organisation with Flight Simulation Training Device (Level-D) facility (hereinafter referred to as “ATO/TRTO”) as per the standards decided by the Director-General of Civil Aviation (hereinafter referred to as “DGCA”) on Lease for its use in accordance with the terms and conditions set forth in this Agreement.
- B. The Authority had prescribed the technical and commercial terms and conditions, and invited bids (the “**Request for Proposal**” or the “**RFP**”), for leasing of land for establishing ATO/TRTO to the successful Bidder for the term, set out herein below and, accordingly issued a notice inviting tender (“**NIT**”), and invited proposals from interested bidders through Request for Proposal dated [\_\_\_\_], 2020.
- C. After evaluation of the bids received, the Authority had accepted the bid of [\_\_\_\_] and issued its letter of award vide [letter No.] (herein after called the “**LOA**”) to the Lessee requiring, inter alia, the execution of this Agreement within 30 (thirty) days of the date of issue of LOA thereof.
- D. The Authority has agreed to enter into this Agreement with the Lessee for design, build, finance and operation of the ATO/TRTO at the Site for the Contract Period of this Agreement and to transfer the infrastructure built at the Airport at zero cost to Authority at the expiry of the Contract Period or upon Termination of this Agreement, whichever is earlier, subject to and on the terms and conditions set forth hereinafter.
- E. The Lessee represents and warrants that it has duly fulfilled all the terms and conditions necessary for the execution of this Agreement as per the terms and conditions in the Bid documents and is in a position to execute this Agreement and fulfil its obligations as envisaged in the Bid and this Agreement.
- F. In light of compliance by the Lessee of the pre-conditions to the execution of the Agreement, Authority has agreed to enter into this Agreement vesting the Lease rights with the Lessee on the terms, conditions, and covenants hereinafter set forth in this 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 INTERPRETATIONS**

### **1.1. Definitions**

The words and expressions beginning with capital letters and defined in this agreement shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

“**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 except in the first and the last calendar year of the subsistence of this Agreement. In the first year of subsistence of this Agreement, it means the period from the signing of this Agreement to the immediately following, 31st March. In the last year of subsistence of this Agreement, it means the period from 1st April to the date of Surrender/ Transfer.

“**Affected Party**” shall have the meaning as set forth in Clause 20 of this agreement.

“**Applicable Laws and Policies**” means

- (i) all laws, brought into force and effect by GOI or the State Government including rules, regulations and notifications made thereunder, and judgments, 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;
- (ii) all regulations and policies framed in accordance with and under the provisions of the Act; and
- (iii) all the notifications, orders, circulars, clarifications, policies, guidelines, directives or any similar document issued by the Authority or the Ministry of Civil Aviation, Govt. of India an applicable to the Authority

“**Appointed Date**” shall have the meaning ascribed to it in Clause 3.3.3 of this agreement.

“**Approvals**” means all clearances, Leases, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained by the Lessee from the Authority and/ or other statutory authorities including the fire department, Police, Directorate General of Civil Aviation, Bureau of Civil Aviation Security of India and the Ministry of Home Affairs under the Applicable Laws and Policies including without limitation the Act and rules and regulations framed thereunder and the policies of the Authority, in connection with the construction and use of the ATO by the Lessee during the subsistence of this Agreement;

“**Approved Training Organisation (ATO)**” means the Approved Training organization approved/ recognized by DGCA and shall also include IOA;

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

“**Authority Representative**” means such person or persons as may be authorized 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 the obligations of the Authority under this Agreement including an independent engineer engaged by the Authority at its own cost;

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

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

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

“**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 judgment 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 rates of any of the Taxes that have a direct effect on the transaction contemplated herein.

“**Completion Certificate**” shall mean the certificate issued by the Authority to certify the completion of construction of IOA by the Lessee in the form set out in **Schedule F** hereto;

“**Completion Date**” shall mean the date of issue of Completion Certificate by the Authority

“**Construction Documents**” means and includes all drawings, calculations, samples, patterns, models, operation and maintenance manuals, and other manuals and information of a similar nature prepared in relation to the ATO;

“**Construction Inspection Report**” shall have the meaning ascribed to it in Clause 13.1 of this

agreement.

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

**“Construction Works”** means the activities relating to design, construction, completion and commissioning of the ATO at the Site and as the context may admit or require, including the technology, services and things to be designed, engineered, constructed, installed, equipped, supplied, executed, manufactured, completed, tested, commissioned, rectified, replaced, made good, carried out and undertaken in respect of the ATO and any other permanent, temporary or urgent works required hereunder;

**“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 Lessee requires any reasonable action by the Lessee that must be approved by the Authority hereunder, the applicable Cure Period shall be extended by the period taken by the Authority to accord their approval.

**“Damages”** shall mean (a) any and all monetary (or where the context so requires, the monetary equivalent of) damages, fines, fees, penalties, losses, and out-of-pocket expenses (including without limitation any liability imposed under any award, writ, order, judgment, decree or direction passed or made by any Person), (b) subject to Applicable Laws and Policies, any punitive, or other exemplary or extra-contractual damages payable or paid in respect of any contract, and (c) amounts paid in settlement, interest, court costs, costs of investigation, reasonable fees and expenses of legal counsel, accountants, and other experts, and other expenses of litigation or of any claim, default, or assessment;

**“Designs and Drawings”** means the conceptual and detailed designs, drawings and engineering, project master plans, backup technical information required for the construction of IOA and all calculations, samples, patterns, models, specifications and other technical information relating to the IOA, submitted by the Lessee from time to time for approval in accordance with the provisions of this Agreement;

**“Date of Surrender/Transfer”** means the date on which this Agreement and the Lease Rights hereunder expire pursuant to the provisions of this Agreement or is terminated by a Termination Notice;

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

“**Effective date**” shall mean the date on which the Agreement has been executed by the Parties;

“**Easement**” means all easements, reservations, rights-of-way, utilities and other similar rights as to the use of real property, which is necessary or appropriate for the conduct of activities of the Lessee related to the IOA;

“**Emergency**” means a condition or situation that is likely to endanger the security of the individuals on or about the IOA, including users thereof, or which poses an immediate threat of material damage to any of the Site and/ or the IOA;

“**Encumbrances**” means in relation to the Site and the IOA, any encumbrances such as a mortgage, charge, pledge, lien, hypothecation, Security Interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, or restriction and shall include physical or legal obstructions or encroachments on the whole or any part of the Site or Third Party claims or rights of any kind attaching to the whole or any part of the Site and the IOA or any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Site and the IOA, where applicable herein but excluding utilities referred to in Clause 10;

“**Fee Commencement Date**” means the date on and from which the Lessee shall be liable to make the payment of the Fee i.e. from the date of commencement of training operations, as more specifically defined in Clause 14.7 of this Agreement;

“**FSTD Training**” means “**Training**” as defined in DGCA CAP 7100 Approved vide F. No. AV. 22024/ATO Manual/2013-FSD, “**FSTD Level-D**” means “**Flight Simulation Training Device**” as defined in CAR Section 7, Series D, Part IV Issue I Dated 09/02/2015, and CAR Section 7, Series D, Part VI Issue I Dated 26/09/2016, issued by the Directorate General of Civil Aviation (DGCA) and further amendments from time to time by DGCA.

“**Gestation Period**” means the Premium free period of 548 days provided to the Concessionaire from the date of the letter of Award (LoA/LoI), or the actual date of commencement of commercial/operational/training activities from the date of issue of Letter of Award (LoA/LoI), whichever is earlier,

“**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 Lessee 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 Lessee in accordance with this Agreement, Applicable Laws and Policies and Approvals in a reliable, safe, economical and efficient manner ;

“**Government Authority**” or “**Government**” means GoI, or any State Government or governmental department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body, central, state, or local, having jurisdiction over the Lessee, the Site and the IOA, and the Construction Works or any part thereof or the performance

of all or any of the services, obligations or covenants of Lessee under or pursuant to this Agreement or any portion thereof;

**“Government Instrumentality”** means any department, division or sub-division of the Government 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 Site and the IOA or the performance of all or any of the services or obligations of the Lessee under or pursuant to this Agreement;

**“GST”** shall mean goods and services tax as stipulated vide Goods & Service Tax Act India 2017.

**“Incurred Cost Certificate”** shall refer to the certificate issued by a Chartered Accountant certifying the costs incurred by the Lessee in the designing, development and construction of the IOA;

**“Indemnified Party”** means the Party entitled to the benefit of an indemnity pursuant to Clause 28.4;

**“Infrastructure of ATO” or “IOA”** shall refer to infrastructures constructed on the Site in the establishment of ATO/TRTO at Integrated Aviation Hub Hisar Airport cityside area and shall include ATO/TRTO building, permanent structures along with fittings, Flight Simulation Training Device Units etc. for the operation of the ATO/TRTO;

**“Insurance Cover”** means the aggregate of the maximum sums insured under the insurances taken out by the Lessee pursuant to Clause 19, and includes all insurances required to be taken out by the Lessee under Clause 19.2 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, programs 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;

**“LOA” or “Letter of Award”** means the letter of award referred to in Recital C of this agreement.

**“Maintenance Requirements”** shall have the meaning as set forth in Clause 15.1 of this agreement.

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

**“Operation Period”** shall mean the period during which the Lessee can commence the use of



the IOA commencing from the Fee Commencement Date and ending on the Surrender/ Transfer Date;

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

“**Person**” means (unless otherwise specified or required by the context), any individual, company, corporation, partnership, joint venture, trust, unincorporated organization, Government or Governmental Authority or agency or any other legal entity;

“**Proposal**” or “**Bid**” means the entire set of technical, financial, qualifying and other documents in their entirety comprised in the proposal or bid submitted by the Selected Bidder in response to the Request for Proposal in accordance with the provisions thereof, and accepted by the Authority;

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

“**Safety Requirements**” shall have the meaning as set forth in Clause 16.1 of this agreement.

“**Revenue**” means total Fees accrued annually from all types of training(s) imparted by the lessee from the Approved Training Organisation/TRTO/FSTD (Level-D) or from the infrastructure developed by the lessee on the site offered by the Authority at Integrated Aviation Hub Hisar Airport.

“**Schedule**” means any of the schedules appended to this Agreement;

“**Security Interest**” means any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, security interest or other encumbrances of any kind securing or conferring any priority of payment in respect of any obligation of any Person and includes without limitation any right granted by a transaction which, in legal terms, is not the granting of security but which has an economic or financial effect similar to the granting of security in each case under any Applicable Law;

“**Selected Bidder**” means the entity that has been successful in the bidding process for the construction, maintenance and operation of the ATO;

“**Specifications and Standards**” means the specifications and standards relating to the quality, quantity, capacity and other requirements for the establishment of ATO, as outlined in Schedule B – Specifications and Standards, and any modifications thereof, or additions thereto, as included in the design and engineering for the ATO submitted by the Lessee to, and expressly approved by, the Authority;

“**State**” means the State of Haryana, in which the ATO is situated and “**State Government**” means the government of that State of Haryana;

“**Statutory Auditors**” means a reputable firm of chartered accountants acting as the statutory auditors of the Lessee under the provisions of the Companies Act, 2013, including any statutory re-enactment or modification thereof, for the time being in force;

“**Subcontractor**” means the construction contractor(s) and/or operation and maintenance contractor(s) and/or any other contractors and sub-contractors, manufacturers or suppliers of works and/or building/ services or part thereof, as the context may require, to whom the Lessee contracts or subcontracts the works in full or part;

“**Suspension**” shall have the meaning as outlined in Clause 22.1;

“**Taxes**” means any Indian taxes including excise duties, customs duties, GST, 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 ATO charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

“**Termination**” means the expiry or earlier termination of this Agreement and the Lease Rights & other rights granted hereunder following the terms hereof;

“**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 Lessee upon Termination;

“**Third Party**” means any Person, real or legal, or entity other than the Parties to this Agreement; and

## 1.2 **Interpretation**

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

- a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- b) references to laws of India or Indian law or regulation having the force of law shall include the laws, Acts, ordinances, rules, regulations, bye-laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- c) references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- d) the table of contents, headings or sub-headings in this agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this agreement;
- e) terms and words beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the terms and words defined in the

Schedules and used therein shall have the meaning ascribed thereto in the Schedules.;

- f) 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;
- g) references to “**construction**” or “**building**” include, unless the context otherwise requires, investigation, design, development, engineering, procurement, transportation, installation, processing, fabrication, equipping, establishing, testing, commissioning and other activities incidental to the construction and “**construct**” or “**build**” shall be construed accordingly;
- h) references to “**operation**” include unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and “**operate**” shall be construed accordingly;
- i) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- j) any reference to day shall mean a reference to a calendar day;
- k) references to a “**business day**” shall be construed as a reference to a day (other than Saturday and Sunday) on which banks in the respective city are generally open for business;
- l) references to any date, the period shall mean and include such date, period as may be extended according to this Agreement;
- m) 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;
- n) words importing singular shall include the plural and vice versa;
- o) references to any gender shall include the other and the neutral gender;
- p) “**lakh**” means a hundred thousand (100,000) and “**crore**” means ten million (10,000,000);
- q) “**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;
- r) 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 a reference to that agreement, deed, instrument, license or other documents as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
- s) any agreement, consent, Approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party, as the case may be, in this behalf and not otherwise;

- t) 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;
- u) references to Recitals, Clauses, Sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Clauses, Sub-clauses, Provisos and Schedules of or to this Agreement, references 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 references to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of this Schedule or Annex, as the case may be, in which such reference appears;
- v) the Damages payable by either Party to the other, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed to genuine pre-estimated loss and Damage likely to be suffered and incurred by the Party entitled to receive the same and are not in the nature of penalty ;
- w) 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; and
- x) wherever in this Agreement provision is made for the giving or issuing of any notice, endorsement, consent, Approval, certificate, agreement, authorization, communication, information or report or determination by any Party, unless otherwise specified, such notice, endorsement, consent, Approval, certificate, agreement, authorization, communication, information or report or determination shall be in writing under the hand of duly authorized representative of such Party in this behalf.

1.2.2. Unless expressly provided otherwise in this Agreement, any documentation required to be provided or furnished by the Lessee to the Authority shall be provided free of cost and in three copies, and if the Authority is required to return any such documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

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

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

### 1.3. **Measurements and Arithmetic Conventions**

All measurements and calculations shall be in 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 above, 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; and
  - d) between any value written in numerals and that in words, the latter shall prevail.

**PART II- GRANT OF LEASE RIGHTS**

## **2. LEASE RIGHTS**

### **2.1. Grant of Rights**

2.2. Subject to and in accordance with the terms and conditions set forth in this Agreement, the Authority hereby grants to the Lessee and the Lessee hereby accepts the limited lease rights over the Site to develop, build, operate and maintain the ATO during the subsistence of this Agreement and shall transfer the IOA at the Airport to Authority at zero cost after the expiry of the Contract Period or Termination of this Agreement, whichever is earlier (“**Lease Rights**”).

2.3. Subject to and in accordance with the terms and conditions set forth in this Agreement, the Lease Rights hereby granted shall entitle the Lessee to enjoy, and oblige the Lessee to undertake the following in accordance with the provisions of this Agreement, the Applicable Laws and Policies and the Approvals:

- 2.3.1. right of way, access and lease to the Site for the purpose of and to the extent conferred by the provisions of this Agreement;
- 2.3.2. to design, build, operate and maintain the ATO, at its own cost, in accordance with the guidelines of DGCA and to transfer the IOA built at the (cityside area) Airport to Authority at zero cost after the expiry of the Contract Period or Termination of this Agreement, whichever is earlier;
- 2.3.3. Deleted
- 2.3.4. to use the IOA and the Site only for the Permitted Use as set out in this Agreement;
- 2.3.5. manage, administer, use and maintain the ATO as per the provisions of this Agreement;
- 2.3.6. perform and fulfil all of the Lessee's obligations under this Agreement;
- 2.3.7. bear and pay all costs, expenses and charges in connection with or incidental to the performance of its obligations under this Agreement; and
- 2.3.8. neither assigns, transfer or sublet or create any lien or Encumbrance on this Agreement or the Lease Rights hereby granted; or transfer, lease, license or part possession of the IOA and/or the Site.
- 2.3.9. Subject to the provisions contained in this Agreement, the Lessee may sub-contract the Construction Work and maintenance relating to the ATO by any other Person by entering into appropriate contractual arrangements co-terminus with this Agreement; provided however that:
  - a) Lessee shall not create any Encumbrance on the whole or any part of the Site and/ or the IOA in any form or under any arrangement, device or method. This is an essential condition of this Agreement, the breach of which shall constitute a Lessee's Event of Default that shall entitle the Authority to terminate this Agreement in accordance with the provisions hereof;
  - b) the Lessee shall establish fair, reasonable and objective criteria for the grant of such sub-contract. The Lessee has no right to sell or mortgage or transfer any rights in title of the Site, IOA or any part thereof and it shall, upon the expiry of the Contract Period or upon Termination of the Agreement, transfer and hand over the Site along with the IOA to the

Authority or its nominated agency at zero cost in accordance with the provisions hereof.

- c) Any part of the Construction Works may be sub-contracted by the Lessee, and the Lessee retains overall management, responsibility, obligation and liability in relation to the sub- contracted work. Any such subcontracting shall not relieve the Lessee from any of its obligations in respect of such work under this Agreement. It is clarified that Lessee shall remain liable and responsible for any acts, omissions or defaults of any Subcontractors, and shall indemnify the Authority in respect thereof; and
- d) The Lessee acknowledges, accepts and confirms that the covenants contained herein are the essence of this Agreement.

2.4. Subject to and in accordance with the provisions of this Agreement and Applicable Laws and Policies, the Lease Rights hereby granted shall, without prejudice to the provisions of Clause 2.1 above, entitle the Lessee to use all or any part of the Site and the IOA without any limitation or restriction other than as expressly set out in this Agreement.

2.5. **Acceptance by Lessee**

In consideration of the rights, privileges and benefits conferred upon by Authority and other good and valuable consideration expressed herein, the Lessee hereby accepts and agrees and undertakes to perform/ discharge all of its obligations in accordance with the provisions hereof.

2.6. **Contract Period**

The Contract Period shall mean a period of 25 (Twenty-Five) years commencing from the Appointed Date and continuing to be in force till the Transfer Date and during which the Lessee is authorized to use the Site and the IOA in accordance with the provisions and subject to the conditions hereof (“**Contract Period**”). At the end of the Contract Period, all rights given under this Agreement shall cease to have an effect and the Site and the IOA shall be transferred to the Authority at zero cost.

**3. CONDITIONS PRECEDENT**

3.1. Save and except as expressly provided in this Agreement, 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 3 (the “**Conditions Precedent**”) save and except to the extent of waiver, if any, that a Party may grant in accordance with the provisions of this Clause as the case may be.

3.2. Within 90 (ninety) days from the Effective Date, the Lessee shall have:

3.2.1. obtained all the pre-establishment Approvals listed in Schedule D unconditionally or if such Approvals have been granted subject to conditions then all such conditions have been satisfied in full and such Approvals are and shall be kept in full force and effect for the relevant period during the subsistence of this Agreement;



- 3.2.2. provided a Performance Security of an amount equivalent to [Rs. 16,18,800/-] (Rupees Sixteen Lacs Eighteen Thousand Eight Hundred Only) which is equivalent to the annual Fee towards the performance security, in full, to the Authority in accordance with Clause 8.2 below within 30 (thirty) days of the Effective Date;
- 3.2.3. delivered to the Authority, copies (certified as true copies by an authorised officer of the Lessee) of the constitutional documents of the Lessee;
- 3.2.4. delivered to the Authority, copies (certified as true copies by a director of the Lessee) of all resolutions adopted by the board of directors of the Lessee authorizing the execution, delivery and performance by the Lessee of this Agreement;
- 3.2.5. procured No Objection Certificate (NOC) for setting up of ATO from DGCA;
- 3.2.6. delivered to the Authority, a legal opinion from the Indian legal counsel of the Lessee with respect to the authority of the Lessee to enter into this Agreement and the enforceability of the provisions thereof. Any of the condition's precedent set forth in this Clause 3.2 may be waived in writing fully or partially by the Authority at any time in its sole discretion.

### 3.3. **Obligations to satisfy Condition Precedents**

- 3.3.1. The Lessee shall make all reasonable endeavours to procure the satisfaction in full of the Conditions Precedent set out in Clause 3.2 above. The Lessee shall bear its own costs and expenses of satisfying such Conditions Precedent.
- 3.3.2. The Lessee shall notify Authority in writing at least once a month on the progress made in satisfying the Conditions Precedent. The Lessee shall promptly inform the Authority when any Condition Precedent for which it is responsible have been satisfied.
- 3.3.3. Upon satisfaction in full of all Conditions Precedent by the Lessee, the Lessee shall deliver all the relevant documents evidencing the completion of Conditions Precedent set out in Clause 3.2 above. Upon receipt of the aforesaid documents and the Authority, on being satisfied, shall issue a certificate of compliance with Conditions Precedent (the "**Certificate of Compliance**") within a period of 30 (thirty) days therefrom. The date occurring after the date of issue of the Certificate of Compliance by the Authority shall be referred to as the "**Appointed Date**". The Authority shall be deemed to be satisfied with the fulfilment of Conditions Precedent in case it fails to issue the Certificate of Compliance within the aforesaid period of 30 (thirty) days.

### 3.4. **Deemed Termination upon Delay**

- 3.4.1. In the event that (i) the Lessee does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 3.2 above within a period of 90 (ninety) days from the Effective Date, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4 below or other breaches of this Agreement by the Authority, or due to Force Majeure, the Authority may extend the period for fulfilment of the Conditions Precedent set out in Clause 3.2 above by the Lessee upon payment of an amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's delay until the fulfilment of such

Conditions Precedent, subject to a maximum amount equal to 10% (ten percent) of the Performance Security, and upon reaching such maximum, the Authority may, in its sole discretion, terminate the Agreement.

- 3.4.2. Upon termination of this Agreement by the Authority in terms of Clause 3.4.1 above, all rights, privileges, claims and entitlements of the Lessee under or arising out of this Agreement shall be deemed to have been waived by and to have ceased with the concurrence of the Lessee, and the Agreement shall be deemed to have been terminated by mutual agreement of the Parties and the Performance Security of the Lessee shall be encashed and appropriated by the Authority as Damages thereof and the Lessee shall be debarred for a period of 5 (five) years from participation in any tender/ works/ projects of Authority.

#### **4. OBLIGATIONS OF THE LESSEE**

- 4.1. The Lessee acknowledges that the Authority has granted Lease of Site for the establishment of ATO under the vision of the Government of India's 'आत्मनिर्भर भारत' in order to encourage the establishment of ATOs in India and has received concessions from the Authority for the same. **In light of the aforementioned, the Lessee undertakes to pass on the concessions received from the Authority to the student pilots and develop a world-class facility with adequately trained professionals, services, operations and maintenance and safety standards.** Subject to and on the terms and conditions of this Agreement, the Lessee shall, at its own cost, undertake the design, engineering, procurement, construction, operation and maintenance of the ATO and observe, fulfil, comply with and perform all its obligations set forth in this Agreement or arising hereunder.
- 4.2. The Lessee shall obtain the pre-operational Approvals set out in Schedule D hereto before the Fee Commencement Date.
- 4.3. The Lessee shall comply with all Applicable Laws and Policies including without limitation, the Act and the National Civil Aviation Policy, 2016 and the policies of the Authority (as issued and amended from time to time) and the DGCA and obtain and comply with the terms and conditions of all the Approvals (including renewals thereof) in the performance of its obligations under this Agreement.
- 4.4. The Lessee shall keep the Performance Security furnished to the Authority valid at all times and furnish fresh Performance Security in accordance with Clause 8 hereinbelow, during the subsistence of this Agreement.
- 4.5. The Lessee shall pay all costs, charges, statutory deposits, Taxes (including GST), duties (including stamp duties, if any), fees (including any Fee) rates and other user charges (including those applicable for existing utility connections), if any and any other dues assessment or outgoings payable in respect of the ATO (including new utility connections obtained by it, if any) which may be levied by Government Instrumentalities, wherever applicable. The Fee payable by the Lessee in terms of this Agreement shall not be changed by the Authority, for any reason whatsoever, except for the reason of escalation in terms of Clause 18 of this Agreement.
- 4.6. The Lessee shall use the Site and Infrastructure Of ATO/TRTO (hereinafter referred to as "IOA") to only for the Permitted Uses.

- 4.7. Upon clearance from the Authority about the route and location of the road, the Lessee shall develop/ construct the road/Pathway leading to the Site for the operational requirement of ATO. It is however clarified, that the costs for development/ construction of the said road shall be solely borne by the Lessee, however, the road/pathway shall be used commonly by all the other lessees on the Airport.
- 4.8. The Lessee shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 4.9. The Lessee shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set forth in this Agreement:
  - 4.9.1. make, or cause to be made, necessary applications to the Authority, DGCA and other relevant Government Instrumentalities with such particulars and details, as may be required for obtaining all Approvals, other than those set forth in Clause 3.2 above, and obtain and keep in force and effect such Approvals in conformity with the Applicable Laws and Policies;
  - 4.9.2. make all other payments required to be made in accordance with Applicable Laws and Policies in relation to its rights and obligations under this Agreement;
  - 4.9.3. procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems required for the establishment of the ATO;
  - 4.9.4. make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Sub-contractors in connection with the performance of its obligations under this Agreement;
  - 4.9.5. ensure and procure that its Sub-contractors comply with all Approvals and Applicable Laws and Policies in the performance by them of any of the Lessee's obligations under this Agreement;
  - 4.9.6. ensure optimal use, operation and maintenance of the Site, Flight Simulation Training Device (Level-D) and IOA throughout the Contract Period;
  - 4.9.7. 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;
  - 4.9.8. transfer the Site and IOA at zero cost to the Authority upon expiry of the Contract Period or upon the Termination of this Agreement, in accordance with the provisions hereof;
  - 4.9.9. make the payments set out in Clause 18 below including but not limited to the Fee to the Authority in accordance with the provisions contained hereinbelow, till the expiry or termination of this Agreement;
  - 4.9.10. take all reasonable steps to protect the Site and IOA and to limit the damages and nuisance to the people, IOA and the Site resulting from the establishment of the ATO by the Lessee;

- 4.9.11. comply with all the Applicable Laws and Policies and the terms of the Approvals, in the performance of the Lessee's obligations under this Agreement including those being performed by any of the Sub-contractors;
  - 4.9.12. develop, implement and administer a safety program, including the correction of safety violations and deficiencies, and taking of all other actions necessary to provide a safe environment in accordance with Schedule G - Safety Requirements, Applicable Laws and Policies and Good Industry Practice;
  - 4.9.13. take all reasonable precautions for the prevention of accidents on or about the Site and provide all reasonable assistance and emergency medical aid to the victims;
  - 4.9.14. remove promptly from the Site, all waste materials (including, without limitation, hazardous materials and wastewater), rubbish and other debris (including without limitation accident debris) and shall keep the Site in a neat and clean condition and in conformity with the Applicable Laws and Policies and Approvals;
  - 4.9.15. obtain and maintain in force on and from the Appointed Date, all insurance in accordance with the provisions of this Agreement and Good Industry Practice; and
  - 4.9.16. ensure that such Site remains free from all encroachments and take all steps necessary to remove encroachments if any.
- 4.10. The Lessee shall, prior to commencement of construction at the Site:
- 4.10.1. have requisite organisation and designate and appoint a manager and such other managers, officers and representatives as it may deem appropriate to supervise the construction and to deal with the Authority Representative and be responsible for all necessary exchanges of information required pursuant to this Agreement; and
  - 4.10.2. undertake, do and perform such acts, deeds and things as may be necessary or required for construction at Site and operation of the ATO, including without limitation obtaining necessary Approvals, permits, registrations and consents, as may be required and such other things as may be required under and in accordance with this Agreement.
- 4.11. The Lessee shall submit such reports, statements and certifications to the Authority during the Contract Period as detailed in this Agreement. Such reports will contain such information as is reasonably required to keep the Authority properly informed of matters relating to operation and maintenance of the IOA.
- 4.12. The Lessee shall achieve completion of the construction of the IOA within the Construction Period provided that the Lessee shall not be in breach of this Clause 4.12 if any non-fulfilment or delay in fulfilment of its obligations herein are caused by, (i) the occurrence of an event of Force Majeure in accordance with Clause 20: hereof.
- 4.13. The Lessee shall submit a "**Structural Safety Certificate**" of the IOA from the competent structural engineer before the commencement of Training operations.

- 4.14. The Lessee shall on expiry of the Contract Period or upon Termination, within a maximum period of 30 (thirty) days, transfer the IOA and the Site to the Authority at zero cost, in a clean, safe and serviceable condition to the satisfaction of the Authority. Provided that, if the Lessee fails to handover the IOA and the Site as aforesaid, the Authority may invoke the Performance Security to recover any losses, liabilities and/ costs incurred by the Authority on account of such delay in handing over the IOA and the Site.
- 4.15. The Lessee shall provide all assistance to the Authority Representative, independent auditor/ arbitrator as it may require for the performance of their obligations and services hereunder.
- 4.16. In the event of an accident, the Lessee shall, by most expeditious means, inform the police and other concerned authorities and the Authority. The Lessee shall take expeditious action to provide medical aid, emergency services and relief to the accident victims and upon completion of legal formalities clear the accident site and remove the debris and wreckage.
- 4.17. The Lessee shall arrange at its own cost, foreign exchange and clearances required for import of technology, equipment or materials to be used for the purposes of this Agreement and pay all requisite duties and levies in this regard.
- 4.18. The Lessee shall ensure that maximum permitted training activities should be completed in each year and shall submit a duly audited report of the same to the Authority as per the terms of this Agreement.
- 4.19. **Obligations relating to other agreement**
- 4.19.1. It is expressly agreed that the Lessee shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in any other agreement entered into by it with a Third Party in connection with the performance of its obligations or enjoyment of its rights hereunder, and no default under any other agreement shall excuse the Lessee from the fulfilment of its obligations or liability hereunder
- 4.19.2. Notwithstanding anything to the contrary contained in this Agreement, the Lessee shall not sub-lease or in any manner create any Encumbrance on the IOA and/or the Site.
- 4.19.3. The Lessee shall procure that each of the agreement executed by the Lessee in connection with the transactions contemplated hereunder, expressly contain provisions that entitle the Authority to step into such agreement in substitution of the Lessee in the event of Termination or Suspension (the “**Covenant**”). For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution, such agreements shall 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 Lessee agrees to expressly include the Covenant in all such agreements and undertakes that it shall, in respect of each of such agreements, procure and deliver to the Authority an acknowledgement and undertaking, in a form acceptable to the Authority, from

the counter party(s) of each of such agreements, whereunder such counter party(s) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.

4.19.4. The Lessee shall at all times retain overall responsibility, obligation and liability in relation to maintenance of the IOA and the Site. It is clarified that the Lessee shall remain solely liable and responsible for any acts, omissions or defaults of any other Persons authorised by the Lessee in relation to this Agreement, the Sub-contractors and shall at all times indemnify and keep indemnified the Authority in respect thereof.

4.19.5. The Lessee shall neither erect any flag- staff, wireless poles or other such high structures nor shall it erect or display or any high power electric light or any electric sky signs or any other mechanism lighted or otherwise for purpose of advertisements or signboards without the previous approval in writing of the Authority.

4.20. **Employment of trained personnel**

The Lessee 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.

4.21. **Lessee's Representative**

4.21.1. The Lessee's Representative shall be the person so designated by the Lessee. If at some point of time, the Lessee is unable to provide the services of the person named the Lessee's Representative, and then it shall notify the Authority its reasons for this, and thereafter, provide a substitute person who can be the Lessee's Representative.

4.21.2. The person named as the Lessee's Representative under this Agreement shall be a qualified and competent person having previous experience in a similar capacity in works comparable to the works contemplated hereunder. Prior to the appointment of the Lessee's Representative, the Lessee shall also submit the curriculum vitae of the person it proposes to appoint, detailing, in particular, the relevant project experience.

4.21.3. Except as otherwise stated in the Agreement, the Lessee's Representative shall receive on behalf of the Lessee all notices, instructions, consents, Approvals, certificates, determinations and other communications under the Agreement. Whenever the Lessee's Representative is to remain absent from the Site for a continuous period in excess of 15 (fifteen) days, a suitable replacement Person shall be appointed with the Authority's written consent.

4.21.4. The Lessee's Representative may delegate, while retaining his prime responsibilities, any of his powers, functions and authorities to any competent Person, and may at any time revoke any such delegation. Any such delegation or revocation shall be in writing and shall not take effect until the Authority has received prior written notice signed by the Lessee's Representative, specifying the powers, functions and authorities being delegated or revoked. Lessee's Representative shall notify in writing to the Authority the names, duties and scope of authority of such Persons. Any instructions given to any of them shall be deemed to have been given to the Lessee's Representative. Any such delegation shall not relieve the Lessee's Representative of its obligation and duties under this Agreement.

4.22. **Change in Control**

4.22.1. Notwithstanding anything to the contrary, at no stage, shall any change in the shareholding pattern of the Lessee that results in a change in control of the Lessee shall be made without obtaining prior written approval from the Authority. On an application made for the purpose, the Authority may permit the change of equity components/ shareholding pattern resulting in a change in control, provided that the Authority is satisfied that the proposed changes shall be in the interest of the transaction contemplated herein and would not be detrimental to any of the rights or interests of the Authority and any of the confirming authorities. The expression "control" shall have the meaning ascribed thereto in the Companies Act, 2013.

**5. OBLIGATIONS OF THE AUTHORITY**

5.1. 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.

5.2. The Authority agrees to provide support to the Lessee and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and Applicable Laws and Policies, the following:

5.2.1. enable access to the Site, free from Encumbrances, in accordance with this Agreement;

5.2.2. permit peaceful occupation and use of the Site by the Lessee, under and in accordance with the provisions of this Agreement without any hindrance from the Authority or persons claiming through or under it;

5.2.3. execute and deliver (in the capacity of the owner of the Site), such requisite documents to the Lessee as may be necessary for obtaining the Approvals hereunder;

5.2.4. earmark the location and route for the construction of the Road/Pathway leading to the Site, on request of Lessee within 30 (thirty) working days of receipt of a request from the Lessee.

5.2.5. observe and comply with its obligations set forth in this Agreement and the Applicable Laws and Policies;

- 5.2.6. pay all the Taxes, cesses and duties imposed by the relevant Government Authorities and/ or Government Instrumentalities in relation to the Site including without limitation the municipal taxes; and

5.3. **Maintenance Obligations prior to the Appointed Date**

Prior to the Appointed Date, the Authority shall maintain the Site surrounding, at its own cost and expense, so that its existing facilities (e.g. road, water supply system, sewerage and other similar facilities) and safety are at no time materially inferior as compared to its condition 7 (seven) days prior to the Bid Date, and in the event of any material deterioration or damage other than normal wear and tear, undertake repair thereof, or pay to the Lessee the cost and expense, as determined by the Authority Representative, for undertaking such repair after the Appointed Date. It is clarified that on and from the Appointed Date, the maintenance of the Site and the continued provision of utility services thereat, shall be the sole responsibility of the Lessee.

**6. REPRESENTATIONS AND WARRANTIES**

6.1. **Representations and warranties of the Lessee**

The Lessee represents and warrants to the Authority that:

- 6.1.1. It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation;
- 6.1.2. It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- 6.1.3. It has taken all necessary corporate and other action under Applicable Laws and Policies and its constitutional documents to authorize the execution, delivery and performance of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- 6.1.4. It has the financial standing and capacity to fulfil its obligations hereunder;
- 6.1.5. The obligations of the Lessee under this Agreement will be legally valid, binding and enforceable against it in accordance with the terms hereof;
- 6.1.6. It is subject to laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- 6.1.7. All the information furnished in the Bid is, and shall be, true and correct as on the Effective Date and true, correct and accurate in all respects;
- 6.1.8. 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 the Memorandum and Articles of Association of the Lessee or any Applicable Laws and Policies or any covenant, agreement, 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;



- 6.1.9. There are no actions, suits, proceedings, or investigations pending or, to the Lessee's 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 or constitute a default of the Lessee under this Agreement or which individually or in the aggregate may result in any Material Adverse Effect on its business, properties or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations and duties under this Agreement;
- 6.1.10. 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 Governmental Agency which may result in any Material Adverse Effect or impairment of the Lessee's ability to perform its obligations and duties under this Agreement;
- 6.1.11. It has complied with all Applicable Laws and Policies 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 Material Adverse Effect on its financial condition or its ability to perform its obligations and duties under this Agreement;
- 6.1.12. It has been engaged by the Authority for development, construction, maintenance and operation of the ATO and that the ownership of the IOA developed by the Lessee shall, at all times, remain with the Authority;
- 6.1.13. All rights of the Lessee in and to the Site and IOA shall pass to and vest in Authority on the Transfer/ Termination Date, free and clear of all liens, claims, and Encumbrances without any further act or deed on the part of the Lessee or Authority;
- 6.1.14. No representation or warranty by the Lessee contained herein or in any other document furnished by it to Authority, or to any Governmental Agency in relation to Approvals, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- 6.1.15. It warrants that no sums, in cash or kind, have been paid or will be paid by or on behalf of the Lessee, to any person by way of fees, commission or otherwise for securing the Lease Rights or entering into this Agreement or for influencing or attempting to influence any officer or employee of Authority in connection therewith;
- 6.1.16. All undertakings and obligations of the Lessee arising from the Request for Proposals or otherwise shall be binding on the Lessee as if they form part of this Agreement.

6.2. **Representations and warranties of the Authority**

The Authority represents and warrants to the Lessee that:

- 6.2.1. Authority is duly organised and validly existing under the laws of India;
- 6.2.2. Authority has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- 6.2.3. Authority has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- 6.2.4. This Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- 6.2.5. 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;
- 6.2.6. To the best of the Authority's knowledge and belief, there are no actions, suits, proceedings or investigations pending against it, at law or in equity, before any court or Governmental Authority, the outcome of which may result in the breach of or constitute a default of the Authority under this Agreement or result in impairment of the Authority's ability to perform its obligations and duties under this Agreement; and
- 6.2.7. It has complied with Applicable Laws and Policies in all material respects.

6.3. **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.

7. **DISCLAIMER**

7.1. **Acceptance of Site:** The Lessee acknowledges that it has undertaken due diligence of the Site. For the purposes of this Agreement, the Lessee shall be deemed to have:

- 7.1.1. inspected the Site and its surroundings.
- 7.1.2. satisfied itself as to the nature of the climate, noise level, hydrological and general physical conditions of Site, the nature of the ground, the nature of its obligations, and the nature of the design, work and materials necessary for the performance of its obligations under this Agreement.
- 7.1.3. satisfied itself as to the means of communication with, access to and accommodation around the Site, it may require or as may be otherwise necessary for the performance of its obligations under this Agreement.

- 7.1.4. obtained for itself, all necessary information as to the risks, contingencies and all other circumstances which may influence or affect its rights and obligations hereunder; and
- 7.1.5. has determined the nature and extent of the difficulties, inputs, costs, time, resources, risks and hazards that are likely to arise or may be faced by it in the course of the performance of its obligations under this Agreement.
- 7.2. Lessee further acknowledges that it, or any entity claiming under it, shall have no recourse against the Authority if it is, at a later date, found that the Site is deficient in any manner whatsoever, and in the event of any mistake made or misapprehension harboured by the Lessee in relation to any of the foregoing provisions of this Clause. If a deficiency is found, Lessee acknowledges and agrees that it shall, at its own cost, take all appropriate measures to remedy the same in order to undertake the establishment of the ATO.
- 7.3. Lessee acknowledges and hereby accepts the difficulties, inputs, costs, time, resources, risks and hazards associated with the performance of its obligations hereunder and hereby agrees that Authority shall not be liable for the same in any manner whatsoever to Lessee.
- 7.4. It is clarified that all fossils, antiquities, structures and/or other remains or things either of archaeological or of particular geological interest discovered at Site or in the course of carrying out any work shall not be the property of Lessee and the Lessee shall have no right or interest in such fossils, antiquities and structures.
- 7.5. **Deemed knowledge and disclaimer**
- 7.5.1. Subject to the provisions of this Agreement, the Lessee shall be fully and exclusively responsible for, and shall bear the financial, technical, commercial, legal and other risks in relation to the design, financing, construction, completion, commissioning, maintenance, use and operation of the ATO and all its other rights and obligations under or pursuant to this Agreement regardless of whatever risks, contingencies, circumstances and/or hazards may be encountered (foreseen or not foreseen) and notwithstanding any change(s) in any of such risks, contingencies, circumstances and/or hazards on exceptional grounds or otherwise and whether foreseen or not foreseen and the Lessee shall have no right whether express or implied to bring any claim against, or to recover any compensation or other amount from, the Authority and/or any of its agencies.

## **PART III – DEVELOPMENT AND OPERATIONS**

## **8. PERFORMANCE SECURITY**

- 8.1. The Lessee shall, for securing the performance of its obligations under this Agreement, provide to the Authority, an irrevocable and unconditional bank guarantee towards performance security, in accordance with the provisions contained in this Clause 8, from a nationalised/ scheduled Bank in India, in the form set forth in **Schedule – E** (the “**Performance Security**”).
- 8.2. The Lessee shall, within 30 (thirty) days of the issue of Letter of Award, shall furnish a Performance Security of an amount equal to INR [*insert amount equivalent to Lease Fee for the first year from Fee Commencement Date*] (including GST). Until such time, the Performance Security is provided by the Lessee pursuant to this Clause and the same comes into effect, the Bid Security Declaration shall remain in force and effect.
- 8.3. The Performance Security in terms of Clause 8.2 furnished by the Lessee within 30 (thirty) days of receipt of the Letter of Award and shall remain valid until the expiry of 2 (two) years from the thirtieth (30<sup>th</sup>) day of issue of Letter of Award. Thereafter, for the subsequent period, the Lessee shall be required to furnish the revised Performance Security every year as per the revised rate of the Annual License/Lease Fee.
- 8.4. Notwithstanding anything to the contrary contained in this Agreement, in the event the Lessee fails to furnish the Performance Security in accordance with this Clause 8, the Authority may take appropriate action against the Lessee in accordance with the Bid Security Declaration or may encash the last Performance Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Lessee under or arising out of this Agreement shall be deemed to have been waived by and to have ceased with the concurrence of the Lessee, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

### **8.5. Appropriation of Performance Security**

- 8.5.1. In the event of the Lessee 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 as Damages for such default. Upon such encashment and appropriation of the Performance Security, Authority shall grant a period of 15 (fifteen) days to the Lessee to provide fresh Performance Security and the Lessee shall within the time so granted furnish to Authority such Performance Security failing which Authority shall be entitled to terminate this Agreement under Clause 23.1.1.1).
- 8.5.2. Notwithstanding anything to the contrary contained in Clause 8.5.1, upon the furnishing of fresh Performance Security in accordance with Clause 8.5.1, the Lessee 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, the Lessee continues 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 23 hereof.

8.6. **Release of Performance Security**

The Performance Security shall remain in force and shall be kept in effect by the Lessee, during the subsistence of this Agreement and 6 (six) months thereafter. Upon expiry of the abovementioned period and upon successful Transfer of the Site as well as IOA by the Lessee, the Lessee shall make a request to the Authority for release of the Performance Security along with the particulars which establish satisfaction of the requirements for release. The Authority shall, subject to the other provisions of this Agreement, including but not limited to Clause 33 (Transfer Provisions) and Clause 25 (Defects Liability), release the Performance Security within a period of 15 (fifteen) days.

9. **LEASE AND ACCESS TO THE SITE**

9.1. **The Site**

9.1.1 The Site shall refer to the land admeasuring [4047 Sqm] as more particularly described in Schedule-A and in respect of which the right of way shall be provided and granted by the Authority to the Lessee under and in accordance with this Agreement (the “Site”). For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the land parcel required for the establishment of ATO, as set forth in Schedule A.

9.1.2 **Additional Site**

If the Lessee successfully completes more than 2000 Flight Simulation Training Hours in an Accounting Year for two consecutive years, the Lessee may seek for an additional site from the Authority. The Authority may, in its sole discretion, grant such additional site, if available, on lease to the Lessee upon payment of an additional fee equivalent to 2.5 times the prevailing License/Lease Fee for such additional site, or as mutually agreed between the Authority and the Lessee.

9.2. **Lease and Access**

9.2.1. In consideration of the payments specified under this Agreement and the covenants and warranties on the part of the Lessee herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby agrees to grant to the Lessee the Lease Rights comprising the following, on and from the Appointed Date:

- a) limited Lease in respect of the Site, on an “as is where is” basis, free of any Encumbrances, to access the Site only for the purpose of establishment of the ATO during the Construction Period and;
- b) Lease rights to use, operate and maintain the Site and IOA, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Site and the IOA, hereditaments or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the Contract Period and for the Permitted Uses under this Agreement,

and for no other purposes whatsoever.

- 9.2.2. It is expressly agreed that the Lease Rights agreed to be granted hereunder shall terminate automatically and forthwith, 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 Lessee or any other person authorised by the Lessee, such right in respect of the Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.
- 9.2.3. The Lessee hereby irrevocably appoints the Authority (or its nominee) to be its true and lawful attorney, to execute and sign in the name of the Lessee, a surrender of the Lease granted hereunder at any time after the Contract Period has expired or has been terminated earlier in terms hereof, sufficient proof of which will be a declaration by Authority Representative, and the Lessee consents to it being registered for this purpose.

9.3. **Handing Over of the Site**

- 9.3.1. The Parties shall, within 7 (seven) days of the Authority's notice in this behalf to the Lessee prior to the Appointed Date, carry out through the Authority Representative and the Lessee Representative, on a mutually agreed date and time, an inspection of the Site and preparation of a memorandum containing an inventory of the Site including the vacant and unencumbered land, structures thereupon, road works, and any other immovable property on or attached to the Site. The signing of the memorandum, in two counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall, subject to the provisions of Clause 9.2.2 above be deemed to constitute a valid Lease to the Lessee for the use of the Site in accordance with the provisions of this Agreement during the Contract Period and for no other purpose whatsoever. Notwithstanding the aforesaid, the Lessee understands and acknowledges that subject to the availability and operational requirements of the Authority, the location and size of the Site may vary.
- 9.3.2. In addition to the memorandum, the Lessee's Representative shall execute and deliver to the Authority a letter acknowledging the taking over of the Site to the Lessee in the format set out in Schedule I.
- 9.3.3. On and after signing the memorandum referred to in Clause 9.3.1 above, and until the Transfer Date, the Lessee shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Lessee shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.
- 9.3.4. Upon receiving the access in respect of the Site, the Lessee shall complete the Construction Works thereon within a maximum period of 1 (one) year in accordance with Good Industry Practice.

9.4. **Site to be free from Encumbrances**

Subject to the provisions of Clause 9.3 above, the Site shall be made available by the Authority to the Lessee pursuant hereto, free from all Encumbrances and occupations and without the Lessee 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 Contract 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 Lessee accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Site.

9.5. **Protection of Site from Encumbrances**

During the Contract Period, the Lessee shall protect the Site from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Subcontractor or other person claiming through or under the Lessee to place or create any Encumbrance or Security Interest over all or any part of the Site or the ATO, or on any rights of the Lessee therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

9.6. **Special/ temporary access to the Site**

The Lessee shall bear all costs and charges set out in Schedule J for any special or temporary access to the Site. The Lessee shall obtain at its cost such facilities on or outside the Site as may be required by it for the purposes hereunder and the performance of its obligations under this Agreement.

9.7. **Access to the Authority, Authority Representative, and Government Authorised Persons**

The Lease and right to the Site granted to the Lessee hereunder shall always be subject to the right of access of the Authority, the Authority Representative, and the Government Authorised Persons and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

9.8. **Geological and archaeological finds**

It is expressly agreed that mining, geological or archaeological rights do not form part of the Lease granted to the Lessee under this Agreement and the Lessee 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. The Lessee 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 may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Lessee hereunder shall be reimbursed by the Authority. It is also agreed that the Authority shall procure that the instructions hereunder are issued by the Authority within a reasonable period.



## **10. UTILITIES AND ASSOCIATED ROADS**

### **10.1. Shifting of obstructing utilities**

The Lessee shall, subject to Applicable Laws and Policies and with prior written consent and supervision of the Authority, undertake shifting of any utility including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Site if and only if such utility causes or shall cause a Material Adverse Effect on the construction, operation or maintenance of the IOA. The cost of such shifting shall be borne by the Lessee.

### **10.2. New utilities and roads**

The Lessee shall allow, subject to such conditions as the Authority may specify, access to, and use of the Site for laying telephone lines, water pipes, electric cables or other public utilities. For the avoidance of doubt, it is agreed that use of the Site under this Clause 10.2 shall not in any manner relieve the Lessee of its obligation to use and maintain the Site & Infrastructures of ATO in accordance with this Agreement and any damage caused by such use shall be restored forthwith.

## **11. LESSEE'S COVENANTS**

### **11.1. Covenants in respect of the Lease Rights**

11.1.1. In consideration of payments to the Authority in accordance with the terms hereof and adherence to the terms and conditions as contained in this Agreement, the Authority grants to the Lessee Lease Rights of the Site for the Contract Period;

11.1.2. The Lessee shall be solely responsible to seek connection of, to procure and ensure at its own cost and expense, water, electricity and all other utilities required for the construction, maintenance and use of the IOA and the Authority shall not be responsible to provide any infrastructure in relation to any such services and/or utilities. If the said utilities are provided by the Authority, the Lessee shall reimburse the charges for the same to the Authority on an actual basis;

11.1.3. It is agreed that the Lessee shall, with effect from the Appointed Date, pay all present and future outgoings, Taxes (including GST), levies, import duties, fees and other charges whatsoever and all increases thereto, pertaining to the Lease contemplated hereunder and construction of the IOA or in respect of the materials stored therein on the due dates thereof and the Authority shall not be liable to pay the same. On and from the Fee Commencement Date, the Lessee shall also pay all the Taxes (including GST), levies, import duties, fees and other charges, dues, assessments or outgoings payable in respect of the Fee (including GST) or in respect of the Site or the IOA which may be levied by any Governmental Authority. If the Lessee fails to pay any of the above charges, the Authority shall be entitled, but not obliged to pay the same and recover the same from the Lessee along with interest at a rate calculated at SBI One Year MCLR plus 4% (four percent) per annum;

11.1.4. During the Contract Period, the Lessee shall not transfer or create any Encumbrance over the Site and the Infrastructure of ATO/TRTO;

- 11.1.5. The Parties recognise and agree that nothing contained in this Agreement shall be construed to constitute a transfer of title in the Site in favour of the Lessee. The Lessee shall not at any time during the Contract Period, assert any ownership rights over the Site;
- 11.1.6. Notwithstanding anything to the contrary contained in this Agreement, the Lessee shall not use any area on the Airport other than the Site. However, the Authority may allow the Lessee to store its materials and stores at the areas as may be designated by the Authority for such purposes on such terms and conditions as it may consider appropriate. Further, the Authority may, on payment of charges to be prescribed by the Authority, allow the Lessee to use any other area on the Airport on the terms determined by the Authority;
- 11.1.7. The Lessee shall at all times be responsible for the construction and maintenance of IOA in accordance with this Agreement and in compliance with the Applicable Laws and Policies and the Specifications and Standards hereto;
- 11.1.8. The Lessee shall undertake its obligations hereunder using due care and diligence in a professional manner, using sound engineering and design principles and project management and supervisory procedures and in accordance with Good Industry Practice;
- 11.1.9. The Lessee shall at all times, obtain and maintain all approvals which are required for the fulfilment of its obligations in terms of this Agreement. The Parties agree that the Lessee shall indemnify the Authority in respect of any loss caused to, or suffered by the Authority, arising out of a breach of the terms of any Approvals obtained by it in connection herewith;
- 11.1.10. The Lessee shall maintain the Site during the Contract Period, with regard to safety precautions, fire protection, security, transportation, delivery of goods, materials, plant and equipment, control of pollution, maintenance of personnel, labour and industrial relations and general site services;
- 11.1.11. Lessee shall ensure that all materials, equipment, machinery, etc. installed and/ or used at Site will be of sound and merchantable quality, that all workmanship shall be in accordance with Good Industry Practices applicable at the time of installation, construction or repair and that each part of the construction will be fit for the purpose for which it is required;
- 11.1.12. Lessee shall be responsible for safety, soundness and durability of the IOA constructed upon Site and shall ensure their compliance with the Specifications and Standards;
- 11.1.13. The Lessee shall obtain and maintain in force on and from the Appointed Date, all insurance in accordance with the provisions of this Agreement and Good Industry Practice;

- 11.1.14. The Lessee shall procure, as required, the appropriate proprietary rights, leases, agreements, Approvals and permissions for materials, methods, processes and systems used in the construction of the IOA located upon the Site;
- 11.1.15. The Lessee shall ensure that the Site remains free from all encroachments during the Contract Period;
- 11.1.16. In the event there are any existing structures laid upon or on the Site, then the Lessee shall be required to demolish/ dispose all such structures at its own risk and cost, with the prior written approval of the Authority, which shall not be unreasonably withheld;
- 11.1.17. The Lessee shall not set up labour camp and/ or lay down areas within the Airport, provided however that the Lessee may set up lay down areas within the Site;
- 11.1.18. During construction, the Lessee shall use only those approach roads to the Site within the Airport which are specified by the Authority, provided that the Authority may notify any change in such approach routes which shall be followed by the Lessee;
- 11.1.19. The Lessee shall indemnify the Authority against all actions, suits, claims, demands and proceedings and any loss or damage or cost or expense that may be suffered by the Authority on account of anything done or omitted to be done by the Lessee in connection with the performance of its obligations under this Agreement; and
- 11.1.20. The Lessee shall, from time to time, promptly pay all the charges/ bills for the usage of infrastructure facilities provided to it by the relevant Governmental Authority or by the Authority.

## 11.2. **Sub-Contracts**

- 11.2.1. Lessee shall have the right to grant a sub-contract any activity for fulfilling its obligations relating to the Construction Works, including but not limited to the design, construction, maintenance or any part thereof, provided always that notwithstanding the sub-contract, Lessee shall retain the overall responsibility, obligation and liability hereunder. It is clarified that Lessee shall remain liable and responsible for any acts, omissions or defaults of any Sub-contractor, and shall indemnify the Authority in respect thereof. Provided further that, the Lessee shall ensure that all such sub-contracts are in compliance with the terms of this Agreement.

## **12. CONSTRUCTION OF THE INFRASTRUCTURE OF ATO/TRTO (IOA)**

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

Prior to the commencement of Construction Works, the Lessee shall:

- 12.1.1. submit to the Authority detailed design, drawings, construction methodology, quality assurance procedures, and the construction time schedule for completion of the construction of the IOA and start training operations;
- 12.1.2. appoint its representative duly authorised to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement;
- 12.1.3. 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 Policies and Approvals;
- 12.1.4. obtain all the statutory Approvals or permits required to be taken before the commencement of the Construction Works from State/ Central Government Authorities; and
- 12.1.5. make its own arrangements for construction and procurement of materials needed under and in accordance with Good Industry Practice, Approvals, Applicable Laws and Policies.

### **12.2. Construction standards and maintenance of the Site & Infrastructure of ATO/TRTO**

- 12.2.1. The Lessee shall ensure that all contract(s) and arrangement(s) entered into in relation to the Construction Works shall (to the extent such provisions can be reasonably obtained in the market concerned) include provisions whereby the relevant Subcontractor warrants that each part of such Construction Works carried out thereunder shall be fit for its purpose and free from all defects in design, workmanship and materials;
- 12.2.2. In the execution of the Construction Works, the Lessee shall procure coordination amongst and avoidance of conflicts in the working of the Subcontractors, including all types of suppliers, subcontractors, agents, advisors and consultants. The Lessee shall monitor and supervise the activities of the Subcontractors, retained by it to fulfil its obligations hereunder, under the terms of their respective contracts;
- 12.2.3. The Lessee shall, by itself or through its Subcontractors, at its cost and risk undertake the construction of the IOA, in accordance with the provisions of this Agreement, including compliance with the Specifications and Standards and Good Industry Practice. The IOA shall have adequate facilities with respect to water supply, power, entry & exit arrangement, fire safety provisions, etc.;

- 12.2.4. The Lessee shall, at its responsibility, arrange for materials used in undertaking the Construction Works, as well as equipment, machinery, tools and ancillary materials such as shuttering and scaffolding, bearings, joint fillers and similar materials. The Lessee shall make arrangements for transport, loading and unloading, stacking and proper storage (including making sheds) for all materials and equipment;
- 12.2.5. The Lessee shall maintain the Site during the Contract Period, with regard to safety precautions, fire protection, security, transportation, delivery of goods, materials, plant and equipment, control of pollution, maintenance of personnel, labour and industrial relations and general site services;
- 12.2.6. The Lessee shall ensure that the materials and goods which are used in the Construction Works shall be of sound quality and which shall have been manufactured and prepared and all workmanship shall be in accordance with the Specifications and Standards and Good Industry Practice and that each part of the works shall be fit for the purpose for which it is required as stated in or as may be reasonably inferred from such Construction Documents;
- 12.2.7. The Lessee shall carry out or cause to be carried out the Construction Works with the skill, care and diligence to be expected of appropriately qualified and experienced professional designers, engineers and contractors with experience of work similar in scope and nature to that required under this Agreement. The Lessee shall design, engineer and execute the Construction Works using the best design and engineering principles and practices; and
- 12.2.8. The Lessee shall ensure that in fulfilling its obligations hereunder it shall procure, as required, the appropriate proprietary rights, Leases, agreements, Approvals and permissions for the designs, software, materials, methods, processes and systems used or incorporated into the Construction Works undertaken by it and indemnify and keep indemnified the Authority and its advisors and consultants against all costs, damages, liabilities or consequences arising out of any breach by the Lessee in this behalf.

### **13. MONITORING AND SUPERVISION OF CONSTRUCTION**

#### **13.1. Inspection**

Three months before the scheduled date of completion of the Construction Works, the Authority Representative, shall be entitled to inspect the Site and make a report of such inspection (the “**Construction Inspection Report**”) stating in reasonable detail the defects or deficiencies if any. He shall send a copy of the Construction Inspection Report to the Authority and the Lessee within 7 (seven) days of such inspection and upon receipt thereof, the Lessee shall rectify and remedy the defects or deficiencies, if any, stated in the Construction Inspection Report. Such inspection or submission of Construction Inspection Report by the Authority Representative shall not relieve or absolve the Lessee of its obligations and liabilities hereunder in any manner whatsoever.

#### **14. COMPLETION OF CONSTRUCTION**

- 14.1. Upon the completion of the Construction Works and other activities including delivery of the Structural Safety Certificate, but prior to seeking Completion Certificate from the Authority, in relation to the IOA, in accordance with the terms of this Agreement, the Lessee shall intimate Authority Representative in writing, together with all Approvals required for the purposes of the commencement of commercial operations and an Incurred Cost Certificate (“**Completion Notice**”). Authority Representative shall, within 15 (fifteen) business days of the receipt of the Completion Notice, inspect the IOA and conduct such tests as the Authority Representative may deem necessary, to ascertain its compliance with the terms of Applicable Laws and Policies, Specifications and Standards and this Agreement.
- 14.2. In the event that the IOA complies with the Applicable Laws and Policies and this Agreement including but not limited to Specification and Standards, the Authority Representative shall submit a compliance report to the Authority for information. Upon finding the aforesaid report satisfactory, the Authority shall direct the Authority Representative to issue the Completion Certificate to the Lessee.
- 14.3. If the ATO does not comply with the Applicable Laws and Policies, Specifications and Standards and this Agreement, the Authority Representative shall share a copy of a non-compliance report with the Authority and Lessee for information, indicating the deviations and requiring the Lessee to make such alterations as would be required to ensure its conformity. The Authority on finding the aforesaid report correct shall direct the Authority Representative to issue a notice to the Lessee, to make such alterations to ensure conformity with the Applicable Laws and Policies, Specifications and Standards and this Agreement (“**Cure Notice**”).
- 14.4. In the event that the Authority Representative issues a Cure Notice in accordance with Clause 14.3 above, the Lessee shall undertake the alterations, that are required in terms of the Cure Notice, provided that such alterations are permissible as per Applicable Laws and Policies, whereafter the Lessee may issue another Completion Notice in accordance with Clause 14.1 above.
- 14.5. Upon receipt of a Completion Certificate from the Authority Representative and all Approvals, the Lessee may commence the operations at Site.
- 14.6. Authority Representative shall issue either the Completion Certificate or the Cure Notice within 15 (fifteen) days of the inspection, pursuant to the receipt of the Completion Notice. If Authority Representative fails to issue either a Completion Certificate or a Cure Notice within the aforesaid period, Authority Representative shall be deemed to have granted a Completion Certificate.
- 14.7. The Lessee guarantees that the Construction Works shall be completed and training operations shall commence on or before the expiry of 18 (eighteen) months from the Appointed Date. This date of commencement of training operations or the completion of the “Gestation Period” shall be called as “**Fee Commencement Date**”. *Notwithstanding the foregoing, the Authority may, in its sole discretion, and upon receiving valid reasons in detail in writing from the Lessee, extend such period for an additional 6 (six) months.*

- 14.8. Authority shall not be responsible for any loss of business, profit, goodwill or any other loss caused to the Lessee due to a delay in the completion of construction of the IOA on account of the issue of a Cure Notice by Authority Representative.

**15. MAINTENANCE REQUIREMENTS**

- 15.1. The Lessee shall be solely responsible for maintaining the Site and the IOA in good condition and neat and clean, to the satisfaction of the Authority. The Lessee shall procure that, at all times during the Contract Period, the Site and the IOA conform to the maintenance requirements as per Good Industry Practices and the statutory requirements (“**Maintenance Requirements**”).

- 15.2. The Lessee shall, during the Contract Period, maintain, at its cost, the existing facilities (e.g. FSTD, buildings, water supply system, sewerage, etc.) so that the Site surroundings and safety thereof are at no time materially inferior as compared to their condition 7 (seven) days prior to the date of this Agreement, and shall undertake the necessary repair and maintenance works for this purpose; For the avoidance of doubt, it is agreed that the Lessee shall at all times be responsible for ensuring safe operation of the ATO.

**15.3. De-commissioning due to Emergency**

- 15.3.1. If, in the reasonable opinion of the Lessee, there exists an Emergency which warrants de-commissioning and closure of the whole or any part of the IOA & ATO, the Lessee shall be entitled to decommission and close the whole or any part of the IOA & ATO for so long as such Emergency and the consequences thereof warrant; provided that such decommissioning and particulars thereof shall be notified by the Lessee to the Authority without any delay, and the Lessee shall diligently carry out and abide by any reasonable directions that the Authority may give for dealing with such Emergency.

- 15.3.2. The Lessee shall re-commission the IOA & ATO or the affected part thereof as quickly as practicable after the circumstances leading to its decommissioning and closure have ceased to exist or have so abated as to enable the Lessee to re-commission the IOA & ATO and shall notify the Authority of the same without any delay.

- 15.3.3. Any Decommissioning or closure of any part of the Site and/or IOA and/or ATO and re-commissioning thereof shall, as soon as practicable, be brought to the notice of the affected person by means of public announcement/ notice.

**15.4. Damages for breach of maintenance obligations**

- 15.4.1. In the event the Lessee does not maintain and/ or repair the Site, the IOA or a part thereof up to and in accordance with the Specifications and Standards and/ or in accordance with the Maintenance Requirements, and shall have failed to commence remedial works within 15 (fifteen) days of receipt of notice in this behalf from Authority, or the Inspection Report, as the case may be, Authority shall, without prejudice to its rights under this Agreement, including Termination thereof, be entitled to undertake the repair and maintenance of the Site and/ or the IOA at the risk and cost of the Lessee and to recover the same from the Lessee. In

addition to the recovery of the aforesaid cost of repair and maintenance by the Authority, a sum equal to 25% (twenty-five per cent) of such cost shall also be recovered by the Authority from the Lessee as Damages.

15.4.2. In the event the Authority does not exercise its option to undertake the required repair and maintenance after expiry of the 15 (fifteen) days period set forth in 15.4.1 above, it shall recover Damages from the Lessee for default in operating and maintaining the Site in conformity with this Agreement. Such Damages shall be payable after the aforesaid period of 15 (fifteen) days and until the default is cured. The amount to be claimed as Damages shall be calculated for each day of default at the higher of the following, namely (a) INR 1,000 (Indian Rupee One Thousand), or (b) 0.1% (zero point one per cent) of the cost of such repair as estimated by the Authority. Recovery of such Damages shall be without prejudice to the other rights of the Authority under this Agreement, including Termination thereof.

15.5. **Restoration of loss or damage**

Save and except as otherwise expressly provided in this Agreement, in the event the Site, the IOA or any part thereof suffers any loss or damage during the Contract Period from any cause whatsoever, the Lessee shall, at its cost and expense, rectify and remedy such loss or damage forthwith.

15.6. **Modifications to the IOA**

The Lessee shall not carry out any material modifications to the IOA, save and except where such modifications are necessary to operate in conformity with the Specifications and Standards, Safety Requirements, Maintenance Requirements, Good Industry Practice and Applicable Laws and Policies; provided that the Lessee shall carry out such modifications only if such modifications have been approved by the DGCA & Authority in advance.

15.7. **Excuse from the performance of obligations**

The Lessee shall not be considered in breach of its obligations under this Agreement in case it is unable to fulfil its obligations on account of any of the following for the duration thereof:

- a) an event of Force Majeure; or
- b) compliance with a request from the Authority or the directions of any Government Instrumentality, the effect of which is Suspension of Lease Rights granted to the Lessee or revert of Lease Rights to the Authority:

provided, that any the particulars of occurrence of events in a) above thereof shall be notified by the Lessee to the Authority without any delay.

15.8. **Overriding Powers of the Authority**

15.8.1. If in the reasonable opinion of the Authority, the Lessee 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 any person or property, the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Lessee to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.

15.8.2. In the event that the Lessee, upon notice under Clause 15.8.1 above, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Clause 15.8.2 and take over the performance of any or all the obligations of the Lessee 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, it is reasonably required hereunder; provided further that the Lessee shall be responsible for any costs and expenses incurred by the Authority in the discharge of its obligations hereunder, and the Authority shall be entitled to recover them from the Lessee as Damages.

## **16. SAFETY REQUIREMENTS**

16.1. The Lessee shall comply with the provisions of this Agreement, Applicable Laws and Policies and Approvals and conform to Good Industry Practice for securing the safety of the visitors to the Site, the IOA and other persons present at the Site. In particular, the Lessee shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Site and shall comply with the safety requirements set forth in Schedule G - Safety Requirements (the “**Safety Requirements**”).

16.2. The Authority reserves the rights required by the Lessee to get a safety audit of the Site, and the IOA has been established in accordance with the Safety Requirements, and shall take all other actions necessary for securing compliance with the Safety Requirements.

### **16.3. Expenditure on Safety Requirements**

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

### **16.4. Security Requirements**

16.4.1. The Lessee shall at its own costs be liable to and shall obtain necessary security clearances/permits for its employees.

16.4.2. The Lessee shall not use wireless communications systems, Leased or otherwise at any frequency bands within the Airport without the prior written permission of the Government of Haryana, Civil Aviation Department.

16.4.3. The Lessee shall be responsible for the security of the Site and/or the IOA and their use by the Lessee in a safe manner.

16.4.4. The Lessee, in consultation and with approval of Authority, shall provide and take all such security measures as necessary to prevent unauthorised intrusion into the Site & the IOA.

16.4.5. The Lessee shall include all such measures as part of the security system during the Contract Period, as may be prescribed by Authority from time to time.

16.5. The Lessee shall ensure that the Lessee, its agents, employees, subcontractors or representatives shall comply with the safety and emergency requirements and take all such security measures as necessary to prevent unauthorised intrusion into the Site and the IOA and ensure that the actions of the Lessee or its employees, agents or representatives do not compromise the security of the airport or the operations of the airport, its users, visitors etc. at any point of time.

## **17. MONITORING OF LESSEE'S OBLIGATIONS**

### **17.1. Monthly Operation Reports**

17.1.1. During the Operation Period, the Lessee shall, no later than 10 (Ten) days after the close of each month, furnish to the Authority a monthly compliance report:

- a) indicating the Total training activities (Including FSTD Training) completed by the trainee pilot as per trainee logbook duly certified by the competent authority of the Lessee containing;
  - i) a summary of the compliances undertaken during the month in terms of the Approvals, Safety Requirements, Maintenance Requirements, Applicable Laws and Policies and other obligations of the Lessee in terms of this Agreement;
  - ii) a summary of any other relevant facts and information pertaining to the Site, the ATO and/ or the rights and obligations of the Lessee under this Agreement; and
  - iii) documents evidencing the subsistence of all the Approvals (including but not limited to license) obtained by the Lessee in relation to the Site.

17.1.2 The Lessee shall also submit a copy of valid licenses annually as authorized by DGCA.

### **17.2. Inspection**

The Authority Representative reserves the right to inspect the Site, IOA and/ or conduct such tests as it may deem necessary, without any notice. It shall make a report of such inspection and/ or tests (the "**Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the obligations of the Lessee under this Agreement including Maintenance Requirements and the Safety Requirements, and send a copy thereof to the Authority and the Lessee within 7 (seven) days of such inspection.

### 17.3. **Audit right of the Authority**

Notwithstanding anything to the contrary contained herein, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at anytime, another firm of chartered accountants to audit and verify the expenses, costs and realisations disclosed by the Lessee to the Authority. The Lessee undertakes to co-operate with Authority and the entities authorized by Authority in the conduct of such audit, and for such purpose to provide access to the officials of Authority and its authorized agencies to the books of accounts, bills, documents, papers and such other details as may be required by the Authority or its representatives. The Lessee shall be accountable for preparing of financial statements and delivering them to the Authority and the respective Regulatory Authority as per the following: -

- (a) The Lessee shall prepare and submit a quarterly statement of their revenues and disbursements, expected trends for the next quarter, progress concerning current investment, and proposed additional investments to the Authority and to the respective regulatory authority.
- (b) At the end of each financial year, the Lessee shall prepare and submit the Concessionaire's balance sheet, a profit and loss account and a statement of cash flow drawn up in accordance with generally accepted international accounting practices and applicable Indian corporate law and certified by qualified corporate auditors registered in India to the Authority.
- (c) To monitor compliance with the applicable regulations and with this Agreement, the Lessee shall submit duly audited financial result(s) to the Authority and the respective regulatory authority (as applicable) from time to time.

### 17.4. **Remedial measures**

17.4.1. The Lessee shall repair or rectify the defects or deficiencies, if any, set forth in the Inspection Report and furnish a report in respect thereof to the Authority within 15 (fifteen) days of receiving the Inspection Report; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Lessee shall submit progress reports of the remedial works once every week until such works are completed in conformity with this Agreement.

17.4.2. The Authority shall require the Lessee to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Site and the IOA into compliance with the Maintenance Requirements and the procedure set forth in this Clause 17.4 shall be repeated until the Site and the IOA conforms to the Maintenance Requirements. In the event that remedial Authority measures are not completed by the Lessee in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Damages from the Lessee under and in accordance with the provisions of Clause 15.4 above.

17.5. **Reports of Unusual Occurrence**

The Lessee shall, prior to the close of each day, send to the Authority, by facsimile or e-mail, a report stating accidents and unusual occurrences on the Site and IOA, if any. A weekly and monthly summary of such reports shall also be sent within 3 (three) days of the closing of each week and month, as the case may be. For the purposes of this Clause 17.5, accidents and unusual occurrences on the Site, or IOA shall include:

- a) death or injury to any person;
- b) damaged or dislodged fixed equipment;
- c) any damage or obstruction on the Site or IOA;
- d) all major accidents or crime;
- e) smoke or fire or flooding of the Site; and
- f) such other relevant information as may be required by the Authority.

## **PART IV- FINANCIAL COVENANT**

## 18. PAYMENTS TO BE MADE BY THE LESSEE TO THE AUTHORITY

### 18.1. Fee

18.1.1. In consideration of the Lease of the Site and the IOA constructed thereupon, granted to the Lessee in terms of the provisions contained herein, the Lessee shall pay to the Authority from the Fee Commencement Date, Space rental fee (referred to as the “**License Fee**”):

- i) The Lease Fee calculated as per the rate given in Schedule K for the allocated Site; or
- ii) The Lease Fee and the Concession Fee shall be subject to escalations as mentioned in Clause 18.1.2. below.

18.1.2. On and from the beginning of Fee Commencement Date (both Lease Fee & Concession Fee) payable by the Lessee to the Authority in terms of Clause 18.1.1 above, shall stand escalated as per the under;

- i) Licence Fee: The license fee calculated as per the rate given in Schedule K for the allocated site and is subject to an escalation of 10 % Per Annum.
- ii) The detail Concession Fee in terms of the Highest Quoted Rate of revenue share. The rate of escalation from the beginning of Fee Commencement Date shall be applicable, is as under:

Sr No.	Year-wise Slab	Applicable Rate	Remarks
a)	1 <sup>st</sup> – 5 <sup>th</sup> Year	Nil	--
b)	6 <sup>th</sup> – 10 <sup>th</sup> Year	R %	R%= Highest Quoted Rate of Revenue
c)	11 <sup>th</sup> – 15 <sup>th</sup> Year	R % + 2 %	R% + 2 % = S%
d)	16 <sup>th</sup> – 20 <sup>th</sup> Year	S % + 2 %	S% + 2 % = T%
e)	21 <sup>st</sup> – 25 <sup>th</sup> Year	T % + 2 %	--
f)	Extension Period	For this period, the Rate of Revenue to be mutually decided between the parties for further extension	

18.1.3. The Lease Fee payable by the Lessee in terms of this Agreement shall be paid in advance on or prior to the 10<sup>th</sup> day of each year by cheque/ RTGS/ NEFT in favour of the Authority, on and from the Fee Commencement Date. The Lessee shall pay to Authority Concession Fee on a Six monthly basis, on or prior to the 10<sup>th</sup> day of every Sixth month following the Fee Commencement Date.

18.1.4. The excess amount of Fee paid in an Accounting Year, if any, shall be reconciled within 2 months from the end of respective Accounting Year paid on the basis of Total Revenue Share paid in every sixth month at respective quoted rates.

18.1.5. It is expressly clarified that Fee payable to the Authority by the Lessee is exclusive of Applicable Taxes.

- 18.2. It is clarified that in terms of Clause 18.1.1 above, the Lessee shall not be liable to pay the Fee to the Authority before the Fee Commencement Date.
- 18.3. If the Authority does not receive the payment of the amounts 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 at SBI One Year MCLR plus 4% (four percent) per annum. Notwithstanding anything contained herein, the Lessee shall at all times be liable to ensure the deposit of three months Lease Fee in advance in terms of Performance Security.
- 18.4. For the avoidance of doubt, GST, cess or any other tax applicable shall be borne by the Lessee over and above the accepted Fee as per Clause 18.1.1 above.

18.5. **Other Charges**

No additional charges shall be levied by the Authority over and above the Fee in terms of this Clause. However, as per Clause 11.1.2, the Lessee shall reimburse the charges in respect of usage of electricity and water to the Authority on an actual basis or pay directly to the respective electricity and water providing Departments.

19. **INSURANCE**

19.1. **Insurance during the Contract Period**

19.1.1. Insurance during the Contract Period

- a) The Lessee shall effect and maintain at its own cost, during the Contract Period, such insurances for such maximum sums as may be required under the Applicable Laws and Policies, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Lessee 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 Lessee during the Contract Period. The Lessee shall procure that in each insurance policy, the Authority shall be either a first insured or co-insured and that the insurer shall pay the proceeds of insurance into the designated bank account of the Authority.
- b) No later than 45 (forty-five) days prior to commencement of the Contract Period, as the case may be, the Lessee shall by notice furnish to the Authority, in reasonable detail, the information in respect of the insurances that it proposes to effect and maintain in accordance with this Clause 19. Within 30 (thirty) days of receipt of such notice, the Authority may require the Lessee 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.

For the sake of brevity, the aggregate of the maximum sums insured under the insurance taken out by the Lessee pursuant to this Clause 19 is herein referred to as the “**Insurance Cover**”.

**19.2. Insurance Cover**

Without prejudice to the provisions contained in Clause 19.1 above, the Lessee shall, during the Contract Period, procure and maintain Insurance Cover including but not limited to the following:

- 19.2.1. loss, damage or destruction of the Site and/ or the IOA, including assets handed over by the Authority to the Lessee, at replacement value;
- 19.2.2. comprehensive Third Party liability insurance including injury to or death of personnel of the Authority or others caused by the transactions contemplated herein;
- 19.2.3. the Lessee's general liability arising out of the Lease Rights;
- 19.2.4. liability to third parties for goods or property damage;
- 19.2.5. workmen's compensation insurance; and
- 19.2.6. any other insurance that may be necessary to protect the Lessee and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items Clause 19.2.1 to 19.2.5 above.

**19.3. Evidence of Insurance Cover**

All insurances obtained by the Lessee in accordance with this Clause 19 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any Insurance Cover, the Lessee 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 Lessee to the Authority.

**19.4. Remedy for failure to insure**

If the Lessee 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 Lessee.

**19.5. Waiver of subrogation**

All insurance policies in respect of the Insurance Cover obtained by the Lessee pursuant to this Clause 19 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.

**19.6. Lessee's waiver**

The Lessee 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 Lessee 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 Lessee 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.

**19.7. Application of insurance proceeds**

The proceeds from all insurance claims, except life and injury, shall be paid to the Lessee and it shall, notwithstanding anything to the contrary contained in Clause 19.3 above, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement or delivery of the Site and/ or the IOA.

## **PART V-FORCE MAJEURE AND TERMINATION**

## **20. FORCE MAJEURE**

20.1. Force Majeure: As used in this Agreement, a Force Majeure Event shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and/or Political Event as defined in Clauses 20.2, 20.3 and 20.4 respectively hereinafter which prevent the Party claiming Force Majeure (the “**Affected Party**”) from performing its obligations under this Agreement and which act or event is (i) beyond the reasonable control and not arising out of the fault of the Affected Party, (ii) the Affected Party has been unable to overcome such act or event by the exercise of due diligence and reasonable efforts, skill and care, including through expenditure of reasonable sums of money and (iii) has a Material Adverse Effect.

### **20.2. Non-Political Force Majeure Events**

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

20.2.1. act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);

20.2.2. strikes or boycotts (other than those involving the Lessee, subcontractors or their respective employees/ representatives or attributable to any act or omission of any of them) interrupting supplies and services for a period exceeding a continuous period of 30 (thirty) days in an Accounting Year, and not being an Indirect Indian Political Event set forth in Clause 20.3 thereof;

20.2.3. any failure or delay of a Subcontractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Lessee by or on behalf of such Subcontractor;

20.2.4. any judgement or order of any court of competent jurisdiction or statutory authority in India made against the Lessee in any proceedings for reasons other than the failure of the Lessee to comply with any Applicable Law or Approvals or on account of the breach thereof, or of any contract, or enforcement of this Agreement or exercise of any of its rights under this Agreement by the Authority;

20.2.5. 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

20.2.6. any event or circumstance of a nature analogous to any of the foregoing.

### **20.3. Indirect Political Force Majeure Events**

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

20.3.1. an act of war (whether declared or undeclared), invasion, armed conflict or act of a foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage which prevents the Lessee from fulfilling its obligations hereunder for a continuous period exceeding 15 (fifteen) days in an Accounting Year;

- 20.3.2. industry-wide or statewide or India wide strikes or industrial action for a period exceeding a continuous period of 30 (thirty) days in an Accounting Year;
- 20.3.3. any civil commotion, boycott or political agitation which prevents the Lessee from fulfilling its obligations hereunder for a continuous period exceeding 15 (fifteen) in an Accounting Year;
- 20.3.4. any failure or delay of a Subcontractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Lessee by or on behalf of such Subcontractor; or
- 20.3.5. any event or circumstance of a nature analogous to any of the foregoing.

20.4. **Political Force Majeure Events**

A Political Event shall mean one or more of the following acts or events by or on account of the Government of India or any other Governmental agency:

- 20.4.1. expropriation or compulsory acquisition by any governmental agency of the Site and/ or the IOA or rights of the Lessee;
- 20.4.2. unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, Approval or exemption required by the Lessee or any of the Sub-Contractors to perform their respective obligations under this Agreement and the other agreements in relation thereto; provided that such delay, modification, denial, refusal or revocation did not result from the Lessee's or any Subcontractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, Lease, authorisation, no objection certificate, exemption, consent, Approval or permit;
- 20.4.3. Any decision or order of a court or tribunal which has the effect of restraining all or any part of the activities concerning the construction, use, operation or maintenance of the IOA including the determination, levy, demand, collection, retention and appropriation of financials;
- 20.4.4. any failure or delay of a Subcontractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Lessee by or on behalf of such Subcontractor; or
- 20.4.5. any event or circumstance of a nature analogous to any of the foregoing.

20.5. **Effect of Force Majeure before the Appointed Date**

Upon the occurrence of any Force Majeure Event prior to Appointed Date, the following shall apply:

- 20.5.1. There shall be no Termination except as provided in Clause 20.7;
- 20.5.2. the period set forth in Clause 3.2 above for fulfilment of Conditions Precedent shall be extended by a period equal in length to the duration of the Force Majeure Event; and subject to a maximum period of 30 (thirty) days; and
- 20.5.3. The Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs arising out of such Force Majeure Event.

20.6. **Effect of Force Majeure Event after Appointed Date**

Upon the occurrence of any Force Majeure Event after the Appointed Date, the following shall apply:

20.6.1. There shall be no Termination of this Agreement except as provided in Clause 20.7 below;

20.6.2 Subject to the provisions of Clause 20.7 below, where the Force Majeure Event occurs after the Appointed Date, the Contract Period shall be extended by the period for which such Force Majeure Event shall subsist; and

20.6.3. The Parties expressly agree that payment of Fee shall not be suspended during the pendency of Force Majeure event and/or its effect.

Provided, however, that the Force Majeure costs, payable by the Authority, shall not exceed the Fee received by the Authority in the immediately preceding 3 (three) months.

20.7. **Termination Notice**

If a Force Majeure Event subsists for a period of 180 Days, either Party may in its sole discretion terminate this Agreement by giving 30 (thirty) days Termination Notice in writing to the other Party without being liable in any manner whatsoever, save as provided in Clause 20.8 below and upon the 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.

20.8. **Termination Payment for Force Majeure Events**

Upon termination of this Agreement pursuant to Clause 20.7 above, the Lessee shall be entitled to a Termination Payment in accordance with the provisions of Clause 23.5 hereinbelow.

20.9. **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 as laid down in Clause 30 of this Agreement; 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.

20.10. **Liability for other losses, damages etc.**

Save and except as expressly provided in this Clause 20, neither Party hereto 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 to this Clause 20.

20.11. **Duty to Report**

The Affected Party shall discharge the following obligations in relation to reporting the occurrence of a Force Majeure Event to the other Party:

20.11.1. The Affected Party shall not claim any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party in writing of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event within 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

20.11.2. Any notice pursuant to this Clause 20.11 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 Clause 20 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 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; and
- d) any other information relevant to the Affected Party's claim.

For so long as the Affected Party continues to claim to be affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) written reports containing the information as required by this Clause 20.11, and such other information as the other Party may reasonably request the Affected Party to provide.

20.12. **Excuse from the performance of obligations**

If the Affected Party is rendered wholly or partially unable to perform its obligation under this Agreement because of 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:

20.12.1. The suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;

20.12.2. 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

20.12.3. When the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder.

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

### **21.1. Compensation for default by Lessee**

In the event of Lessee being in material default of this Agreement and such default is cured before Termination, the Lessee shall pay to Authority as compensation, all direct additional costs suffered or incurred by Authority arising out of such material default by the Lessee, in one lumpsum within 30 (thirty) days of receiving the demand from the Authority supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 21.1 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.

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

Compensation payable under this Clause 21 shall be in addition to, and not in substitution for, or derogation of, Termination Payment if any.

### **21.3. 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 the breach of Agreement by the other Party.

## **22. SUSPENSION OF LESSEE'S RIGHTS**

### **22.1. Suspension upon Lessee Default**

Upon the occurrence of a Lessee's Event of 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 Lessee under this Agreement and (b) exercise such rights itself and perform the obligations hereunder or authorise any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon the issue of notice by the Authority to the Lessee and may extend up to a period not exceeding 120 (one hundred and twenty) days from the date of issue of such notice; provided that the Authority may, upon a written request of the Lessee, extend the aforesaid period of 120 (one hundred and twenty) days by a further period not exceeding 60 (sixty) days.

### **22.2. Authority to act on behalf of Lessee**

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

22.3. **Revocation of Suspension**

The suspension of the rights of the Lessee by Authority pursuant to Clause 22.1 above shall be revoked by Authority forthwith upon the Lessee having remedied or removed the cause of suspension within a period not exceeding 90 (ninety) days from date of suspension to the satisfaction of Authority unless in the meantime this Agreement has been terminated by Authority in accordance with this Clause 22.

22.4. **Termination**

22.4.1. At any time during the period of Suspension under this Clause 22, the Lessee may by notice require the Authority to revoke the Suspension and issue a Termination Notice. the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Clause 22.

22.4.2. 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 22.1, the Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated 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 the occurrence of a Lessee's Event of Default.

23. **TERMINATION**

23.1. **Termination for Lessee's Default**

23.1.1. Each of the following events or circumstances, to the extent not caused by a default of Authority or Force Majeure shall be considered for the purposes of this Agreement as events of default of the Lessee ("**Lessee's Event of Default**") which, if not remedied within the Cure Period set forth below, or where no Cure Period is specified, within 60 (sixty) days, upon receipt of written notice from Authority, shall provide Authority with the right to terminate this Agreement in accordance with Clause 23.4 below:

- a) The Lessee abandons the Site, the ATO unattended for more than 15 (fifteen) consecutive days without the prior consent of Authority, provided that the Lessee shall be deemed not to have abandoned such operation if such abandonment was (i) as a result of Force Majeure Event and is only for the period such Force Majeure is continuing, or (ii) is on account of a breach of its obligations by Authority;
- b) The Lessee creates any Encumbrance, charges or lien in favour of any person save and except as otherwise expressly permitted under this Agreement;
- c) Upon the occurrence of the change in control of the Lessee and the Lessee does not '*suo moto*' cure such default within 30 (thirty) days of its occurrence;
- d) the Lessee is adjudged bankrupt or insolvent, or if a trustee or receiver or the interim resolution professional/ resolution professional is appointed for the Lessee or for the whole or material part of its assets that has a material bearing on this Agreement and the transactions contemplated hereunder;



- e) a resolution for winding up of the Lessee is passed, or any petition for insolvency resolution process/ liquidation/winding up of the Lessee is admitted by a court/tribunal of competent jurisdiction and an interim resolution professional/ resolution professional /provisional liquidator/liquidator or a receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Lessee is ordered to be wound up/liquidated by Court/tribunal except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, and undertaking of the Lessee are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Lessee under this Agreement and the other agreements executed by the Lessee in connection herewith; 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 other agreements executed by the Lessee in connection herewith ;
  - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the other agreements executed by the Lessee in connection herewith and has credit worthiness at least as good as that of the Lessee as at the date immediately preceding the date on which such proposal for amalgamation or reconstruction has been approved; and
  - (iii) each of the other agreements executed by the Lessee in connection herewith remains in full force and effect;
- f) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Lessee under any of the agreements executed by the Lessee or of (ii) undertaking of the Lessee, and such transfer causes a Material Adverse Effect;
- g) a resolution is passed by the shareholders of the Lessee for the voluntary winding up of the Lessee;
- h) the Lessee repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement;
- i) the Lessee suffers an execution being levied on any of its equipment or assets causing a Material Adverse Effect and allows it to be continued for a period of 15 (fifteen) days;
- j) the Lessee has delayed any payment that has fallen due under this Agreement if such delay exceeds 90 (ninety) days;
- k) the Lessee is in breach of the provisions contained in Clause 8 of this Agreement;
- l) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 8.5.1 above, the Lessee fails to meet any Condition Precedent or cure the Lessee Default, as the case may be, for

which whole or part of the Performance Security was appropriated, within the Cure Period specified with respect to that particular default;

- m) the Lessee fails to fulfil any of its obligations hereunder and such default is not remedied within the Cure Period specified herein; or
- n) the Lessee has failed to make any payment to the Authority within the period specified in this Agreement including without limitation the amounts set out in Clause 18 above;
- o) ATO does not set up at least 01 Level D FSTD within 18 months of issuance of Letter of Award (LoA)/ Letter of Intent (LoI).
- p) Lessee does not commence training activities within 18 months of Appointed Date; provided that non-commencement of training activities was (i) as a result of Force Majeure Event and is only for the period such Force Majeure is continuing, or (ii) is on account of a breach of its obligations by Authority, or (iii) in accordance with the provisions of this Agreement.

23.2. **Termination by Authority without default**

Without prejudice to any other rights or remedies which the Authority may have under this Agreement, the Authority shall be entitled to terminate this Agreement for any reasons whatsoever, including upon determination that the Authority requires the Site for its own use, and without having to specify any reasons therefor, by issuing a Termination Notice of not less than 30 (thirty) days to the Lessee.

23.3. **Termination upon closure of Airport**

In the event of the announcement of the closure of the airport, Lessee may request to terminate the Agreement with effect from the date which is 7 (seven) days before the effective date of closure of the Airport. It is however clarified that in the event of termination of this Agreement under this Clause, the Authority shall be liable to make the Termination Payment in terms of Clause 23.5.4 below in case such closure happens before the expiry of 10 (ten) years from the Effective Date.

- 23.4. Without prejudice to any other right or remedy which Authority may have in respect thereof under this Agreement, upon the occurrence of any breach or default by the Lessee under this Agreement including any Lessee's Event of Default, Authority shall be entitled to terminate this Agreement by a communication in writing to the Lessee if the Lessee has failed to cure such breach or default within the period provided for the same in this Agreement or Cure Period of 60 (sixty) days and invoke the Performance Security and appropriate the proceeds thereof as Damages. Provided that before issuing the Termination Notice, the Authority shall by a notice inform the Lessee of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Lessee 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 a Termination Notice.

- 23.4.1. Subject to Clause 23.2 above, the following shall apply in respect of cure of any of the defaults and/or breaches of this Agreement.
- a) The Cure Period shall commence from the date on which notice in writing is delivered by Authority to the Lessee asking the latter to cure the breach or default specified in such notice;
  - b) The Cure Period provided in this Agreement shall not relieve the Lessee from liability for Damages caused by its breach or default;
  - c) The Cure Period shall not in any way be extended by any period of suspension under this Agreement; and
  - d) If the cure of any breach by the Lessee requires any reasonable action by the Lessee that must be approved by Authority hereunder the applicable Cure Period (and any liability of the Lessee for damages incurred) shall be extended by the period taken by Authority to accord its approval.

23.5. **Termination Payment**

23.5.1. The Lessee hereby acknowledges that no Termination Payment shall be due or payable on account of a Lessee's Event of Default or Termination by Lessee in terms of Clause 23.6 below.

23.5.2. In the event of termination of this Agreement by the Authority in terms of Clause 23.2, the Authority shall be liable to repay the proportionate cost of construction of the IOA, on the basis of the amounts set out in the Incurred Cost Certificate.

23.5.3. The Lessee expressly agrees that Termination Payment under this Clause 23 shall constitute a full and final settlement of all claims of the Lessee on account of Termination of this Agreement for any reason whatsoever and that the Lessee or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

23.5.4. In the event of termination of this Agreement on account of closure of airport before the expiry of a period of 10 (ten) years, the Authority shall be liable to pay the Termination Payment to be calculated in the following manner:

A= Remaining/ unexpired period out of the initial 10 years (in months);

B= 10 years (120 months)

IC= Costs incurred by the Lessee in the designing, development and construction of the IOA as duly certified by the Incurred Cost Certificate.

$$\text{Termination Payment} = (A / B) \times IC$$

23.6. **Termination by Lessee**

The Lessee may, at any time after the Completion Date, terminate this Agreement upon serving a Termination Notice of not less than 3 (three) months, without having to specify any reasons therefor.

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

Upon termination for any reason whatsoever, the Authority shall:

- a) cancel the Lease and take control of the Site and the IOA forthwith;
- b) be entitled to restrain the Lessee and any person claiming through or under the Lessee from entering upon the Site and the Infrastructure/Premises of ATO;
- c) require the Lessee to comply with the Divestment Requirements; and
- d) succeed upon election by the Authority, without the necessity of any further action by the Lessee, to the interests of the Lessee under other agreements executed by the Lessee in connection herewith, as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Subcontractors only for compensation accruing and becoming due and payable to them under the terms of their respective agreements from and after the date the Authority elects to succeed to the interests of the Lessee. For the avoidance of doubt, the Lessee acknowledges and agrees that all sums claimed by such Subcontractors 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 Lessee and such Subcontractors, 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 agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment and the Performance Security, as the case may be.

23.8. **Survival of rights**

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

**24. DIVESTMENT OF RIGHTS AND INTEREST**

24.1. **Divestment Requirements**

24.1.1. Upon Termination, the Lessee shall comply with and conform to the following Divestment Requirements:

- a) transfer forthwith the Site and IOA, free and clear of all Encumbrances, defects and deficiencies, provided that in the event of Termination during the Construction Period, the Site and the IOA shall be handed over on 'as is where is' basis after bringing them to in a safe condition;
- b) deliver and transfer relevant records, reports, Intellectual Property and other licenses pertaining to IOA 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 Lessee

represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the IOA and shall be transferred to the Authority free of any Encumbrance;

- c) transfer and/or deliver all Approvals to the extent permissible under Applicable Laws and Policies;
- d) execute such documents and other writings as the Authority may reasonably require for divesting and assigning all the rights, title and interest of the Lessee, including manufacturers' warranties 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
- e) comply with all other requirements as may be prescribed or required under Applicable Laws and Policies for completing the divestment and transfer of all rights and interest of the Lessee in the IOA and the Site, free from all Encumbrances, absolutely unto the Authority or to its authorised representative.

24.1.2. Subject to the exercise by the Authority of its rights under this Agreement or under any of the other agreements executed in connection with this Agreement, to perform or procure the performance by a Third Party of any of the obligations of the Lessee, 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.

#### 24.2. **Inspection and cure**

Not earlier than 90 (ninety) days prior to Termination but not later than 30 (thirty) days prior to the effective date of such Termination, the Authority Representative shall verify, after giving due notice to the Lessee of the time, date and place of such verification, compliance by the Lessee with the Maintenance Requirements and the Safety Requirements. Defaults, if any, in the Maintenance Requirements and the Safety Requirements shall be cured by the Lessee at its cost and the provisions of Clause 25 below shall apply, *mutatis mutandis*, in relation to the curing of defects or deficiencies under this Clause 24.

#### 24.3. **Cooperation and assistance on the transfer of Site and the IOA**

24.3.1. The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Site and the IOA in accordance with the provisions of this Agreement.

24.3.2. The Lessee shall provide to the Authority, 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, such reasonable advice and assistance as the Authority.

24.3.3. The Authority shall have the option to purchase or hire from the Lessee at a fair market value and free from any Encumbrance all or any part of the plant and machinery used in connection with the IOA but which does not form part of assets

specified in Clause 24.1.1. and is reasonably required in connection with the operation of the IOA. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.

#### 24.4. **Vesting Certificate**

24.4.1. The divestment of all rights and interest in the Site and the IOA 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 H (the “**Vesting Certificate**”), which will have the effect of constituting evidence of divestment by the Lessee of all of its rights and interest in the Site and the IOA, 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 the footing that all Divestment Requirements have been complied with by the Lessee.

#### 24.5. **Divestment costs etc.**

24.5.1. The Lessee shall bear and pay all costs incidental to the divestment of all of the rights and interest of the Lessee in the Site and IOA in favour of the Authority upon Termination, save and except that all stamp duties payable on any deeds or documents executed by the Lessee in connection with such divestment shall be borne by the Authority.

24.5.2. In the event of any Dispute relating to matters covered by and under Clause 24, the Dispute Resolution Procedure shall apply.

### 25. **DEFECTS LIABILITY**

#### 25.1. **Liability of Defects**

The Lessee shall be responsible for all defects and deficiencies in the IOA and at the Site for the Contract Period and for a period of 120 days after the Termination (“**Defects Liability Period**”), and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Authority Representative in the IOA and Site during the aforesaid period. In the event that the Lessee 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 Lessee’s risk and cost so as to make the IOA conform to the Maintenance Requirements, Safety Requirements and Standards and Specifications. All costs incurred by the Authority hereunder shall be reimbursed by the Lessee 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 Performance Security provided hereunder.

**26. ASSIGNMENT AND CHARGES**

**26.1. Restrictions on assignment and charges**

- 26.1.1. Subject to Clause 26.2 below, this Agreement shall not be assigned by the Lessee 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.
- 26.1.2. Subject to the provisions of Clause 26.2 below, the Lessee 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 other agreements executed by the Lessee in connection with this Agreement except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

**26.2. Assignment by the Authority**

Notwithstanding anything to the contrary contained in this Agreement, the Authority may, after giving 60 (sixty) days' notice to the Lessee, 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 of the Agreement.

It is hereby agreed between the Parties that the Authority shall have the right to novate this Agreement in favour of any other person on the same terms and conditions as contained in this Agreement and the Lessee hereby agrees to enter into such novation agreement recognizing the Third Party as the lessor in place of the Authority and release the Authority of all liabilities and obligations arising from and after the date of transfer/novation of such rights.

The Authority agrees that in the event the Authority transfers the rights to operate and maintain the airport to a Third Party(s) during the Contract Period, the Authority shall ensure that:

- (a) it causes to transfer/novate this Agreement, in favour of such Third Party on the same terms and conditions as contained in this Agreement, on the principle that such transfer/novation would release Authority of all liabilities and obligations arising from and after the date of transfer/novation of such rights. The Parties, along with relevant Third Party shall execute necessary documentation or put in place necessary agreements for the aforesaid transfer/novation; and
- (b) the rights and obligations under or pursuant to all contracts and other arrangements entered into in accordance with the provisions of this Agreement between Authority and Lessee shall be vested in such Third Party.

**27. CHANGE IN LAW**

- 27.1. Any Change in Law subsequent to the date of this Agreement, shall not affect the rights and obligations of the Parties hereunder and shall not absolve the Lessee from the fulfilment of its obligations hereunder unless such Change in Law makes the performance of any provision of this Agreement or any transaction contemplated hereunder impracticable or impossible. Accordingly, the Lessee shall continue to fulfil its obligations hereunder including without limitation the payment of the amounts set out in Clause 18 above by the Lessee, without any delay or demur, in the event of any Change in Law.
- 27.2. In case any Change in Law makes the performance of this Agreement impracticable or impossible, the Parties shall jointly make such modifications to this Agreement, as may be approved by the Authority, which will make the performance of this Agreement practicable or possible.



## **PART VI- OTHER PROVISIONS**

## **28. LIABILITY AND INDEMNITY**

### **28.1. Liability in respect of the Site and the IOA**

Lessee shall be solely responsible for the construction, use, operation and maintenance of the IOA on the Site, and shall have the overall responsibility and liability with respect to the Site, the IOA located upon the Site. In no event shall the Authority have any liability or be subject to any claim for damages arising out of the design, development, financing, construction, use, operation, maintenance or management of the IOA located upon the Site.

### **28.2. General indemnity**

The Lessee will indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and Government-owned and/ or controlled entities/enterprises, (the “**Authority 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 Lessee of any of its obligations under this Agreement or any related agreement or from any negligence of the Lessee 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 Authority Indemnified Persons.

### **28.3. Indemnity by the Lessee**

28.3.1. Without limiting the generality of Clause 28.2 above, the Lessee shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- a) failure of the Lessee to comply with the terms of the Approvals, Applicable Laws and Policies;
- b) payment of taxes required to be made by the Lessee in respect of the IOA or on income therefrom or other taxes of the Lessee’s contractors, suppliers and representatives; or
- c) Non-payment of amounts due as a result of materials or services furnished to the Lessee or any of its contractors which are payable by the Lessee or any of its contractors.

28.3.2. Without limiting the generality of the provisions of this Clause 28, the Lessee shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority 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 Lessee or by the Lessee’s Subcontractors in performing the Lessee’s obligations or in any way incorporated in or related to this Agreement. If in any such suit, action, claim or proceedings, a

temporary restraint order or preliminary injunction is granted, the Lessee 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, use and operation of the IOA, is held to constitute an infringement and its use is permanently enjoined, the Lessee shall promptly make every reasonable effort to secure for the Authority a lease, at no cost to the Authority, authorising the continued use of the infringing work. If the Lessee is unable to secure such license within a reasonable time, the Lessee 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.

28.4. **Notice and contest of claims**

In the event that the Authority receives a claim or demand from a Third Party in respect of which it is entitled to the benefit of an indemnity under this Clause 28 (the “**Indemnified Party**”) it shall notify the Lessee (the “**Indemnifying Party**”) within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

28.5. **Defence of claims**

28.5.1. 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 paid 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 Clause 28, the Indemnifying Party shall be entitled, at its option, to assume and control the defense 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 defense. 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.

28.5.2. If the Indemnifying Party has exercised its rights under Clause 28.4 above, 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).

28.5.3. If the Indemnifying Party exercises its rights under Clause 28.4 above, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such activities, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

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

Provided that if Sub-clauses b), c) or d) of this Clause 28.5.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defense 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.

## 28.6. **Survival on Termination/Expiry**

It is expressly understood by the Parties that Clause 28 shall survive the termination or expiry hereof.

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

### 29.1. **Lease rights**

For the purpose of this Agreement, the Lessee shall have rights to the use of the Site as sole Lessee subject to and in accordance with this Agreement, and to this end, it may, subject to Authority's primary rights over the Site, regulate the entry and use of the Site and the IOA by Third Parties in accordance with and subject to the provisions of this Agreement.

29.2. **Ownership rights of the Authority and others**

The Lessee agrees and acknowledges that:

29.2.1. the Authority has granted to the Lessee:

- (a) Lease to access the Site for the purposes of construction of the IOA on the Site during the Construction Period; and
- (b) Lease rights to construct, use, operate and maintain the IOA in accordance with the terms of this Agreement for the Contract Period;

29.2.2. the Fee payable by the Lessee to the Authority is being charged at significantly lower rates.

The Parties further acknowledge that the title to the Site at all times remain with the Authority.

29.3. **Taxes and charges**

The Lessee shall:

- a) On and from the Appointed Date, pay all taxes, duties, cesses and charges levied under the Applicable Laws and Policies and other charges payable in connection with the Lease granted hereunder and construction of IOA on the Site.
- b) On and from the Completion Date, pay all taxes, duties, cesses and charges levied under Applicable Laws and Policies and other charges payable in connection with the grant of Lease Right hereunder by the Authority and the use, maintenance and operation of the ATO.
- c) Pay/reimburse all charges, taxes, fines, late fees and other outgoings in relation to the use of utilities and services during the Contract Period such as water supply, sewage disposal, fuel, garbage collection and disposal, electric power, gas, telephone and other utilities and ensure avoidance of any disruption thereof due to disconnection or withdrawal of the facility.

29.4. **Restriction on sub-letting**

The Lessee shall not sub-let the whole or any part of the Site and/ or the IOA without the prior written consent of the Authority; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Lessee to appoint Subcontractors for the performance of its obligations hereunder.

**30. DISPUTE RESOLUTION**

30.1. Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure outlined in Clause 30.3 below.

30.2. The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

30.3. **Conciliation**

In the event of any dispute between the Parties, either Party may require such Dispute to be referred to the Advisor Civil Aviation Department, Haryana for an amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 30.1 above or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 30.4 below.

30.4. **Arbitration**

30.4.1. Any Dispute which is not resolved amicably by conciliation, as provided in Clause 30.3, shall be finally decided by reference to arbitration by an arbitral tribunal constituted in accordance with Clause 30.4.2 below. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”), or such other rules as may be mutually agreed by the Parties and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996, the Arbitration and Conciliation (Amendment) Bill, 2019 and further amendments in the Act from time to time. The place of such arbitration shall be [Chandigarh], and the language of arbitration proceedings shall be English.

30.4.2. There shall be an arbitral tribunal comprising 3 (three) arbitrators, of whom each party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.

30.4.3. The arbitral tribunal shall make a reasoned award (the “**Award**”). Any award made in any arbitration held pursuant to this Clause 30 shall be final and binding on the Parties as from the date it is made, and the Lessee and the Authority agree and undertake to carry out such Award without delay.

30.4.4. The Lessee and the Authority agree that an award may be enforced against the Lessee and/or the Authority, as the case may be, and their respective assets wherever situated.

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

30.5. **Continued performance**

While any dispute under this Agreement is pending, including the commencement and pendency of any dispute referred to arbitration, the Parties shall continue to perform all of their respective obligations under this Agreement without prejudice to the final determination in accordance with the provisions under this Clause 30.

30.6. **Adjudication by a tribunal**

In the event of the constitution of a statutory tribunal with powers to adjudicate upon disputes between the Lessee and the Authority, all Disputes arising after such constitution shall, instead of a reference to arbitration under Clause 30.4, be adjudicated upon by such tribunal in accordance with Applicable Laws and Policies and all references to Dispute Resolution Procedure shall be construed accordingly.

**31. DISCLOSURE AND CONFIDENTIALITY**

31.1. **Confidentiality**

31.1.1. Each Party hereby agrees and undertakes to keep all information received from the other Party (and/or its employees, directors, officers or authorized representatives), confidential.

31.1.2. Further, each Party hereby agrees that this Agreement and/or all other agreements or the contents thereof shall not be disclosed by either Party to any Third Party without the prior written consent of the other Party.

31.2. **Disclosure**

31.2.1. Provided however that nothing contained hereinabove shall apply to any disclosure by either party of any information received from the other party if:

- a) Such disclosure is required by Applicable Law and Policies or requested by Governmental Authority or required to be made under the Agreement ;
- b) Such information is available in the public domain, other than by a breach of the Agreement by the party seeking to make such disclosure;
- c) Such information is made available to the consultants and professional advisers of either Party; or
- d) Such information is disclosed by a Party with the prior written consent of the other Party. Provided the disclosure is made strictly in accordance with such written consent.

**32. TERM, RENEWAL AND EXPIRY**

32.1. This Agreement shall continue to be in full force and effect until the 25<sup>th</sup> (Twenty-Fifth) anniversary of the Appointed Date and will be renewable for another 10 years with the mutual consent of both the Parties.

**33. SURRENDER/ TRANSFER PROVISIONS**

- 33.1. Upon expiry of the Contract Period and Termination of this Agreement and the consequent right of Authority to receive back the Site and the IOA under Clause 24 above and Clause 33 without the Authority being required to pay any amount to the Lessee, the Lessee shall ensure that on the expiry of the Contract Period or upon Termination of this Agreement, whichever is earlier, all the rights/interest of Lessee in;
- 33.1.1. All immovable property and structures on the Site shall be transferred to Authority or its nominee, clear of any Encumbrances and at zero cost;
- 33.1.2. the rights and obligations under or pursuant to all contracts relating to the IOA and other arrangements entered into in accordance with the provisions of this Agreement between Lessee and any Third Party shall (in consideration of Authority's assumption of the obligations under or pursuant to the contracts and other arrangements), at the option of Authority, be vested in Authority or its nominee, clear of any Encumbrance and with a good title. The Lessee shall ensure such rights of Authority are incorporated in all contracts between Lessee and Third Party(ies) with a specific obligation on the parties to such contracts to enter into a novation agreement with Authority upon exercise of its option by Authority; and
- 33.1.3. Notwithstanding anything contained in Clause 33.1.1 above and 33.1.2 above, prior to any surrender of the Site and the transfer of IOA, the Authority shall have the right to conduct due diligence of the contracts and agreements, the rights and obligations of which it is assuming and shall not be bound to assume the rights and obligations of contracts that, in the sole opinion of Authority are unreasonably onerous, and would be considered onerous at the time that the contracts were entered into. In relation to all such contracts that are not transferred to the Authority, no third entity, including the counter-party of such contract shall have any right, license title, interest, benefit, claim or demand against or over the Site, the ATO and the same shall be transferred to the Authority or its nominee, clear of any Encumbrance and with a good title.
- 33.2. Furthermore, notwithstanding anything contained in Clause 33.1 above, no liability (accrued or contingent) of Lessee or relating to the Site and/ or the IOA arising on account of actions or inactions prior to the expiry of the Contract Period shall be assumed by or transferred to the Authority or its nominees. Authority or its nominees shall only be liable for liabilities in relation to the Site and/ or the IOA arising pursuant to the expiry of the Contract Period. In the event of any such liability being assumed or transferred to Authority or its nominee or any Encumbrance existing on Site and the IOA, the quantum of such liability and/or amount corresponding to such Encumbrance shall be deducted from the Performance Security.
- 33.3. Without prejudice to the foregoing, the Lessee agrees to indemnify and keep indemnified the Authority from and against all actions, proceedings, losses, damages, liabilities, claims, costs and expenses whatsoever which may be sustained or suffered by Authority as a result of any actions or omissions of Lessee prior to the surrender of the Site and/ or the transfer of IOA. It is expressly understood by the Parties that this Clause shall survive the termination or expiry of this Agreement.



- 33.4. Lessee shall in accordance with Good Industry Practice ensure that all property, assets, rights which are vested in or surrendered/ transferred to Authority shall be in good working order and in a good state of repair. For this purpose, the Parties shall appoint an Authority Representative to conduct an audit of the Site, the IOA being transferred. In the event Site and the IOA surrendered and transferred to Authority are not fit for purpose/ in a good state of repair/ as would be expected of an international world-class asset, as certified by such Authority Representative, then the cost or the capital expenditure required to be incurred to bring it to a good state of repair, the Site and/ or the IOA shall be payable by the Lessee to Authority, and the same may be deducted from the Performance Security.
- 33.5. Expiry or termination of this Agreement shall be without prejudice to all rights and obligations then having accrued to Authority and/or Lessee (or which may thereafter accrue in respect of any act or omission prior to such expiry or termination) and without prejudice to those provisions which expressly provide for continuing obligations or which are required to give effect to such expiry or termination or the consequences of such expiry or termination.
- 33.6. The Parties' rights to terminate this Agreement shall be limited to those expressly set out in this Agreement.

**34. MISCELLANEOUS**

**34.1. No consequential losses**

In no event shall either party be liable to the other party for special, incidental or consequential damages arising under or as a result of this Agreement (or termination thereof), including, but not limited to, the loss of prospective revenue or on account of expenses, investments, or commitments in connection with the business or goodwill or otherwise.

**34.2. Governing Law and jurisdiction**

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

**34.3. Waiver of immunity**

Each Party unconditionally and irrevocably:

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

- 34.3.2. 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;
- 34.3.3. waives any right of immunity which it or its assets, property or revenues now have, may acquire in the future or which may be attributed to it in any jurisdiction; and
- 34.3.4. 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).

34.4. **Delayed payments**

- 34.4.1. The Parties hereto agree that payments due from the Lessee to the Authority 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 a delay beyond such period, the Lessee shall pay interest for the period of delay calculated at a rate equal to SBI One Year MCLR plus 4% (four per cent) and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.
- 34.4.2. Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis and shall be compounded on the basis of quarterly rests.

34.5. **Waiver**

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

34.6. **Liability for review of documents and drawings**

Except to the extent expressly provided in this Agreement:

34.6.1. no review, comment or approval by the Authority of any agreement executed by the Lessee in connection herewith, Document or Drawing submitted by the Lessee nor any observation or inspection of the construction, operation or maintenance of the IOA& ATO nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Lessee from its obligations, duties and liabilities under this Agreement, Approvals, Applicable Laws and Policies; and

34.6.2. the Authority shall not be liable to the Lessee by reason of any review, comment, Approval, observation or inspection referred to in Sub-clause 34.6.1 above.

34.7. **Exclusion of implied warranties etc.**

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

34.8. **Survival**

34.8.1. Termination shall:

- a) not relieve the Lessee 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.

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

34.9. **Entire Agreement**

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the Agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings offer 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 Lessee arising from the Request for Proposal shall be deemed to form part of this Agreement and treated as such.

34.10. **Severability**

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

34.11. **No partnership**

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

34.12. **Third parties**

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

34.13. **Successors and assigns**

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

34.14. **Notices**

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

34.14.1. in the case of the Lessee, be given by registered acknowledgement due, airmail or by courier or e-mail, by facsimile and by letter delivered by hand to the address given and marked for the attention of the person set out below or to such other person as the Lessee may from time to time designate by notice to the Authority.

Kind Attention: [Details of Lessee's Representative]

Fax No: \_\_\_\_\_

Email: \_\_\_\_\_

Notwithstanding anything to the contrary contained in this Agreement, a notice served on the Lessee's Representative at the Site shall be deemed to have been served upon the Lessee.

34.14.2. 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 Advisor Civil Aviation Department, Haryana 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 Lessee; provided that if the Lessee does not have an office in [•] it may send such notice by facsimile or e-mail and by registered acknowledgement or by courier.

Address:

Tele/Fax No: \_\_\_\_\_

Email: [cavation@hry.nic.in](mailto:cavation@hry.nic.in) ; and

34.14.3. 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 a working day following the date of its delivery.

34.15. **Language**

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

34.16. **Counterparts**

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of THE AUTHORITY by:

(Signature)

Administrative Officer  
Civil Aviation Department, Haryana  
3<sup>rd</sup> Floor 30 Bays Building, Sector 17-B - 160017

Telephone No.

Place: Chandigarh

Date:

In the presence of:

The Advisor,  
Civil Aviation Department Haryana

Signed, sealed and delivered for and on behalf of the  
Lessee

(Signature) Director

# **SCHEDULES**

## **SCHEDULE A – SITE AND SITE LAYOUT PLAN**

*(See Clause 9.1)*

### 1. **The Site**

- a. Site for Development of ATO on DBFOM basis at Integrated Aviation Hub Hisar Airport is described in Annexure –I of the Schedule A.
- b. An inventory of the Site including the land, buildings, structures, road works, trees and any other immovable property on or attached to the Site shall be prepared jointly by the Authority and the Lessee.
- c. The Total Area for Construction of ATO is approx. 4047 Sqm (01 acre) towards the cityside area (Westside) of Integrated Aviation Hub Hisar Airport.
- d. The location of the ATO at IAH Hisar Airport is shown in Drawings as per Annexure-II of Schedule A.

### 2. **Land Possession**

- a. The land earmarked for the Development of ATO Facility on DBFOM basis at IAH Hisar airport is under full ownership of the Authority.

### 3. **Development Controls applicable to Site**

<b>Sr No.</b>	<b>Description</b>	<b>Value</b>
(i)	Maximum Gross Built-up Area (GBA)	FSI 1 .0 for the plot of land for all types of buildings, ensuring that the FSI of the total area, including the area for Car Parking, is maintained at 1.00.
(ii)	Permissible Ground Coverage	No restriction
(iii)	Area of Basement	Not permitted
(iv)	Maximum Permissible Height	As per approval from NOCAS, AAI/ Civil Aviation Department Haryana
(v)	Security	As per BCAS Norms

### 4. **Environmental Factor**

- (a) Hazardous waste disposal: The disposal of paint sludge, expiry paints & paint containers and batteries shall be the responsibility of the Lessee. Those disposals have to be carried out as per the Central/State Pollution control norms.



**ANNEXURE – I**

(SCHEDULE A )

- a) The “Site” of the “Setting up and Operation of ATO on DBFOM basis at Integrated Aviation Hisar Airport” shall cover the land area measuring approximately 4047 Sqm (01 acre).
- b) The area of land parcels and their location, mentioned above and elsewhere in the Agreement are subject to verification. However, the Lessee shall be required to conduct its own study/ survey.
- c) The exact location and area of land available for the development shall be mentioned in the memorandum to be prepared jointly by the Lessee and Authority.
- d) The location, area and size of the Site may vary due to site constraints or other considerations and there shall not be any financial implications due to this variation.

**ANNEXURE – II**  
**(SCHEDULE A )**

**LOCATION OF SITE AT INTEGRATED AVIATION HUB HISAR AIRPORT**



## **SCHEDULE B – SPECIFICATIONS AND STANDARDS**

### **General:**

#### **1. General Requirements for setting up the ATO**

##### **1.1 Facilities and Equipment**

Training organization shall establish facility appropriate to the size and scope of the training operations in compliance with the DGCA CAR. It shall provide a physical environment conducive to the learning, which inter-alia shall include:

##### **A. General:**

- (a) Adequate Office Space for operational and administrative staff
- (b) Conduct training as per the stipulated guidelines of DGCA/FAA.
- (b) Area for safe and secured storage of training and personnel records.

##### **B. Classrooms and training aids:**

- (a) Adequate and well-equipped classrooms. The classrooms shall properly be lighted and furnished. The size of the rooms shall be appropriate to accommodate the batch of students. (at least 4ft x 4 ft per student)
- (b) Radiotelephony training and testing facility (as required)
- (c) Minimum 01 Large Aircraft Flight Simulation Training Device (FSTD-Level D)
- (d) Library with a n adequate number of textbooks/ e-books for ground subjects, regulations and flying techniques; DGCA circulars, CARs, AICs, Aircraft Manual; AIP and its supplement and training Books catalogue, register or list of books to track the revisions and stock position.
- (d) Training aids – computer, projector/suitable monitor, multimedia aids etc.

##### **C. Practical training areas (Desirable):**

- (a) Flight Simulation Training room/ area
- (b) Ground Training room/ area
- (c) Adequate briefing room
- (d) Office facility for instructors
- (e) Waiting room(s) for students
- (f) Adequate telephone connection and internet connection.
- (g) Office space for the maintenance personnel.
- (i) Properly marked Car Parking bays.

An approved ATO shall not make a substantial change in facilities, equipment or material that have been approved for a particular training programme unless that change is approved in advance by the DGCA.

### **SCHEDULE C – PERMITTED USE**

The Lessee is authorized to use the Site & IOA for the following purposes:

1. For purposes of the running of Approved Training Organisation, Flight simulator-based training or for any other purpose as approved in writing by the Authority, from time to time;
2. For purpose of conducting any activity which is required for the operation of ATO as per DGCA guidelines;
3. Maintenance of Flight Simulation Training Devices (FSTD) and other equipment required for the conduct of training operations/activities (including the FSTDs taken on lease by the Lessee for running the ATO).

For abundant clarity, it is stated that the Site shall not be used for providing any residential accommodations to the students and faculty of the ATO.

## **SCHEDULED – APPROVALS**

*(See Clause 3.2)*

<b>Sl. No.</b>	<b>Approval required</b>	<b>Department/ Organization</b>
<b>Pre-Establishment Approvals</b>		
1.	Sanction of building plans / Revised Building Plans	Civil Aviation Department Haryana
2.	Height Clearance	Airports Authority of India/ Civil Aviation Department Haryana
3.	Fire Department NOC	Local Government-Additional Division Fire Officer
4.	Approval of Site Layout and Building Plans with respect to Security Safety Clearance.	Director-General of Civil Aviation (DGCA)/ Bureau of Civil Aviation Security (BCAS)
<b>Pre-operational Approvals</b>		
5.	Issue of NOC for Fire Safety	Local Government Fire Department
6.	Issue of Completion certificate	Civil Aviation Department Haryana
7.	Registration under GST	Taxation
8.	ATO license	DGCA

## SCHEDULE E – PERFORMANCE SECURITY

(See Clause 8.1)

The [\_\_\_\_],  
[\_\_\_\_\_]

WHEREAS:

- A. [\_\_\_\_] (the “**Lessee**”) and the [\_\_\_\_],[\_\_\_\_] (the “**Authority**”) have entered into an agreement dated [\_\_\_\_] (the “**Agreement**”) whereby the Authority has agreed to the Lessee undertaking the construction, maintenance and operation of an ATO Facility, subject to and in accordance with the provisions of the Agreement.
- B. The Agreement requires the Lessee to furnish a Performance Security to the Authority in a sum of [**Rs. 16,18,800/-**] [Rupees Sixteen Lacs Eighteen Thousand Eight Hundred only] (the “**Guarantee Amount**”) as security for the due and faithful performance of its obligations, under and in accordance with the Agreement, during the Contract 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:

- A. The Bank hereby unconditionally and irrevocably guarantees and undertakes to pay to the Authority upon the occurrence of any failure or default in the due and faithful performance of all or any of the Lessee’s obligations, 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 Lessee, such sum or sums up to an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
- B. A letter from the Authority, under the hand of an Officer not below the rank of [\_\_\_\_] in the Authority, that the Lessee 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 Lessee is in default in the due and faithful performance of its obligations during the Contract Period under the Agreement and its decision that the Lessee is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Lessee, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Lessee for any reason whatsoever.
- C. 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 Lessee 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.
- D. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Lessee before presenting to the Bank its demand under this guarantee.

- E. 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 Lessee 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 Lessee, 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 Lessee 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.
- F. 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 Lessee under the Agreement.
- G. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the guarantee Amount and this guarantee will remain in force for [\_\_\_\_\_] days and unless 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.
- H. 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.
- I. 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.
- J. This guarantee shall come into force with immediate effect and shall remain in force and effect for a period of [\_\_\_\_\_] days as mentioned in the Agreement or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

Signed and sealed this [\_\_\_\_\_] day of [\_\_\_\_\_] , 2021 at [\_\_\_\_\_]

SIGNED, SEALED AND DELIVERED For and on behalf of the BANK by: (Signature)  
(Name) (Designation) (Code  
Number) (Address)

NOTES:

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



**SCHEDULE F – COMPLETION CERTIFICATE**

*(See Clause 14.1)*

1. I/ We, [ \_\_\_\_\_ ] (Name of the Authority Representative), acting as Authority Representative, under and in accordance with the Lease Agreement dated [ \_\_\_\_\_ ] (the “**Agreement**”), for the construction, maintenance and operation of the ATO by [ \_\_\_\_\_ ] (Name of Lessee), hereby certify that the inspection and tests specified in Clause 14 of the Agreement have been successfully undertaken to determine the compliance of the IOA with the provisions of the Agreement, and I/We am/are satisfied that the ATO & IOA can be safely and reliably placed in operation.
  
2. It is certified that, in terms of the aforesaid Agreement, all works forming part of the obligations of the Lessee under the Agreement have been completed, and the ATO & IOA are hereby declared fit for entry into the operation on this the [ \_\_\_\_\_ ] day of [ \_\_\_\_\_ ] 2021.

SIGNED, SEALED AND DELIVERED

For and on behalf of Authority Representative

(Signature)

(Name)

(Designation)

(Address)

## **SCHEDULE G – SAFETY REQUIREMENTS**

*(See Clause 16.1)*

### 1. **Guiding principles**

- (a) Safety Requirement aim at a reduction in injuries, loss of life and damage to property resulting from accidents on or about the airport, irrespective of the person(s) at fault.
- (b) For the safety of the users of the ATO including the staff of the Lessee, the Third Party users and its contractors working on the Site.
- (c) Safety Requirements apply to all phases of operation, management and development with an emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.
- (d) Safety Requirement include measures associated with safe movement, safety management, safety equipment, fire safety, enforcement and emergency response.

### 2. **Obligations of the Lessee**

The Lessee shall abide by the following in so far as they related to the safety of the users of the ATO:

- (a) Applicable Laws and Policies and Approvals;
- (b) Provisions of this Agreement;
- (c) Good Industry Practice

### 3. **Safety measures during the Contract Period**

- (a) The Lessee shall develop, implement and administer a surveillance and safety programme for users of the ATO.
- (b) The Lessee shall keep a copy of every first information report (the “**FIR**”) recorded by Police with respect to any incident/accident occurring in the ATO. In addition, the Lessee shall also collect data for all cases of accidents not recorded by the Police. The information so collected shall be summarized in the form prescribed by the Authority for this purpose. The Lessee shall also record the exact location of each accident and aforesaid data shall be submitted to Authority at the conclusion of every quarter.
- (c) Once in every Accounting Year, a safety audit shall be carried out by the Authority Representative. The recommendations of the Authority Representative shall be processed, mutatis mutandis, and acted upon by the Lessee.

### 4. **Costs and expenses**

Costs and expenses incurred in connection with the Safety Requirements set forth herein, shall be borne by the Lessee

### 5. **Safety Guidelines** are specified in Annexure – I of Schedule G.

## **Annexure I**

*(Schedule G)*

### **SAFETY GUIDELINES**

#### **1. Safe Movement**

In the design, operation, management and development of the ATO, particular care shall be taken to ensure the safety of users of the ATO. This shall include facilities for safe and efficient evacuation in case of emergency. In particular, the ATO shall be designed and tested for safe movement.

#### **2. System integrity**

In the design of power supply, lighting, communication and security equipment, particular care shall be taken to minimise the likely incidence of failure.

#### **3. Restoration of operation of the ATO**

The ATO shall be designed in a manner that in the event a fault occurs, the operation of the ATO can be restored at the earliest.

#### **4. Contingency and Safety management**

- (a) The Lessee shall procure and ensure that appropriate contingency arrangements are in place at the ATO to deal with the following events in accordance with the provisions of the relevant applicable guidelines laid down in standard codes, stated by concerned local/State/Central Government or the Authority.
  - (i) Accidents/Incidents in and around the vicinity of the ATO;
  - (ii) fires at the ATO;
  - (iii) natural calamities and disasters; and
  - (iv) any other emergency at the ATO.
- (b) The Lessee shall procure and ensure that emergency alarm bells are installed and operated to link the ATO to all the emergency services located at the airport, including fire services, medical services and the Police.
- (c) A safety statement shall be prepared by the Lessee once every quarter to bring out clearly the system of management of checks and maintenance tolerances and the compliance thereof. The statement shall also bring out the nature and extent of staff training and awareness in dealing with such checks and tolerances. Two copies of the statement shall be sent to the Authority Representative within 15 (fifteen) days of the close of every quarter.

5. **Safety equipment**

The following safety equipment shall be provided at the ATO:

- (a) Fire extinguishers and fire alarms at appropriate locations at the ATO;
- (b) adequate number of stretchers and standard first aid boxes; and
- (c) such other equipment as may be required in conformity with the relevant applicable guidelines laid down in standard codes, stated by concerned local/State/Central Government Department or the Authority and Good Industry Practice.

6. **Emergency**

A set of emergency procedures shall be formulated to deal with different emergency situations and the Lessee's staff shall be trained to respond appropriately during an emergency through periodic simulated exercises.

7. **Fire safety**

- (a) The Lessee shall conform to the Approvals, Applicable Laws and Policies.
- (b) To prevent fire in and about the ATO, the Lessee shall use fire-resistant materials in the construction thereof and shall avoid the use of materials that are to some extent flammable, or which emit smoke and harmful gases when burning.
- (c) All notices and signages shall be uniform and standardised.

8. **User safety and information system:**

The user call points should be located at convenient locations to allow users to contact the ATO Operator or airport staff in case of emergencies. The User information system shall comprise dynamic visual displays and loudspeakers.

**SCHEDULE H – VESTING CERTIFICATE**

*(See Clause 24.4)*

The [\_\_\_\_], [\_\_\_\_] Department, (the “**Authority**”) refers to the Lease Agreement dated [\_\_\_\_] (the “**Agreement**”) entered into between the Authority and [\_\_\_\_] (the “**Lessee**”) for selection of an Lessee for construction, maintenance and operation of ATO at IAH Hisar airport.

The Authority hereby acknowledges compliance and fulfilment by the Lessee of the Divestment Requirements set forth in Clause 24.4 of the Agreement on the basis that upon the issue of this Vesting Certificate, the Authority shall be deemed to have received back the possession of the Site and the IOA, and all rights of the Lessee in the Site and the IOA shall be deemed to have vested unto the Authority, free from any Encumbrances, charges and liens whatsoever.

Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Lessee to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Lessee in any manner of the same.

Signed this [\_\_\_\_] day of [\_\_\_\_], 2021 at [\_\_\_\_]

AGREED, ACCEPTED AND SIGNED

For and on behalf of

Lessee by:

(Signature)

(Name)

(Designation)

(Address)

In the presence of:

1.

SIGNED, SEALED AND DELIVERED

For and on behalf of

Civil Aviation Department by:

(Signature)

(Name)

(Designation)

(Address)

(Address)

2.

**SCHEDULE I – FORMAT OF ACKNOWLEDGEMENT OF SITE**

*(See Clause 9.3.2)*

FORMAT OF ACKNOWLEDGEMENT OF SITE

[\_\_\_\_\_] [on the letterhead of the Lessee]

Date: To: [\_\_\_\_\_] ]

Re: Handing over of Site [\_\_\_\_\_] ]

Dear Sir,

We write in reference to the Lease Agreement dated [\_\_\_\_\_] , entered into by us with Authority. As per the requirements of Clause 9.3.2 of the said Agreement, we acknowledge handover of the Site by the Authority. We further acknowledge that the Site is unencumbered and is fit and immediately available for the purpose of construction of ATO thereon.

We have undertaken due diligence over the Site, ourselves for the purposes of this Agreement.

We further acknowledge that we, or any entity claiming under us, shall have no recourse against the Authority if it is, at a later date, found that the Site is deficient in any manner whatsoever, and in the event of any mistake made or misapprehension harboured by us in relation to any of the foregoing provisions mentioned above(deficiency). If a deficiency is found, we acknowledge and agree that we shall, at our own cost, take all appropriate measures to remedy the same in order to fulfil our obligations under the Agreement.

It is clarified that all fossils, antiquities, structures and/or other remains or things either of archaeological or of particular geological interest discovered at Site or in the course of carrying out any work shall not be our property and we shall have no right or interest in such fossils, antiquities and structures.

For and on behalf of

Signature of Authorised Representative Seal/Stamp

**SCHEDULE J – CHARGES PAYABLE FOR SPECIAL/ TEMPORARY ACCESS**

*(See Clause 9.6)*

The Lessee shall be liable to pay the License Fee for the land allotted by Authority for installation of plants, labour camp, cement Godown and site office at Authority stipulated rates of the license fee for the use of unpaved land.

**SCHEDULE K – LICENSE / LEASE FEE**

1. **Unpaved Space Rental (Airside)** = @ ₹ 400 Per Sqm Per Annum
2. Unpaved Space area identified for ATO = Approx. 4047 Sqm (i.e.01 Acre)
3. License Fee applicable for Site = 400 X 4047 = ₹ 16,18,800/- Per Annum
4. **Monthly Guaranteed License Fee** = **₹ 1,34,900/- Per Month**
5. Space Rental Escalation Rate = @ 10 % Per Annum