

NIT No. 4/BIACL/2017-18 Dt-12-12-2017, BIACL, Hyderabad

**Request for proposal for Operations and Maintenance contract of
Orvakal Airport, Kurnool district, Andhra Pradesh**

DISCLAIMER

The information contained in this tender document (hereinafter referred to as “Tender Document”) or subsequently provided to the Bidders, whether verbally or in documentary form by or on behalf of the BHOGAPURAM INTERNATIONAL AIRPORT CORPORATION LIMITED, Government of Andhra Pradesh their employees or any of its agencies/consultants/advisors, is provided to the Bidder(s) on the terms and conditions set out in this Tender Document and all other terms and conditions subject to which such information is provided.

The purpose of this Tender Document is to provide the Bidders with information to assist the formulation of their Eligibility and Financial Proposal. This Tender Document does not purport to contain all the information for all the persons, and it is not possible for BIACL, their employees or any of its agencies/consultants/advisors to consider the business/investment objectives, financial situation and particular needs of each Bidder who reads or uses this Tender Document. Each Bidder should conduct its own investigations and analysis, and should check the accuracy, reliability and completeness of the information in this Tender Document and where necessary obtain independent advice from appropriate sources. BIACL, their employees or any of its agencies/consultants/advisors make no representation or warranty and shall incur no liability under any law, statute, rule or regulation as to the accuracy, reliability or completeness of the Tender Document.

BIACL may in its own discretion, but without being under any obligation to do so, update, amend or supplement the information in this RFP document.

Contents of the Tender Document:
Instructions to Bidders (ITB)
Scope for bidder (SoB)

The “Instructions to Bidders (ITB)” is being issued to bidders must be read in conjunction with SoB, of this Tender Document as shown above and the terms of the Tender Document shall prevail over the terms of the ITB in the event of any inconsistency. However, in case the inconsistency between the ITB and SoB of the Tender Document relates to the bidding process, then, the terms of the ITB shall prevail. The contents of the forms and undertakings attached to the ITB and to be furnished by the Bidders should be considered as an integral part of these instructions. The Bidders are advised to submit their bids complying strictly with the requirements stipulated in this RFP document. Bids are liable to be summarily rejected in case they are non-responsive.

1. **Introduction:** The Government of Andhra Pradesh (“Government”) is developing Greenfield airports across the State of Andhra Pradesh (“State”) to expand air connectivity within the State to provide reliable and seamless air connectivity across the State, especially connecting industries, tourism and other major sector as it is a priority for the Government. This will require development of new airports to facilitate tourism and hinterland logistics.
2. The Bhogapuram International Airport Corporation Limited (BIACL or the “Authority”) is the nodal agency of the Energy, Infrastructure and Investment Department of Government of Andhra Pradesh engaged in facilitating the development of airport infrastructure projects in the State. As part of this endeavor, BIACL is constructing a no-frills Airport at Orvakal in Kurnool district.
3. The purpose of floating this RFP is to have contractor for “O&M operator” for Orvakal airport.
4. **Site of the Airport:** The Airport will be developed at Orvakal in Kurnool district of Andhra Pradesh. Orvakal Airport is approximately 25 km from the town of Kurnool and nearest aerodrome is Hyderabad at a distance of 236 Km.

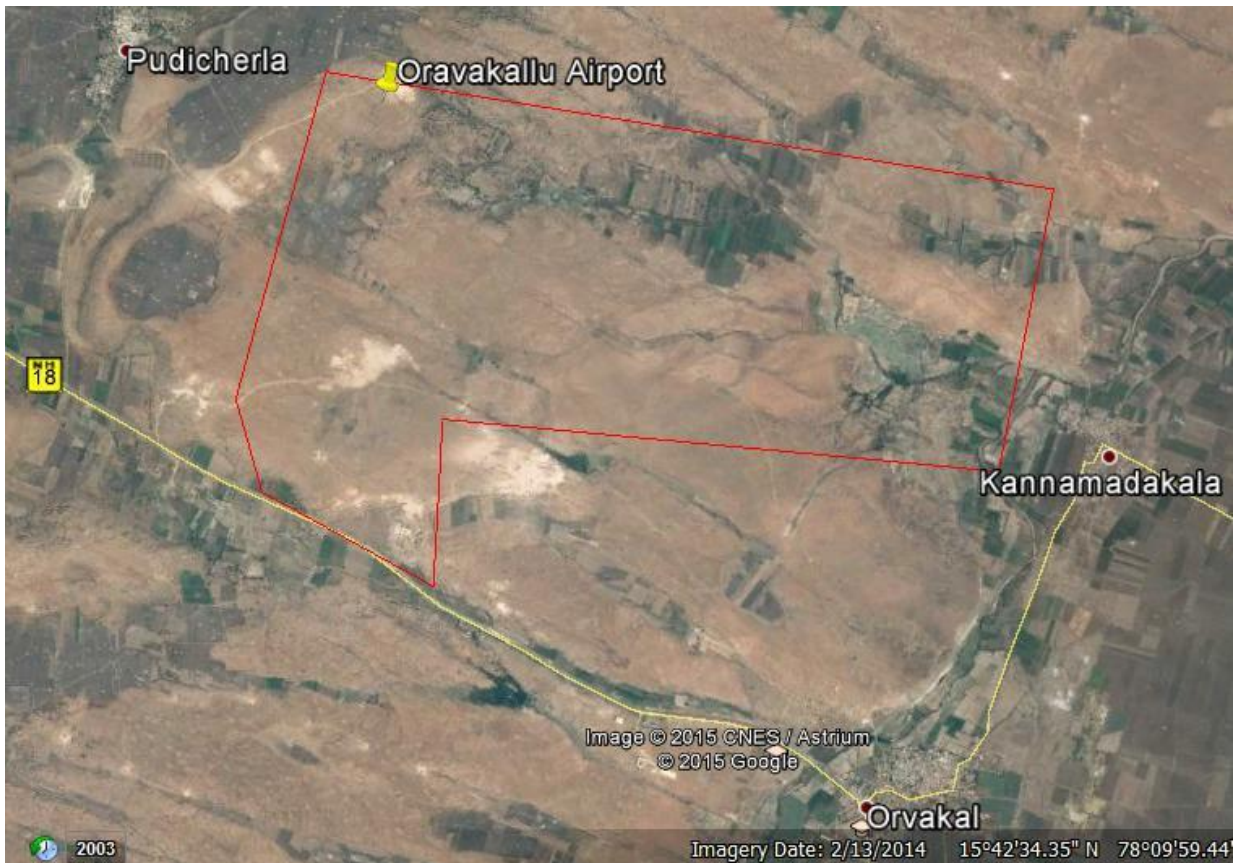


Map 1a: Location of the Airport



- **VISAKHAPATNAM - CHENNAI INDUSTRIAL CORRIDOR (VCIC)**
 Visakhapatnam node
 Kakinada node
 Gannavaram-Kankipadu node
 Srikalahasti-Yerpedu node
- **CHENNAI - BENGALURU INDUSTRIAL CORRIDOR (CBIC)**
 Krishnapatnam node
 Hindupur node
- **KURNOOL - BENGALURU INDUSTRIAL CORRIDOR (KBIC)**
 Orvakal node

Map 1b: Location of the Airport



Map 2: Site identified for airport development at Orvakal, Kurnool District.

5. **Land for the Airport:** The estimated land requirement for the development of this Airport is 960 acres. Developers have been identified for this Airport and physical construction works are underway at the site.

6. **Aerodrome Details:** The Airport will initially cater to Code 3C category of Aircraft (ATR– 72) and subsequently to larger category of code 4C aircraft such as Boeing 737 family and the A320 family of Aircraft. Runway length of 2000m, Apron capacity-04 Nos of ATR stands, Terminal Building area-1350 SQM, City side gardening/car parking area, details may give an idea on scale of the airport to the O&M Operator.

7. **Mode of development:** All the statutory approvals have been obtained for construction of the Orvakal Airport. BIACL is constructing the Airport in two packages, & both the packages have been awarded to the identified contractors

8. **Category of Aircraft:** The Airport will initially cater to Code 3C category of Aircraft (ATR– 72)& subsequently to larger category of code 4C aircraft such as Boeing 737 family and the A320 family of Aircraft.

9. **Licensee:** BIACL is envisaged to be the licensee of this Airport and will be the Airport owner throughout the tenure of Airport operations.

10 Bid and evaluation parameter: BIACL intends to conduct two stage bidding process comprising the evaluation of technical and financial capacity of the bidders. The bidder shall be selected based on the **lowest cost required per month** (L1 bidder) to provide the Operations and Maintenance services at the Orvakal Airport. Bids will be evaluated based on the technical and financial capacity as mentioned below:

Sr. No	Eligibility Criteria	Documentary evidences certified to be attached with the Technical Proposal
1	<p>Financial Capacity</p> <p>Minimum average annual turnover of INR 20 crores for each of the last two financial years from FY 2015-16 to FY 2016-17.</p> <p>Turnover may be of the company or individuals holding strategic shares in that company.</p>	<ol style="list-style-type: none"> 1. Audited Balance Sheet and Profit & Loss Statement for last two financial years i.e., 2015-16, and 2016-17 (or Calendar Years 2015 and 2016 where the accounting years are so) are to be submitted as documentary evidence, 2. A certified statement verified by a statutory auditor as per Annexure mentioned in RFP <p>The financial statements and other documents provided in support for this criteria must be on the applicant's own name.</p>
2	Technical Capacity	
2a	<p>Experience in Operations and Management</p> <p>The Applicant should have provided O&M services for a minimum period of 2 years at Airports which have minimum handling capacity of 0.2 mppa in India or overseas.</p>	<p>Detailed credential as per the template provided.</p> <p>Note: Credentials needs to be provided along with any of the client-certified by Authorized signatory, in case of airport operators it may be self-certified by their authorised signatory.</p>
2b	<p>Or having 5-year experience of managing ground handling at major airport(s) ie pax handling of 5mppa or more in India or abroad or running schedule airline for 5 continuous years.</p>	<p>GHA must submit work order / LoA containing financials.</p> <p>Airline- Must submit copy of AOP issued by concerned DGCA and proof of operations.</p>

11 Payment mechanism: The operator shall be paid for the O&M services provided on fixed monthly basis, irrespective of the number of passengers and air traffic moments at the Airport. Operator shall be paid in the second week of the subsequent month of services provided. The authority may consider to enhance the fixed monthly payment to the O&M

service depending on the volume of traffic at the Airport. This decision will purely be at the discretion of the Authority.

12 Selection of agency for providing “Operations and Maintenance Services” at Orvakal Airport.

The Authority (BIACL) envisages to be the Airport operator, which will monitor and oversee the commercial operations at the Airport. Authority proposes to invite and select operators who have pre-requisite experience in similar nature of Airport operations.

The selected operator will enter into an O&M contract (agreement) for carrying out the O&M operations at Orvakal Airport.

12.1 To develop the Project, the Authority intends to qualify and short-list suitable Bidders (the “Qualified Bidders”) who will be eligible for participation in the Financial Bid opening stage, for awarding the Project through an open international competitive bidding process in accordance with the procedure set out herein.

12.2 The bidder who will be awarded the “O&M” (“**Selected Bidder**”) shall undertake the Project through an agreement with the Authority for the duration of **3 (three years)** from the date of agreement of the project.

12.3 The Operator shall be responsible for the operation and maintenance (O&M) of the Airport under and in accordance with the provisions of a long-term operation and maintenance agreement (the “O&M Agreement”) to be entered into between the O&M Operator and the Authority in the form provided by the Authority as part of the Bidding Documents pursuant hereto.

12.4 The O&M Operator, will be expected to implement global best practices and processes in operation & maintenance of the Airport, as per the functions and obligations of the provisions mentioned in the agreement.

12.5 The Authority shall depute officers or its nominees at the Airport to oversee the commercial operations of the Airport. Some of the key personnel who will represent the Authority / its nominees shall include:

12.5.1 **Head of Airport operations**

12.5.2 **Head of security**

12.5.3 **Head of safety operations**

12.5.4 **Head of fire services**

12.6 The Authority, at its discretion, shall nominate the above personnel to be stationed at the Airport.

12.7 Apart from conducting regular O&M operations at the Airport, the Operator will coordinate and report to Head of Airport Operations on a regular basis for conducting smooth operations of the Airport.

12.8 The O&M Operator is supposed to provide following manpower;

12.8.1 Terminal Building – One Senior person as a Head- Terminal, two Juniors and six persons for housekeeping with all requisite materials.

12.8.1.1. To Man terminal building ticket counter and pass section.

12.8.2 Administrative block & ATC- two Assistant for Authority and one Assistant each for ATC and MET department.

12.8.3 Airside – 10 numbers of Bird scarers and 01 supervisor, will also be responsible for FOD removal/ cleaning of runway/ taxiway/ apron/ drains etc. with four manual flipper machines and long handle brooms, tools for pruning of trees etc.

12.8.3.1 One grass cutting machine suitable for all kind of surfaces eg Bengal Metal three-fold GCMs equipped with powerful tractor.

12.8.3.2 Suitable manpower for Landscaping at land side and along the main access road of the Airport, along with materials eg tall, suitable plants (which do not allow birds to rest/roost, provide food etc) seasonal flowers /plants as per approval of authority.

12.8.3.2 17 (seventeen) Numbers of trained manpower for ARFF.

12.8.3.3 Authority has right to select/reject the personals appointed by the O&M Operator i.e: CV's approval etc

Note: for all unskilled works preference must be given to local persons for deployment.

13 The authority will continue to be responsible for the following operations at the Airport:

13.1 All major maintenance of air field and buildings

13.2 City side garbage collections and disposal

13.3 Commercial management

13.4 Repainting of Runway, Taxiway, apron markings

14.5 Allotment of commercial space/ advertisements

14 Instruction to Bidders

Authority has adopted the following tentative schedule for releasing, meeting and accepting the submission of Proposal:

S. No	Description	Date
1.	Release of RFP Document:	12 Decemeber,2017
2.	Last date of queries from Bidders:	26 December,2017
3.	Reply by BIACL on the queries:	31 December,2017

4.	Pre-Bid Meeting at BIACL Office:	05 January,2018
5.	Bid Due date:	12 January,2018
6.	Bid opening date/ time	12 th January,2018, 1600 hrs
12	Financial bid Opening	To be notified

The Bidder shall submit a valid and binding proposal on or before due date of submission as mentioned above.

15 Fees for bidding process

Along with the Bid, the Bidder shall pay to the Authority a non-refundable sum of Rs.25000/- as the cost of the RFP process. The cost of the RFP shall be in the form of a demand draft issued by any of the Nationalized/Scheduled Banks in India in favor of the Managing Director, BIACL and payable at Hyderabad (the “Demand Draft”). The Demand Draft shall remain valid for one month after the Bid Due Date.

Bidding will also be open for Consortium, which have pre-requisite experience as per the provisions of the RFP.

16. Bid Due date

Bidders shall submit the signed and sealed hard copy of proposal by way of courier, registered post or by hand delivery and in sealed covers, on or before 1500 of 12th January,2018 which is the Proposal Due Date (“Due Date”), to BIACL at the following address:

Managing Director,

Bhogapuram International Airport Corporation Limited

1st Floor, FDC complex, AC Guards, Hyderabad – 500 028

Technical bids will be opened on same day at 1600 hrs in the office of CEO - BIACL. Bidders or their authorized representative can attend the same. Bidder representative shall produce authority letter for the same.

17. Bid Security and Performance Security

The Bidders are required to submit “Bid Security” deposit of Rs. 10,000,00/- (Rs. Ten lacs only) by way of bank guarantee in favour of Bhogapuram International Airport Corporation Limited along with the Technical Proposal, before last date and time of Proposal submission.

The Bid Security, original Bank guarantee, should be kept in the envelope containing the Technical Proposal. Any Technical Proposal not accompanied by the Bid Security shall be rejected by the BIACL as non-responsive.

The Applicant, by submitting its Proposal pursuant to this RFP, shall be deemed to have acknowledged that without prejudice to BIACL's any other right or remedy hereunder or in law or otherwise, the Bid Security shall be forfeited and appropriated by BIACL as damage payable to BIACL for, inter alia, the time, cost and effort of BIACL in regard to the RFP including the consideration and evaluation of the Proposal under the following conditions:

- a. If an Applicant submits a non-responsive Proposal;
- b. If an Applicant withdraws its Proposal during the period of its validity as specified in this RFP and as extended by the Applicant from time to time;
- c. In the case of the successful Applicant, if the Applicant fails to sign the Agreement within the specified time, if awarded; or
- d. In the case of a successful Applicant, the Applicant having signed the Agreement, commits any breach thereof.
- e. In case of unsuccessful Bidders, Bid Security will be returned without any interest within 60 days of the completion of RFP process i.e. after the LOA is issued to the successful Applicant and its acceptance thereof by the successful Bidders. No interest will be payable on Bid Security. Bid Security refund shall be in the form of an account payee cheque in favour of the unsuccessful Applicant, and shall be mailed to the address given in the Technical Proposal.

Selected bidder's bid security shall be retained till Bidder provides Performance Security, equivalent to an amount of Rs. 30,000,00/- (Rs Thirty Lacs only) in the form of bank guarantee of nationalized bank. The selected bidder has to provide performance security to the Authority, 30 days within signing of Letter of Award (LoA).

Any proposal submitted by either facsimile transmission or e-mail is not acceptable. Any proposal received after the due date and time, will be summarily rejected.

18. Queries from Bidders

If discrepancies or omissions are found by any Applicant, or there is a doubt as to the true meaning of any part of this RFP, a written request for a clarification or interpretation must be submitted to BIACL and the same shall reach BIACL on or before 1700 hrs, 26th December, 2017.

Any query or clarification related to this RFP must be made by email to the following email address:

Email: ceobiACL@gmail.com

Copies of BIACL's response shall be forwarded via email to all the Bidders to the email address provided to BIACL, with a description of the enquiry; but, without identifying its source. Further, BIACL is no way give any guarantee to give response to all the query raised by the Bidders, but may respond only to the relevant query, which BIACL may decide at its sole discretion.

19. Addendum/Corrigendum

- a. At any time prior to the closure of the due date, BIACL may, for any reason, shall have the right to modify the RFP by issuing Addendum/Corrigendum. Any Addendum/Corrigendum issued, shall be a part of the RFP pursuant to this Clause, and shall be uploaded in the BACL website or communicated in writing by email or by fax to all the Bidders.
- b. In order to afford the Bidders reasonable time to take an amendment into account, or for any other reason, BIACL may, at its sole discretion, extend the Due Date for submission of the Proposals, in which case, all rights and obligations of BIACL, and the Bidders previously subject to the original deadline will thereafter be subject to the extended deadline.
- c. In case of issuance of Addendum/Corrigendum, BIACL may also modify the other dates in relation to this RFP.
- d. In the event that BIACL is required to issue a Corrigendum or an Addendum to the RFP, all Bidders are required to provide, additional and/or supplementary information relevant to the Corrigendum or Addendum in accordance with the corrigendum and addendum and on the same name submitted along with the original proposal.

20. Submission of bids

The interested bidders ("Bidders") are being called upon to submit their technical and financial capacity details as mentioned in the RFP and financial proposals in the format at Appendix-I collectively referred as "Bid" in accordance with the terms specified in these Bidding Documents. The Bid shall be valid for a period of 180 (one hundred eighty) days from the Bid Due Date.

21. Bid Validity Period

The Proposal shall be unconditional, firm and valid for a period of 180 (One Hundred and Eighty Days) days from the due date of the proposal. Any proposal, which have validity lower than that specified above, shall be rejected by BIACL as being non-responsive.

22. Language

The language for all written communication in the bids shall be English.

23. Format and signing of proposal

- a. The Bidders shall provide all the information as per this RFP. BIACL reserves the right to evaluate only those Proposals that are received in the required format, complete in all respects and in line with the instructions contained in this RFP.
- b. The Bidders shall prepare and submit the proposal in original along with one soft copy in the form of pen drive containing a scanned copy of the original.
- c. The proposal shall be bound and each page stamped and signed by the Authorized Signatory of the Applicant.
- d. The Technical Proposal (Original + softcopy) and the Financial Proposal (Original + softcopy) shall be submitted in two separate envelopes. These two envelopes shall be submitted in a single outer envelope.

The outer envelope should clearly mention following details and addressed to:
“PRIVATE AND CONFIDENTIAL”

Proposal for selection of operator for Operations and Maintenance services at Orvakallu Airport, Kurnool district, Andhra Pradesh

To:

Managing Director,

Bhogapuram International Airport Corporation Limited

1st Floor, FDC complex, AC Guards, Hyderabad – 500 028

Attention: GM- Airports

<Authorized Signatory, Name of Applicant and Applicant's Address>

- e. If the envelope is not sealed and marked, as instructed above, BIACL assumes no responsibility for the misplacement, or premature opening of the Proposal submitted. In this case, the prematurely opened proposal will be rejected.

List of documents/ attachments to be provided to the Authority along with the submission of bids:

1. Demand Draft towards bid process fee
2. Bid security for the specified amount in the agreement

3. Statement of Technical capacity
4. Statement of Financial capacity
5. Letter comprising the financial bid
6. Particulars of the bidder
7. Statement of legal capacity
8. Power of Attorney for signing of bid
9. Appendices I to VII as provided in RFP
10. Bank Guarantee as per specimen

24. Responsibilities

It is the sole responsibility of the Applicant to:

- i. Examine, understand and conduct its own investigations and analysis; examine the accuracy, reliability and completeness of the information provided in this RFP document and all the annexures/appendices and to verify their completeness.
- ii. All other matters that might affect the Applicant's / Applicant Team's performance under the terms of this RFP and all the annexures/appendices including all risks, costs, liabilities and contingencies associated with this RFP, the Scope of Work, etc.
- iii. The Applicant shall make all relevant investigations in relation to the performance of its obligations pursuant to the Applicant's / Applicant Team's right.
- iv. In the event that, there are any page or document obviously missing or erroneously inserted in the documents supplied, or there is any concern implied, or related to, but not specifically mentioned, the Applicant shall promptly inform BIACL, to have such discrepancy rectified well before the RFP submission date.
- v. The Applicant agrees that, all information pertaining to BIACL's business and other information by BIACL, are confidential information of BIACL. The same shall be kept confidential, and shall not be disclosed to any third party, without prior written approval of BIACL.
- vi. Nothing contained herein, shall confer right upon an Applicant, or any obligation upon BIACL. The Applicant hereby voluntarily and unequivocally agrees not to seek any claim, damages, compensation or any other consideration whatsoever, on this account, from BIACL.

25. Confidentiality

BIACL and the Applicant shall ensure the confidentiality of all documents supplied by either party to either side. All documents will be used in RFP process only.

26. Grounds of dis-qualification

In addition to BIACL's rights to disqualify any Applicant as set-out elsewhere in this RFP, BIACL shall have the right, in its sole discretion, to disqualify any Applicant, and reject its Proposal including, but not limited to any one or more of the following grounds:

- a. Declaration of the Applicant as ineligible due to past corrupt or fraudulent practices, in any tender/bid process.
- b. The proposal not being accompanied by any supporting document/s or Annexure/s, required to be submitted in accordance with this RFP.
- c. Failure to comply with the requirements of the RFP, or the Proposal being non-responsive to the requirements of the RFP.
- d. If the Proposal is not stamped, signed, sealed and marked or does not contain all the information as requested in the RFP, or in the format as specified in the RFP or Annexure/s, BIACL may reject the Proposal as non-responsive.
- e. If the Bidder submits incorrect/inaccurate/misleading, false information, misrepresentation, in its Proposal which is in the sole opinion of BIACL, is material information.
- f. If the Bidder is black listed or debarred by any major corporates or by the any governmental agency.
- g. Any proposal is received after the timeline as set-out in this RFP.
- h. Misrepresentation/ Fraud/ Breach of Terms and Conditions: If it is discovered at any point of time that the Applicant has suppressed any fact or given a false statement or has done misrepresentation or fraud or has violated any of the terms of this RFP, its Proposal may be cancelled by BIACL. In such an event, the Applicant will not be entitled to any compensation whatsoever, or refund of any other amount, if any, paid by it.

27. Award Process

- i. Authority will conduct the award process in a fair and non-discriminatory manner. Canvassing in any form, unsolicited letter and post-bid correction will invoke summary rejection of the bid.
- ii. The Applicant shall comply with all the terms and conditions set-out in bid document and its appendices while submitting its proposal.

- iii. Authority reserves its right to accept any Proposal and to reject any or all the proposals received without any reason or can change the process of the selection at any time during or after the RFP process or withdraw from the bidding process or any part of the bidding process or to vary any of the terms at any time without giving any reason. Authority shall not be responsible to any Applicant/persons on any account, if it exercises such rights.
- iv. The successful Bidder/ applicant team shall sign the O & M Agreement within 30 (thirty) days or as desired/asked by BIACL in writing. If the selected applicant's team, whose proposal has been accepted, fails to sign a written contract within specified period, Authority shall take action against such applicant, if any, as per the provisions of the bidding document and forfeit the bid security as per the provisions of the agreement.

28. Conflict of interest

The Applicant's Team shall hold BIACL's interest paramount, without any consideration for future work, and strictly avoid conflict with other assignment or its own corporate interest.

Participation by the applicant with a conflict of interest situation, would be examined by BIACL, and appropriate decision would be taken, which may also include disqualification of all the bids in which, it is involved.

BIACL considers a conflict of interest to be a situation in which, a party has interests that could improperly influence that party's performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations, and that such conflict of interest may contribute to or constitute a prohibited corrupt practice. An applicant's team may be considered to be in a conflict of interest with one or more parties in this Bidding process if, including but not limited to:

- a. receive or have received any direct or indirect subsidy from any of them; or
- b. have common controlling shareholders; or
- c. have the same legal representative for purposes of this bid; or
- d. have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another applicant, or influence the decisions of BIACL regarding this Bidding process. BIACL policy requires that an applicant participating in this bidding, procurement process shall not have a conflict of interest. Any applicant's team found to have a conflict of interest

shall be ineligible for award of the contract.

List of documents forming part of the RFP

- i. Annex I: Preventive Maintenance
- ii. Annex II: Specifications and standards
- iii. Schedule A
- iv. Format of O&M Contract agreement
- v. Format of bank guarantee
- vi. Technical and financial bid format
- vii. Appendices I to VII
- viii. Draft agreement
- ix. Performance security

28. DISPUTE RESOLUTION

28.1 Dispute resolution

28.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 28.2.

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

28.2 Conciliation

In the event of any Dispute between the Parties, either Party may require such Dispute to be referred to the Managing Director of the Authority and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 28.1.2 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 28.3.

28.3 Arbitration

28.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 28.2, shall be finally decided by reference to arbitration by an arbitral tribunal in accordance with Clause 28.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The place of such arbitration shall be the capital of the State and the language of arbitration proceedings shall be English.

28.3.2 There shall be an arbitral tribunal comprising 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.

28.3.3 The arbitral tribunal shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 28 shall be final and binding on the parties as from the date it is made, and the concessionaire and the authority agree and undertake to carry out such award without delay.

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

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

28.4 Adjudication by a tribunal

In the event of constitution of a statutory tribunal or other forum with powers to adjudicate upon disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 28.3, be adjudicated upon by such tribunal or other forum in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly.

28.5 BIACL reserve the rights to terminate this agreement with three-month notice to operator at any point of time without assigning any reason thereof. Operator is eligible for payments against service rendered during notice period.

ARTICLE 1: Scope of the Operations and Maintenance

1. Scope

This TOR shall apply to operation and maintenance of the Airport

The selected operator shall carry out the functions of “**Operations and Maintenance**” of the Airport in accordance with this Agreement and if required, modify, or otherwise make improvements with consent of the authority, to the Airport to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice.

1.1 Definitions and interpretation

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

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

1.2 Role and functions of Operator

The roles and functions of the Operator hereunder shall include:

- A. permitting safe, smooth and uninterrupted movement of Users and flow of traffic on the Airport, including prevention of loss or damage thereto, during normal operating conditions;
- B. collecting and appropriating the user fee on behalf of the Authority;
- C. minimizing disruption to movement of Users and flow of traffic in the event of accidents or other incidents affecting the safety and use of the Airport by providing a rapid and effective response and maintaining liaison with emergency services of the State;
- D. carrying out periodic preventive maintenance as per Annex -I, of the Airport;
- E. Ensuring that the Aeronautical Assets, including Runways, taxiways, aprons and approach areas are maintained and operated in accordance with the provisions contained in Applicable Laws and relevant ICAO/ DGCA Documents;

- F. Monitor & confirm that the obstacle limitation surfaces of the Airport and the approach and take-off areas shall be maintained free from obstructions or that the obstructions shall be limited to the permissible limits specified in Applicable Laws;
- G. Undertaking routine running maintenance including prompt repairs of cracks, joints, drainage systems, embankments, structures, buildings, pavement markings (chipping etc and repainting such portions only), signaling systems, communication systems, lighting, road signs.
- H. ensuring that the sensitive and critical areas, as identified by the Authority or the Designated GOI Agency, as the case may be, for the operation of CNS/ATM Equipment and facilities shall be maintained free of any obstructions and that no obstruction which may hamper the safety or functioning of these equipment and facilities or endanger the safety of aircraft operations shall be permitted;
- I. procuring that appropriate arrangements e.g. deployment of 10 (Ten) numbers of bird chasers with sufficient suitable fire crackers (as approved by authority) and precautions have been undertaken at the Airport to prevent bird and animal nuisance in and around the operational areas, Runway and taxiways;
- J. running maintenance of the Airfield Lighting System, signal area, MET installations etc if any and the main and standby power supply systems in accordance with the standards prescribed in Applicable Laws and relevant ICAO Documents and Annexes;
- K. preventing, with the assistance of the concerned law enforcement agencies, any encroachments on, unauthorized entry to or unauthorized use of the Airport;
- L. protection and conservation of the environment and provision of equipment and materials therefor;
- M. operation and maintenance of all communication, control and administrative systems necessary for the efficient operation and management of the Aeronautical and Non-Aeronautical Services;
- N. complying with Safety Requirements in accordance with DGCA / BCAS requirements;
- O. operation and maintenance of all airport Assets diligently and efficiently and in accordance with Good Industry Practice;
- P. maintaining punctuality and reliability in operating the Airport;
- Q. maintaining a high standard of cleanliness and hygiene on the Airport; and
- R. taking all measures relating to fire precautions in accordance with relevant ICAO standards, Applicable Laws, Applicable Permits and Good Industry Practice.
- S. The Operator shall ensure that all contractors shall promptly remove all surplus construction machinery and materials, waste materials

(including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) from the airport site and keep the Airport in a clean, tidy and orderly condition, and in conformity with Applicable Laws, Applicable Permits and Good Industry Practice.

- T. The Operator shall maintain, in conformity with Good Industry Practice, all stretches of approach roads, over-bridges/ under-bridges, over-passes, under-passes or other structures situated within airport property but not forming part of the Airport.
- U. Extend all support and show utmost courtesy's in handling of VIP movements and manage VIP lounge(s).
- V. Coordinating with ATC, MET, etc for smooth flight operations.
- W. Providing stationary/vehicle requirements of ATC, MET Dept, maybe to the Authority also as under;
 - 04 Nos of Boloro Jeeps to Police, with drivers
 - 01 No Boloro Jeep to ATC and CNS team, with driver
 - 03 Nos of Boloro Jeeps to Authority, with two drivers
 - All stationary material to Authority and AAI / Police / MET

X. The O&M Operator is supposed to provide following manpower;

- Terminal Building – One Senior person as a head- terminal and two Juniors, 06 (six) persons for housekeeping with all requisite materials.
 - To Mann terminal building ticket counter and pass section.
 - Administrative block & ATC- two assistant for authority and one assistant each for ATC and MET department.
 - Airside – 10 (Ten)numbers of Bird scarers and 01(one) supervisors. 04 (four) persons for FOD removal/ cleaning of runway/ taxiway/ apron/ drains etc. with four manual flipper machines and long handle brooms, tools for pruning of trees etc.
 - One grass cutting machine suitable for all kind of surfaces eg Bengal Mattel three-fold GCMs equipped with powerful tractor.
 - Suitable manpower (minimum 03) for Landscaping at land side and along main access road of the airport, along with materials eg tall suitable plants which do not allow birds to rest/ food etc/ seasonal flower /plants as per approval of authority.
 - 17 (seventeen) Numbers of trained manpower for ARFF.
 - Is authority has right to select/reject the personals appointed by the O&M Operator i.e: CV's approval etc.
- Y. Terminal Building minor maintenance.
- Z. Cost of Airside maintenance equipment

Note:

1. for all unskilled works preference must be given to local persons for deployment.

2. Operator has to submit following deliverables;

- i. Fortnightly reports on availability / serviceability of items/ services mentioned in Para 3.2 – b,e, d,g,i,p,u,w,x above.
- ii. Monthly reports on availability / serviceability of items/ services mentioned in Para 3.2 – b,e, d,g,i,p,u,w,x above.
- iii. Compliance report for Annex-1, 2 and schedule A.
- iv. Any non-conformity of i, ii, iii above will attract a penalty of 1.5 % of total monthly bill with a maximum of Rs.1,50,000/- against each of sub-para i,ii,iii.
- v. Monthly bills will be processed based on accepted deliverables and meeting other requirements eg penalties etc.

1.3 The roles and functions of the Authority

All major maintenance such as repairs to buildings, & Apron/ Runway/ Taxiway pavements repairs, markings and their repainting, boundary wall painting etc will be made by Authority.

1.4 Maintenance requirements

The operator shall ensure that at all times during the Operation Period, the Airport conforms to the maintenance requirements set forth in Annex-II.

1.5 Safety, breakdowns and accidents

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

3.5.2 The operator's responsibility for rescue operations on the Airport shall include safe evacuation of all Users and staff from the affected area as an initial response to any particular incident and shall also include prompt removal of debris or any other obstruction, which may endanger or interrupt the smooth flow of traffic and movement of the Users. For this purpose, it shall maintain and operate 2 (two) fire & rescue vehicles & one ambulance with rescue equipment and position the vehicles in a manner that allows prompt access to the accident site. Provide and ensure availability of **trained Fireman (17 Nos)** during all operational hours, maintain sufficient stock of fire extinguishing media, as per approval of BIACL.

3.6 De-commissioning due to Emergency

- 3.6.1 If, in the reasonable opinion of the operator, there exists an Emergency which warrants de-commissioning and closure of the whole or any part of the Airport, the Operator shall be entitled to de-commission and close the whole or any part of the Airport to Users for so long as such Emergency and the consequences thereof warrant; provided that such de-commissioning and particulars thereof shall be notified by the Operator to the Authority without any delay, and the Operator shall diligently carry out and abide by any reasonable directions that the Authority may give for dealing with such Emergency.
- 3.6.2 The Operator shall re-commission the Airport or the affected part thereof as quickly as practicable after the circumstances leading to its de-commissioning and closure have ceased to exist or have so abated as to enable the Operator to re-commission the Airport and shall notify the Authority of the same without any delay.
- 3.6.3 Any decommissioning or closure of any part of the Airport and the re-commissioning thereof shall, as soon as practicable, be brought to the notice of affected persons by means of public announcements/notice.
- 3.6.4 No claim or compensation shall be due and payable to the Operator on account of de-commissioning or restricted use of the Airport or any part thereof during an Emergency or for reasons of national security and public interest.

3.7 Section closure

- 3.7.1 Save and except as approved by the authority, the Operator shall not close any section of the Airport for undertaking maintenance or repair works, not forming part of the Maintenance Program, except with the prior written approval from Authority.
- 3.7.2 The provisions of Clause 3.6.1 shall not apply to de-commissioning under Clause 3.7.1 or to closure of any section of the Airport for a period not exceeding 6 (six) hours in a day at any time of the day specified by authority as Off- Peak Period for this purpose.

3.8 Damages for breach of maintenance obligations

- 3.8.1 In the event that the Operator fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages from monthly bill, to be calculated and paid for each day of delay until the breach is cured, at the higher of (a) 0.5% (zero point five per cent) of Average Daily Fee. Recovery of such Damages shall be without prejudice to

the rights of the Authority under this Agreement, including the right of Termination thereof.

- 3.8.2 Authority as its discretion can encash performance security in case the Operator fails to perform stipulated assignments for two consecutive months or three consecutive tasks assigned by authority in any month.

3.9 Authority's right to take remedial measures

In the event the Operator does not maintain and/or repair the Airport or any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual or the Maintenance Program, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from the Authority, as the case may be, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Operator, and to recover its cost from the Operator. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Operator to the Authority as Damages.

3.10 Overriding powers of the Authority

- 3.10.1 If in the reasonable opinion of the Authority, the Operator is in material breach of its obligations under this Agreement and, in particular, the Maintenance Requirements, and such breach is causing or likely to cause material hardship or danger to the Users, the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Operator to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.
- 3.10.2 In the event that the Operator, upon notice fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers and take over the performance of any or all the obligations of the Operator to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Authority shall be entitled to recover them from the Operator in accordance with the provisions of clauses above along with the Damages specified therein.
- 3.10.3 In the event of a national emergency, civil commotion or any other act, the Authority may take over, or authorize any Designated GOI Agency to take over, the performance of any or all the obligations of the Operator to the extent deemed necessary by it, and exercise such control over the Airport or give such directions

to the Operator as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. It is also agreed that the Operator shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

3.11 Modifications to the Airport

- 3.11.1 The Operator shall not carry out any modifications to the Airport assets, except where such modifications are necessary for the Airport to operate in conformity with the Master Plan, Specifications and Standards, Maintenance Requirements, Good Industry Practice, Applicable Laws and the provisions of this Agreement.
- 3.11.2 The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to the all Construction Works forming part of modification of the Airport.

3.12 Excuse from performance of obligations

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

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

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

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

3.13 O&M of City Side Development

The Parties expressly agree that the provisions of this article shall also apply to City Side Development; however, that the Operator agrees and undertakes to maintain City Side Development at all times in accordance with Good Industry Practice and Applicable Laws.

In case any new structure is created in future, operator is entitled to claim for additional services, authority shall consider paying on proportional basis e.g. rupees per square feet V/v airside paved area plus PTB built-up, total area rate per square feet basis, example Airside paved area is 10000 SFT + PTB built-up area is 5000 SFT, Total area will be 15000 SFT , monthly bill is Rs 30,000,00/-the average SFT rate will be $30,000,00 / 15000 = \text{Rs } 200 \text{ SFT}$.

ARTICLE 2: OPERATION AND MANAGEMENT OF AERONAUTICAL ASSETS

Operation and management of Aeronautical Assets

1. Save and except as provided in this Agreement, the Operator shall undertake the operation and management of the Aeronautical Assets in accordance with the provisions of this Agreement, Applicable Laws and Good Industry Practice.
 - a. The Operator shall operate the Aeronautical Assets in accordance with the specifications and standards set forth in Annex–II and the standards specified from time to time by the DGCA and ICAO or any successor thereof. Without prejudice to the generality of this Article, the Operator shall ensure that the Aeronautical Assets at all times comply with the regulations relating to the safety and security of aircrafts and passengers, and other persons at the Airport.
 - b. Save and except as provided in this Agreement, the Operator shall regulate the use of the Aeronautical Assets by third parties and provide non-discriminatory access to all airlines and passengers in accordance with Applicable Laws and the provisions of this Agreement. For the avoidance of doubt, provision of different levels of services for identified categories of aircrafts and passengers shall not be construed as discrimination hereunder.
 - c. The Operator shall at all times keep free from obstruction all areas meant for circulation and use by aircrafts.
 - i. The Operator shall, subject to conformity with the standards for signage as may be specified by ICAO from time to time, provide directions, signs and signals for the safe and efficient use of Aeronautical Assets.

ARTICLE 3: OPERATION OF TERMINAL BUILDING

1. Operation and management of Terminal Building

- a. The Operator shall undertake the operation and management of the Terminal Building in accordance with the provisions of this Agreement, Applicable Laws and Good Industry Practice.
- b. The Operator shall operate the Terminal Building in accordance with the Specifications and Standards set forth in Schedule-A and the standards specified from time to time by the IATA or any successor thereof.
- c. The Operator shall regulate the use of the Terminal Building by third parties and provide non-discriminatory access to all airlines and passengers in accordance with Applicable Laws and the provisions of this Agreement. For the avoidance of doubt, provision of different levels of services for identified categories of airlines and passengers shall not be construed as discrimination hereunder.
- d. The Operator shall at all times keep free from obstruction all areas meant for circulation and use by passengers.
- e. The Operator shall provide 50 hand baggage trollies as per approval of BIACL on cost re - imbursement basis and maintain an adequate supply of efficient baggage trolleys within easy reach of the baggage claim areas and at the entry points of the Terminal Building. For the avoidance of doubt, the Parties agree that NO advertisements may be displayed on the trolleys by O&M operator.
- f. The Operator shall ensure that at all times, within the Terminal Building, all of the following:
 - i. Serviceability of Free drinking water outlets for passengers,
 - ii. Ensure, vending machines if, installed by authority and its vendor, for dispensing bottled water and popular beverages, hot and cold, at a price which shall not exceed the maximum retail price of each such product as prevalent in the market outside the Airport; and
 - iii. Washrooms are available during all flight operation times in neat and tidy conditions.
- g. The Operator shall, subject to conformity with the standards for signage as may be specified by ICAO from time to time, ensure availability of directions signs, signals, public announcement systems and enquiry counters to facilitate

passengers and assist them in finding their way to airlines counters, travel facilities, passenger amenities and Cargo Facilities.

- h. The Operator shall ensure that the Terminal Building is open to passengers during airport operating hours, including on public holidays, and at all times during 150 (one hundred and fifty) minutes before the scheduled departure of a flight and 90 (ninety) minutes after the arrival thereof, or as may be specified by the Authority in accordance with the security requirements and Good Industry Practice.

- i. **Level of Service**

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

ARTICLE 4: OPERATION OF CAR PARK

1. Operation and maintenance of Car Park

- a. Basic lighted infrastructure shall be provided by authority eg fenced car park site with motorable roadways to parking slots, in-grace / out-grace.
- b. The Operator shall operate and maintain the Car Park in accordance with the provisions of this Agreement, Applicable Laws and Good Industry Practice.
- c. The Operator shall regulate the use of Car Park by third parties in accordance with the provisions of this Agreement and shall permit non-discriminatory use thereof to all passengers and visitors; provided that the Operator may levy charges for the use of Car Park and may as approved by authority ordinarily, restrict the use of Car Park to 4 (four) hours for every single entry of a vehicle and may levy additional charges for every subsequent 4 (four) hours or part thereof subject to a maximum fees of Rs.200/- per day. All revenues from this head can be retained by O&M contractor and operator shall share 10% of gross revenue from car park on monthly basis with authority from second year of operations which shall be increased by 5% for every year from third year with a cap of 20%.
 - i. Operator shall deploy sufficient manpower to man car parking and to monitor unauthorized parking within airport area.
 - ii. Operator can use car parking area for placing advertisements with due approval from authority.
 - iii. Operator shall deploy one towing vehicle at airport to handle unauthorized parking issues and ensure that at all times there is no damage occurs to any vehicle being towed for unauthorized parking. Operator will be held responsible for the damages, if any occurred to any vehicle being towed by him.
- d. **Unauthorized Parking**
 - i. The Operator may remove any vehicle that is parked at a place not earmarked or authorized for parking, and park such vehicle in the Car Park. If the Operator is not able to shift the vehicle to the Car Park for any reason, it may immobilize the vehicle at or near the spot where it is parked. The Operator shall be entitled to recover Fee, as approved by the authority for such vehicle and also charge a sum equivalent to 5 (five) times the Fee as the pre-determined and agreed cost of immobilizing the vehicle or moving it to the Car Park, as the case may be. For the avoidance of doubt, the Operator shall procure that any shifting or immobilizing of vehicles under the

provisions of this Clause is undertaken in a manner that does not cause damage to such vehicles. Revenues from this head can be retained by operator.

ARTICLE 5: MONITORING OF OPERATION AND MAINTENANCE SERVICES

1. Reports of unusual occurrence

The Operator shall, prior to the close of each day, notify the Authority, by facsimile or e-mail, a report stating accidents and unusual occurrences on the Airport relating to the safety and security of the Users and Airport. 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, accidents and unusual occurrences on the Airport shall include:

- (a) death or injury to any person;
- (b) damaged or dislodged fixed equipment;
- (c) any damage to or obstruction at the Airport, which results in a slowdown of the services being provided to the Users;
- (d) any damage or obstruction on the Runway, apron or taxiways;
- (e) air traffic congestion at the Airport leading to undue delay in scheduled aircraft operations or congestion at the Terminal Building;
- (f) any failure or defect in the Airfield Lighting System;
- (g) any obstruction or undue congestion in the provision of Reserved Services;
- (h) outages or failure of electricity supply or water supply at the Airport;
- (i) outages or failure of air-conditioning facilities at the Terminal Building;
- (j) disablement of any closed-circuit television system at the Airport;
- (k) communication failure affecting the operation of the Airport;
- (l) any incident of bird hits, near bird hits or animal nuisance in and around the operational area, Runway and taxiways;
- (m) any incident of theft or robbery at the Airport;
- (n) any incident of breach of security at the Airport;
- (o) smoke or fire;
- (p) flooding of the Airport.

ANNEXURE –I: PREVENTIVE MAINTENANCE

- 1.** Operator must get the cleaning schedule approved by authority within 15days of the commencement of the work and take all necessary actions to implement of the schedule for ensuring cleanness in all areas as per Industry standards.
- 2.** Operator must frame the preventive maintenance schedules (to be approved by authority within 15 days of the commencement of the work) and implement the same to avoid any downgrading of infrastructures / facilities with respect to civil/mechanical/electrical etc. The Preventive maintenance must include the serviceability of the systems provided as per best practices at his own cost. and any deficiency found should be brought to notice of authority and restore the same as per breakdown maintenance norms. Depending upon severity of situation operator must carry out immediate repair of facility to make that serviceable.
- 3.** All airside markings on runway/ taxiway/ aprons shall be maintained in good visible condition and on need basis may be repainted for small portions, maximum once in every quarter of the year.
- 4.** All paved areas must be checked on routine basis for cracks/ depressions/ potholes/ rutting / bulging etc and suitable corrective actions must be taken by O&M operator for minor nature of defects in consultations with authority. For avoidance of doubt minor nature means any isolated pot hole of runway/ taxiway or aprons, small crack / isolated bulging not more than a 6 inch in diameter/ 12 inch in length etc. The O&M operator must capture all such materials required for routine repair and restoration works and get them approved by authority in terms of methodology and specifications of the consumables.
- 5.** The corrective methodologies must be approved by authority and implemented in the event of any Leakage / blockage etc in wash rooms/ kitchens/ commercial areas.
- 6.** Functionality of general electrical equipment's eg fans/ ACs/ tube or LED lights, doors etc.

ANNEX – II: SPECIFICATIONS AND STANDARDS

1. Operator must ensure IATA standard level “D” for passenger’s comfort.
2. Adherence to DGCA/ BCAS/ AAI published regulatory requirement within scope of O&M contractor.
3. Do running maintenance of solar panels under guidance of BIACL, as and when required.
4. Use best practices to avoid bird hit incidents eg use of fire crackers during flight operation periods, at his own cost.
 - a. In case of any bird hit incident occurrence within airport premises a penalty of Rs.2000/- (two thousand) per incident will be imposed on operator.

Schedule –A

1 Operator shall ensure that at all the times;

- I. Airport Entry ticket counter is manned during operational period.
- II. Car park is manned and maintained in presentable conditions.
- III. All wash rooms are cleaned and manned in terminal building
- IV. All wash rooms are cleaned on daily basis within airport premises and maintained in hygienic conditions.
- V. VIP lounge is maintained in good condition and at least two daily newspapers and quality magazines are available on daily basis.
- VI. Airport pass section is maintained and manned on all working days during office hours.
- VII. PTB Glass façade and other window panes are cleaned regularly.
- VIII. Carry out passenger feedback survey as and when advised by authority to ascertain satisfaction levels. Always extend support for ASQ surveys.
- IX. Baggage handling area are cleaned and maintained.
- X. Passenger trollies are available for arrival and departing passengers at designated areas.

APPENDIX – I

Letter comprising the bid

To

Managing Director

BHOGAPURAM INTERNATIONAL AIRPORT CORPORATION LIMITED,

1st Floor, FDC Complex,

AC Guards, Hyderabad – 500028

Tele : +91 40 29803753

Web site: www.biacl.co.in

E-mail: md@biacl.co.in

Dated:

Sub: Providing Operations and Maintenance (O&M) Services at Orvakallu Airport, Kurnool district, ANDHRA PRADESH

Dear Sir,

With reference to your Tender Document dated, I/we, having examined the Tender Document and understood its contents, hereby submit my/our Application for Qualification for the aforesaid project. The Application is unconditional and unqualified.

- 1) I/We acknowledge that the Authority will be relying on the information provided in the Application and the documents accompanying such Application for qualification of the Applicants and award of the aforesaid project, and we certify that all information provided in the Application and in Appendix is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Application are true copies of their respective originals.
- 2) *This statement is made for the express purpose of qualifying and award as a Bidder for providing Operations and Maintenance (O&M) Services at Orvakallu Airport, Kurnool district, ANDHRA PRADESH.*
- 3) I/ We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Qualification statement.
- 4) I/ We acknowledge the right of the Authority to reject our Application without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
- 5) I/ We certify that in the last three years, we or our Associates have neither failed to perform on any contract, as evidenced by 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.

- 6) I/ We declare that:
 - a) I/ We have examined and have no reservations to the Tender Document, including any Addendum issued by the Authority.
 - b) I/ We do not have any conflict of interest in accordance with the Tender Document; and
 - c) 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 Document, in respect of any tender or Tender Notice issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and
 - d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of the Tender Document, 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.
- 7) I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Application that you may receive nor to invite the Applicants to Bid for the Project, without incurring any liability to the Applicants.
- 8) I/ We believe that we satisfy the Rs. 20 CRORES annual Turnover criteria and meet(s) all the requirements as specified in the Tender Document and are/ is qualified to submit the Bid and for award of Project.
- 9) I/ We believe that we satisfy the net worth criteria and meet all the requirements as specified in the RFP document and are/ is qualified to submit the bid and for award of project.
- 10) I/ We declare that we or our associates are not a member of a/ any other consortium applying for pre-qualifications.
- 11) I/ We certify that in regard to 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 a 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 in regard to 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 against our CEO/MD or any of our Chief Executive Officers/ managers/ employees.
- 14) I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, I/We are attracted by the provisions of disqualification in terms of the provisions of this RFP DOCUMENT; I/We shall intimate the Authority of the same immediately.
- 15) The Statement of Legal Capacity as per format provided at Appendix - VI of the Tender Document, and duly signed, is enclosed. The power of attorney for signing of application, as per formats provided at Appendix V of the RFP DOCUMENT, are also enclosed.
- 16) In the event of my/ our being declared as the Selected Bidder, I/We agree to enter into O&M contract agreement (The Agreement) in accordance with the draft that has been provided to me/us prior to the Bid Due Date. I/We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
- 17) I/We have studied all the Bidding Documents carefully. I/We understand that except to the extent as expressly set forth in the "The Agreement", we shall have no claim, right or title arising out of any documents or information provided to us by Authority or in respect of any matter arising out of or concerning or relating to the Bidding Process including the award of contract.
- 18) The cost per month have been quoted by me/us after taking into consideration all the terms and conditions stated in the TENDER DOCUMENT, O& M contract agreement our own estimates of costs and after a careful assessment of all the conditions that may affect the Bid.
- 19) I/We offer a Bid Security of Rs. (Rup only) to

Authority in accordance with the Tender Document.
- 20) The Bid Security in the form of a Demand Draft 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 is not awarded to me/us or our Bid is not opened.
- 22) I/ We understand that the selected Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956 or Indian Companies Act 2013, having its registered office and headquarters in India prior to execution of the O&M contract agreement.
- 23) I/We agree and undertake to be jointly and severally liable for all the obligations in accordance with the RFP and O&M contract agreement.

24) I/We hereby irrevocably waive any right which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by Authority in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.

25) I/We agree to keep this offer valid for 180 (one hundred and eighty) days from the Bid Due Date specified in the TENDER DOCUMENT.

26) I/We agree and undertake to abide by all the terms and conditions of the Tender Document.

In witness thereof, I/ We submit this application under and in accordance with the terms of the Tender Document.

Yours faithfully,

(Signature, name and designation of the Authorized Signatory)

Name and seal of the Applicant

Date:

Place:

APPENDIX II
General Information about Bidders

1.	Name of the Organization	
2.	Name of the authorized person	
3.	Address & contact Numbers	
4.	Year of establishment	
5.	Status of the firm (whether Pvt Ltd company/ Public Ltd. Company)	
6.	Names of Chief Executive Officers	
7.	Whether registered with Registrar of Companies – mention number and date with proof	
8.	Whether registered for sales tax , VAT– mention number and date. Also furnish copies of sales tax number allotted.	
9.	Whether registered for service tax – mention number and date. Also furnish copies of service tax number allotted	
10.	Whether assesses of Income tax payee. Mention PAN , furnish copy of last income tax return.	
11.	Name and Address of Bankers	
12.	Provide details of the agreement with other state government for air services/ flight operations.	
13.	3 years Annual Turnover (Furnished copy of Balance sheet) (CA certification required)	(2016-17) (2015-16)
14.	EMD details :DD Number/Bank Name/ Date	
15.	List of present clients (Copy of work order to be Enclosed)	

16.	Any other information	
-----	-----------------------	--

Name: Designation:
 Affix Company
 seal

DECLARATION

- I / We have read the instructions appended to the Proforma and I/We understand that if any false information is detected at a later date, any contract made between ourselves and BIACL on the basis of the information given by me/us can be treated as invalid by the BIACL and I / We will be solely responsible for the consequences.
- I/We agree that the decision of BIACL in selection of bidder will be final and binding to me/us.
- All the information furnished by me/us above here is correct to the best of my/our knowledge and belief.
- I / We agree that I / We have no objection if enquiries are made about the work listed by me / us here in above and/or in the accompanying sheets.

Place: Date:

SIGNATURE:

Name & Designation & seal of the Company

APPENDIX III

Financial Capacity of the applicant

Year	Name of the Bidder	Annual Turnover (In Rs.)
2015-16		
2016-17		
TOTAL		

Instructions:

- 1) The Applicant shall attach copies of the balance sheets, financial statements and Annual Reports for 2 (three) years preceding the Application Due Date. The financial statements shall:
 - (a) Reflect the financial situation of the Applicant.
 - (b) Be complete, including all notes to the financial statements; and
 - (c) Correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
 - (d) Provisional financials duly certified by chartered accountant, of the latest year shall also be submitted.

ANNEXURE-IV

Technical Capacity of the Bidder

(Refer to Clause 11 of the RFP)

Entity that fulfills the Airport operator / O&M / Ground Handling Experience

Bidder	
Entity which fulfills the requirement	
Relationship with Bidder	<i>(Bidder/Member/Affiliate of Bidder or Member)</i>

1. O&M Experience Details

Name of Project	
Location	
Description including the minimum annual handling capacity of passengers	
Date of Contract	
Scope of Work Undertaken (Please specify details of the Developmental and/or Expansion work undertaken)	
Counter Party	
Name of Entity which* completed the Project	

2. Ground Handling Experience

Name of Project	
Location	
Description including the annual passenger throughput handled	

Start Date of Operation Period	
End Date of Operation Period	
Nature of Involvement (please specify details of the operation and maintenance work undertaken within the Eligibility Period)	
Counter Party	
Cost of Contract	
Name of Entity which completed the Project	

Please provide details of all the relevant projects along with statutory auditor certificate

APPENDIX V

Power of Attorney for signing of Application (on Rs 100/-stamp paper)

Know all men by these presents, We..... (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorize Mr/ Ms

(name), son/daughter/wife of and presently residing at, who is presently employed with us and holding the position of, as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our application for qualification and submission of our bid for Providing O&M services at Orvakallu Airport, Kurnool district, ANDHRA PRADESH , including but not limited to signing and submission of all our applications, bids and other documents and writings, participate in Pre-Applications and other conferences and providing information/ responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our bid for the said Project and/ or upon award thereof to us and/or till the entering into of the Contract Agreement with the Authority.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE,, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF

For

(Signature, name, designation and address)

Witnesses:

1.

2.

Accepted

..... (Signature)
(Name, Title and Address of the Attorney)

(Notarized)

Notes:

- The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
- Wherever required, the Applicant should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.
- For a Power of Attorney executed and issued overseas, the document will also have to be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Applicants from countries that have signed The Hague Legislation Convention 1961 are not required to be legalized by the Indian Embassy if it carries a conforming Apostille certificate.

APPENDIX – VI

Statement of Legal Capacity

(To be forwarded on the letterhead of the Applicant)

Ref:

Date:

To

Managing Director,

BHOGAPURAM INTERNATIONAL AIRPORT CORPORATION LIMITED,

1st Floor, FDC Complex,

AC Guards, Hyderabad – 500028

Tele : +91 40 29803753

Website: www.biacl.co.in

E-mail: md@biacl.co.in

Dear Sir,

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

We have agreed that will act as our representative and has been duly authorized to submit the TENDER DOCUMENT. Further, the authorized signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorized
signatory)

For and on behalf of.....

APPENDIX-VII

FORMAT OF THE FINANCIAL BID SUBMISSION

(Refer Clause 22)

(Date and Reference)

To,

Managing Director,

Bhogapuram International Airport Corporation Limited

1st Floor, FDC complex, AC Guards, Hyderabad – 500 028

Dear Sir,

Subject: Financial Bid for the Operation and Maintenance of Operations and Maintenance services at Orvakallu Airport, Kurnool district, Andhra Pradesh

We quote cost of Rs. _____ (both in words and in numbers) for providing Operations and Maintenance services at Orvakallu Airport, Kurnool district. Andhra Pradesh.

I/We agree that this offer shall remain valid for a period of 180 (one hundred eighty) days from the Bid Due Date.

Yours Sincerely,

(Signature, name and designation of the authorised signatory)

Operations and Maintenance (O&M) Services Agreement

This Agreement is entered into on this the _____ day of _____, 2018

Between

BHOGAPURAM INTERNATIONAL AIRPORT CORPORATION LIMITED (BIACL), a 100% owned corporation by Government of Andhra Pradesh, represented by its Managing Director, and having its registered office at

(hereinafter referred to as “BIACL ” which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns) of One Part,

AND

[_____ Limited], a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at _____ (Hereinafter referred to as the “Operator” which expression shall unless repugnant to the context or meaning thereof include its successors and permitted substitutes) of the Second Part

WHEREAS

- A) The BHOGAPURAM INTERNATIONAL AIRPORT CORPORATION LIMITED, (hereinafter referred to as “Authority” is interested in PROVIDING Operations and Services at Orvakallu Airport through a private entity/ contractor.
- B) Authority has accordingly invited proposals vide Tender Notice No _____/ dated _____ (“the Tender Notice”) for selection of a bidder for the aforesaid AO subject to and on the terms and conditions contained in the RFP Document.
- C) After evaluation of the Bids so received, BIACL had accepted the Bid of M/s and issued its Letter of Acceptance No..... dated (“LOA”) to the bidder requiring, inter alia, the execution of this O&M contract Agreement.
- D) Authority in accordance with the provisions of RFP has agreed accordingly to enter into this O&M services agreement with the entity/ contractor for providing services subject to and on the terms and conditions set forth hereinafter.
- E) The Operator has duly provided the Bid Security of Rs. 10 Lakhs (Rupees Ten lacs only) to the Authority in terms hereto.

NOW THEREFORE IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS HEREINAFTER CONTAINED, THE PARTIES HERETO HEREBY AGREE AND THIS AGREEMENT WITNESSETH AS FOLLOWS:

PRELIMINARY

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions:

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

- i. **“Accounting Year”** means the financial year commencing from 1st April of any calendar year and ending on 31st March of the next calendar year.
- ii. **“Agreement”** or the **“Operations and Maintenance services agreement”** means this Agreement, its recitals, schedules and annexure hereto and any amendments thereto made in accordance with the provisions contained in this Agreement.
- iii. **“Applicable Laws”** means all laws, promulgated or brought into force and effect by the State Government and/or the Government of India including rules, regulations and notifications made there-under, and judgments, decrees, injunctions, writs and orders of any court or record, applicable to this Agreement and the exercise of 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.
- iv. **“Applicable Permits”** means all clearances, permits, authorizations, consents and approvals required to be obtained or maintained under applicable laws in connection with the Operations and Maintenance during the subsistence of this Agreement.
- v. **“Agreement Period (AP)”** means the period beginning from the commencement date of the agreement and ending on completion of three (3) years of such date which can further be extended as decided by Authority in case of satisfactory performance.
- vi. **“Bid”** means the documents in their entirety comprised in the bid submitted by the Bidder in response to the Tender Notice in accordance with the provisions thereof.
- viii. **“Commencement Date”** means the date on which the O&M services shall start in accordance with the provisions contained in this Agreement.
- ix. **“Authority”** means BIACL, Govt of Andhra Pradesh.
- x. **“Bid Security”** shall have the meaning as described in Clause 16.

- xi. **“Dispute”** shall have the meaning set forth in Clause 28.
- xii. **“BIACL”** means the BHOGAPURAM INTERNATIONAL AIRPORT CORPORATION LIMITED,.
- xiii. **“Effective date”** means the date on which this agreement is signed.
- xiv. **“Force Majeure”** or **“Force Majeure Event”** shall mean an act, event, condition or occurrence specified which is not in the Control of any parties to the agreement as stated and described in Clause 3.12.
- xv. **“GOAP”** means the Government of Andhra Pradesh.
- x. **“GOI”** means the Government of India.
- xi. **“Good Industry Practice”** means those practices, methods, techniques, standards, skills, diligence and prudence which are generally and reasonably expected of and accepted internationally from a reasonably skilled and experienced Operator engaged in the same type of undertaking as envisaged under this Agreement and acting generally in accordance with the provisions of applicable law, and would mean good engineering practices in the airport Operations and which would be expected to result in the performance of its obligations by the Operator and in the operation and maintenance of the O&M in accordance with this Agreement, Applicable Laws, Applicable Permits, reliability, safety, environment protection, economy and efficiency.
- xii. **“Government Agency”** means GOI, GOVT OF ANDHRA PRADESH or any Ministry, Department, Commission, Board, Authority, instrumentality or agency, under the control of GOI or GOVT OF ANDHRA PRADESH having jurisdiction over or the performance of all or any of the services or obligations of the BIACL and the Operator under or pursuant to this.
- xiii. **“Indemnifying Party”** means the Party obligated to indemnify the other Party pursuant..
- xiv. **“LOA”** or **“Letter of Acceptance”** means the letter of acceptance referred to in the Recital 16.
- xv. **“BIACL Representative”** means such person or persons as may be authorised in writing

by Chief Executive Officer, BIACL, BIACL to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfil any obligations of BIACL under this Agreement.

- xvi. **“Parties”** means the parties to this Agreement collectively and “Party” shall mean any of the Parties to this Agreement individually.
- xvii. **“Cost for O&M services”** shall mean any amount payable by the BIACL to the contractor/ service provider towards providing O&M services at Orvakallu Airport.
- xviii. **“Preparatory Period”** means the period beginning with signing of the agreement and ending on the commencement date.
- xix. **“State Government”** means the Government of ANDHRA PRADESH.
- xx. **“Termination”** means the expiry or termination of this Agreement and “Termination Date” means the date on which this Agreement is terminated by a Termination Notice.
- xxi. **“Termination Notice”** means the communication issued in accordance with this Agreement by any one Party to the other Party terminating this Agreement in the form of email / written letter in original.

1.2. In this agreement, unless the context otherwise requires

- a) Any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- b) references to Indian law shall include the laws, acts, ordinances, rules, regulations, or bye laws which have the force of law in any State or Union Territory forming part of the Union of India;
- c) the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal entity);
- d) the headings 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;
- g) references to “construction” include, unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction;
- h) any reference to any period of time shall mean a reference to that according to Indian Standard Time (IST)
- i) Any reference to day shall mean a reference to a calendar day.
- j) Any reference to month shall mean a reference to a calendar month.
- k) Any reference to year unless the context otherwise requires shall mean the calendar year.
- l) The Schedules 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;
- m) Any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference provided that this clause shall not operate so as to increase liabilities or obligations of Authority hereunder or pursuant hereto in any manner whatsoever except as expressly provided in this agreement.
- n) References to Recitals, Articles, Clauses, Sub-clauses, Paragraphs, or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to Recitals, Articles, Clauses, Sub-clauses, paragraphs, and Schedules of or to this Agreement;
- o) Any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effectual only if it is in writing under the hands of duly authorized representative of such Party, as the case may be, in this behalf and not otherwise;
- p) 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;
- q) Unless otherwise expressly provided in this Agreement any Documentation required to be provided or furnished by the Operator to BIACL shall be provided free of cost and in three copies and on a computer CD/ floppy or such media as is required for a Soft Copy storage and if Authority is required to return any such Documentation with their comments and/ or approval, they shall be entitled to retain two copies thereof;

- r) In the event of any dispute in respect of interpretation of any clause of the agreement, the decision of BIACL shall be final and binding subject to the parties to this agreement taking recourse to legal action under any other law for the time being in force in the State of ANDHRA PRADESH in terms of the agreement.

1.3 Measurements and Arithmetic Conventions

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

1.4 Priority of contract documents and errors/ discrepancies

In case of ambiguities or discrepancies within this Agreement the following shall apply:

- A) between two Clauses of this Agreement, the provisions of the specific clause relevant to the issue under consideration shall prevail over those in other Clauses;
- B) between the Clauses and the Schedules, the Clauses shall prevail save as otherwise expressly set forth in this agreement;
- C) Between any value written in numerals and that in words, the latter shall prevail.

2. SCOPE OF PROJECT AND DELIVERABLE

The roles and functions of the Operator hereunder shall include:

- i. permitting safe, smooth and uninterrupted movement of Users and flow of traffic on the Airport, including prevention of loss or damage thereto, during normal operating conditions;
- ii. collecting and appropriating the user fee on behalf of the Authority;
- iii. minimizing disruption to movement of Users and flow of traffic in the event of accidents or other incidents affecting the safety and use of the Airport by providing a rapid and effective response and maintaining liaison with emergency services of the State;
- iv. carrying out periodic preventive maintenance as per Annex -I, of the Airport;
- v. Ensuring that the Aeronautical Assets, including Runways, taxiways, aprons and approach areas are maintained and operated in accordance with the provisions contained in Applicable Laws and relevant ICAO/ DGCA Documents;
- vi. Monitor & confirm that the obstacle limitation surfaces of the Airport and the approach and take-off areas shall be maintained free from obstructions or that the obstructions shall be limited to the permissible limits specified in Applicable Laws;

- vii. Undertaking routine running maintenance including prompt repairs of cracks, joints, drainage systems, embankments, structures, buildings, pavement markings (chipping etc and repainting such portions only), signaling systems, communication systems, lighting, road signs.
- viii. ensuring that the sensitive and critical areas, as identified by the Authority or the Designated GOI Agency, as the case may be, for the operation of CNS/ATM Equipment and facilities shall be maintained free of any obstructions and that no obstruction which may hamper the safety or functioning of these equipment and facilities or endanger the safety of aircraft operations shall be permitted;
- ix. procuring that appropriate arrangements e.g. deployment of 10 (Ten) numbers of bird chasers with sufficient suitable fire crackers (as approved by authority) and precautions have been undertaken at the Airport to prevent bird and animal nuisance in and around the operational areas, Runway and taxiways;
- x. running maintenance of the Airfield Lighting System, signal area, MET installations etc if any and the main and standby power supply systems in accordance with the standards prescribed in Applicable Laws and relevant ICAO Documents and Annexes;
- xi. preventing, with the assistance of the concerned law enforcement agencies, any encroachments on, unauthorized entry to or unauthorized use of the Airport;
- xii. protection and conservation of the environment and provision of equipment and materials therefor;
- xiii. operation and maintenance of all communication, control and administrative systems necessary for the efficient operation and management of the Aeronautical and Non-Aeronautical Services;
- xiv. complying with Safety Requirements in accordance with DGCA / BCAS requirements;
- xv. operation and maintenance of all airport Assets diligently and efficiently and in accordance with Good Industry Practice;
- xvi. maintaining punctuality and reliability in operating the Airport;
- xvii. maintaining a high standard of cleanliness and hygiene on the Airport; and
- xviii. taking all measures relating to fire precautions in accordance with relevant ICAO standards, Applicable Laws, Applicable Permits and Good Industry Practice.
- xix. The Operator shall ensure that all contractor shall promptly remove all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) from the airport site and keep the Airport in a clean, tidy and orderly condition, and in conformity with

Applicable Laws, Applicable Permits and Good Industry Practice.

- xx. The Operator shall maintain, in conformity with Good Industry Practice, all stretches of approach roads, over-bridges/ under-bridges, over-passes, under-passes or other structures situated within airport property but not forming part of the Airport.
- xxi. Extend all support and show utmost courtesy's in handling of VIP movements and manage VIP lounge(s).
- xxii. Coordinating with ATC, MET, etc for smooth flight operations.
- xxiii. Providing stationary/vehicle requirements of ATC, MET Dept, maybe to the Authority also as under;
 - a. 04 Nos of Boloro Jeeps to Police, with drivers
 - b. 01 No Boloro Jeep to ATC and CNS team, with driver
 - c. 03 Nos of Boloro Jeeps to Authority, with two drivers
 - d. All stationary material to Authority and AAI / Police / MET
- xxiv. **The O&M Operator is supposed to provide following manpower;**
 - 1. Terminal Building – One Senior person as a head- terminal and two Juniors, 06 (six) persons for housekeeping with all requisite materials.
 - 2. To Mann terminal building ticket counter and pass section.
 - 3. Administrative block & ATC- two assistant for authority and one assistant each for ATC and MET department.
 - 4. Airside – 10 (Ten)numbers of Bird scarers and 01(one) supervisors. these persons shall also be utilized for FOD removal/ cleaning of runway/ taxiway/ apron/ drains etc. with four manual flipper machines and long handle brooms, tools for pruning of trees etc.
 - 5. One grass cutting machine suitable for all kind of surfaces eg Bengal Mattel three-fold GCMs equipped with powerful tractor.
 - 6. Suitable manpower (minimum 03) for Landscaping at land side and along main access road of the airport, along with materials eg tall suitable plants which do not allow birds to rest/ food etc/ seasonal flower /plants as per approval of authority.
- xxv. 17 (seventeen) Numbers of trained manpower for ARFF. Authority will lead the selection process and priority will be given to project affected persons, subject to availability.
- xxvi. Terminal Building minor maintenance.
- xxvii. Cost of Airside maintenance equipment

Note:

- 1.For all unskilled works preference must be given to local persons for deployment.

2. 1 Operator has to submit following deliverables;

- i. Fortnightly reports on availability / serviceability of items/ services mentioned in Para 3.2 – b,e, d,g,i,p,u,w,x above.
- ii. Monthly reports on availability / serviceability of items/ services mentioned in Para 3.2 – b,e, d,g,i,p,u,w,x above.
- iii. Compliance report for Annex-1, 2 and schedule A.
- iv. Any non-conformity of i, ii, iii above will attract a penalty of 1.5 % of total monthly bill with a maximum cap of Rs.1,50,000/- against each of sub-para i,ii,iii, divided by 09 deliverables (ie Para 3.2 – b,e, d,g,i,p,u,w,x).
- v. Monthly bills will be processed based on accepted deliverables and meeting other requirements eg penalties etc.

3. 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 expressly previously approved in writing by the Managing Director, BIACL or his authorised representative and executed by the person expressly authorized by a resolution of the Operator in this behalf.

4. BID SECURITY/ PERFORMANCE SECURITY

4.1 The Operator has agreed to for the due and faithful performance of its obligations under the Agreement, provide to the BIACL a bid security for a sum of Rs.10 Lakhs on or before signing of this agreement, in the form of bank guarantee issued in favour of the BIACL.

4.2 The performance security shall be released by the BIACL to the operator upon successful completion of the agreement period. In the event the Operator does not start O&M services from the commencement date or the contractor is in breach of the terms of the Agreement, the BIACL shall, without prejudice to its other rights and remedies hereunder or in law may encash and appropriate such amount(s) it may determine from the commitment security as damages for such Operator default. Upon such encashment and appropriation from the bid security/performance security, the Operator shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the bid security, and in case of appropriation of the entire commitment security provide a fresh commitment security, as the case may be, failing which BIACL shall be entitled to terminate this Agreement in accordance with RFP and appropriate entire performance security as damages. Provided that the contractor shall be given an adequate opportunity of hearing before any amount is appropriated from the bid security.

4.3 The performance security shall remain in force for entire agreement period and will be released on the expiry of its successful completion.

5. OBLIGATIONS OF BIACL

All major maintenance such as repairs to buildings, & Apron/ Runway/ Taxiway pavements repairs, markings and their repainting boundary wall painting, repainting of

all markings etc will be made by Authority.

6. REPRESENTATIONS AND WARRANTIES

6.1 Representations and Warranties of the Operator:

The Operator represents and warrants to Authority that:

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

and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

- j) It has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- k) It shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of the RfP.
- l) The selected bidder and its/their Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking O&M services in accordance with this Agreement;
- m) The selected bidder is duly organized and validly existing under the laws of the jurisdiction of its incorporation, and has requested BIACL to enter into this Agreement with the Operator pursuant to the Letter of Acceptance, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- n) No representation or warranty by it contained herein or in any other document furnished by it to BIACL or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- o) No sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of BIACL in connection therewith.
- p) All information provided by the selected bidder in response to the Request for Qualification and Tender Notices or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects.

6.2 Representations and Warranties of the BIACL

BIACL represents and warrants to the contractor that it has:

- a) Full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- b) Taken all necessary actions under the Applicable Laws to authorize the execution, delivery

and performance of this Agreement;

- c) The financial standing and capacity to perform its obligations under this Agreement;
- d) Agreed that this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;

No knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Authority 's ability to perform its obligations under this Agreement;

- f) Complied with Applicable Laws in all material respects.

7. 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.

8. DISCLAIMER

- 8.1 The service provider acknowledges that prior to the execution of this Agreement, the service provider has after a complete and careful examination made an independent evaluation of likely revenue from the project, and all the information provided by Authority and has determined to its satisfaction the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by the service provider in the course of performance of its obligations hereunder.
- 8.2 The service provider acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters contained herein and hereby confirms that Authority shall not be liable for the same in any manner whatsoever to the Operator, the Bidder or their Associates.

9. OPERATIONAL MAINTENANCE AND SAFETY REQUIREMENT

- 9.1 The contractor/ service provider shall at its own cost operate and maintain equipment's towards safety of passengers as in this Agreement and follow Good Industry Practice, comply with Applicable Laws and Applicable Permits and more specifically:
 - a) Ensure safe travel of the passengers
 - b) Maintain a public relations unit to interface with and attend to suggestions from any user of the Airport.
 - c) Adhere to the safety standards as per the DGCA regulations and other best industry practice
- 9.2 The contractor/ service provider shall ensure safe conditions for the users and in the event of unsafe conditions, it shall follow the relevant operating procedures. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.

9.3 Authority may carry out necessary inspections at any time for a review of the compliance by the service provider of its obligations under this Agreement.

9.4 All costs and expenses arising out of or relating to safety requirements shall be borne by the service provider to the extent such costs and expenses form part of the work and services included in the Scope of the Project.

10. INDEMNITY

The service provider hereby undertakes to indemnify and hold Authority harmless against all cost, damages, liabilities, expenses arising out of any third party claims relating to torts or contracts relating to the operation and maintenance of the Airport.

11. INSURANCE

The service provider shall effect and maintain, or cause to be effected and maintained, at no cost to Authority during the O&M services such insurance as is commensurate with prevailing applicable laws and good industry practice.

12. FORCE MAJEURE

12.1 The service provider or BIACL, as the case may be, shall be entitled to initially suspend the performance of its respective obligations under this Agreement to the extent that the service provider or BIACL, as the case may be, is unable to render such performance by an event of Force Majeure (a "Force Majeure Event")

12.2 In this Agreement, no event or circumstance and/or no combination and circumstances shall be treated as a "Force Majeure Event" unless it satisfies all the following conditions:

- a) Materially and adversely affects the performance of an obligation;
- b) Are beyond the reasonable control of the affected Party;
- c) Such Party could not have prevented or reasonably overcome with the exercise of Good Industry Practice or reasonable skill and care;
- d) Do not result from the negligence or misconduct of such Party or the failure of such Party to perform its obligations hereunder;
- e) Which, by itself or consequently disables either party to perform its respective obligations under this agreement.

12.3 "Force Majeure Event" includes the following events and/ or circumstances to the extent that they or their consequences satisfy the requirements set forth in RfP:

- a) War (whether declared or undeclared), invasion, armed conflict or act of foreign enemy in each case involving or directly affecting the O&M services;
- b) Revolution, riot, insurrection or other civil commotion, act of terrorism or sabotage affecting the O&M services;
- c) Nuclear explosion, radioactive or chemical contamination or ionizing radiation directly affecting the O&M services, unless the source or cause of the explosion, contamination,

radiation or hazard happens due to any act of the service provider or any Affiliate of the service provider or any Sub-Contractor of the service provider or any of their respective employees, servants or agents;

- d) Strikes, working to rule, go-slows and/or lockouts which are in each case widespread, nationwide or political and affects the O&M services;
- e) Any effect of the natural elements, including epidemic or plague, lightning, fire, earthquake, unprecedented rains, tidal wave, flood, storm, cyclone, typhoon or tornado, affecting the O&M services;
- f) Explosion (other than a nuclear explosion or an explosion resulting from an act of war) affecting the O&M services;
- g) Any event or circumstances of a nature analogous to any events set forth in paragraphs (a) to (g) of this Clause.

12.4 Procedure for Force Majeure

12.4.1 If a Party claims relief on account of a Force Majeure Event, then the Party claiming to be affected by the Force Majeure Event shall, immediately on becoming aware of the Force Majeure Event, give notice of and describe in detail:

- That the Force Majeure Event(s) that has occurred;
- The obligation(s) affected
- The dates of commencement and estimated cessation of such event of Force Majeure; and
- The manner in which the Force Majeure event(s) affect the Party's ability to perform its obligation(s) under this Agreement.
- The nature and extent of relief sought if any. No Party shall be able to suspend or excuse the non-performance of its obligations hereunder unless such Party has given the notice specified above.
- The affected Party shall have the right to suspend the performance of the obligation(s) affected, upon delivery of the notice of the occurrence of a Force Majeure Event in accordance with sub-Clause 14.4.1 above. The affected party, to the extent rendered unable to perform its obligations or part thereof under this Agreement, as a consequence of the Force Majeure Event, shall be excused from performance of the obligations provided that the excuse from performance shall be of no greater scope and of no longer duration than is reasonably warranted by the Force Majeure Event.

12.4.2 The time granted for performance of any obligation or compliance and for the exercise of any right by the Party affected by Force Majeure Event, shall be extended over the period during which such Force Majeure Event continues and by such additional period thereafter as is necessary to enable the affected Party to achieve the level of activity prevailing before the

event of Force Majeure Event.

12.4.3 Each Party shall bear its own costs, if any, incurred as a consequence of the Force Majeure Event.

12.4.4 The Party receiving the claim for relief under Force Majeure Event shall, if it wishes to dispute the claim, give a written notice of dispute to the Party making the claim within 30 (thirty) days of receiving the notice of claim. If the notice of claim is not contested within 30 (thirty) days as stated above, all the Parties to this Agreement shall be deemed to have accepted the validity of the claim. If any Party disputes a claim, the Parties shall follow the procedures set forth in Clause regarding dispute settlement.

12.4.5 It is clarified that the agreement period shall be deemed to have been extended by a period which shall be equal to the duration for which such Force Majeure Event continued and by such additional period thereafter as is necessary to enable the affected Party to achieve the level of activity prevailing before the event of Force Majeure Event

13. Mitigation

The Party claiming to be affected by a Force Majeure Event shall take all reasonable steps to prevent, reduce to a minimum and mitigate the effect of such Force Majeure Event. The affected Party shall also make efforts to resume performance of its obligations under this Agreement as soon as possible and upon resumption, shall forthwith notify the other party of the same in writing.

14. DEFAULT AND TERMINATION

14.1 Service provider- Event of Default

For the purposes of this Agreement, each of the following events or circumstances, to the extent not caused by a default of Authority or Force Majeure Event, shall be considered, as events of default of the Service provider (the "Operator Event of Default") which, if not remedied within the Cure Period upon receipt of written notice from Authority within the period mentioned therein, in case such notice is issued, shall provide Authority the right to terminate this Agreement in accordance with Clause 18:

- a) Any breach, including but not limited to the events specified hereunder by the Operator of its obligations under this Agreement, and such breach if capable of being remedied, is not remedied within a period mentioned in the written notice issued by Authority specifying such breach and requiring the Operator to remedy the same;
- b) Any representation or warranty of the Operator herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Operator is at any time hereafter found to be in breach thereof;
- c) Suspension by the Operator of the performance of the obligations under this Agreement for a period exceeding 7 consecutive days (except during the subsistence of a Force Majeure Event);
- d) Failure by the Operator to operate and maintain the O&M services agreement in accordance with the Applicable Laws or committing a default of its obligation as provided for in clause 6;

- e) Failure of the Operator to comply with the conditions of operational efficiencies mentioned in clause 7.
- f) Failure of the Operator to maintain insurance(s) as required in terms of Clause 13.8 & 14.
- g) The Operator is ordered to be wound up by a court; filing of a petition for voluntary winding up by the Operator, or levy of an execution or restraint on the Operators assets, or appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of Operator by a court of competent jurisdiction;
- h) The Operator is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Operator or for the whole or material part of its assets that has a material bearing on the O&M services contract;
- i) The Operator has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority , a Material Adverse Effect;
- j) The Operator doing or permitting to do any act, matter, deed or thing in violation of Applicable Law and/or Applicable Permits
- k) Non-compliance of Equity lock-in provisions set forth in the bid document
- l) Failure to start operations from the commencement date
- m) Commits a breach of its any obligations as contained in this agreement.

15. BIACL Event of Default

For the purposes of this Flight Operations Agreement, each of the following events or circumstances, to the extent not caused by a default of the Operator or are not Force Majeure Events, shall be considered, as events of default of BIACL ("BIACL Event of Default"), which shall provide the Operator the right to terminate this Agreement in accordance with Clause 18:

15.1 Failure to pay cost towards O&M services and provision of free of cost ambulance & fire brigade.

b) Authority commits a material default in complying with any of the provisions of this

Agreement and such default has a Material Adverse Effect on the performance of the Obligations of the Operator.

c) Fails to provide free security airport.

16. TERMINATION

16.1 Without prejudice to any other rights or remedies which the non-defaulting Party may have

under this Agreement, upon the occurrence of either an Operator Event of Default or a Authority Event of Default, the defaulting Party shall be liable for the breach caused and consequences thereof and the non-defaulting Party shall have the right to issue a notice expressing its intention to terminate this Agreement to the other Party (the “Notice of Intention to Terminate”). Upon the issuance of a Notice of Intention to Terminate, the defaulting Party shall have the right to represent against such notice to the non-defaulting Party who will consider the representation and assess if the default can be and or should be permitted to be cured. If not satisfied it may terminate this Agreement by issuance of a termination notice (the “Termination Notice”). In case the breach or the default can be cured and the non-defaulting party considers it appropriate to allow curing of the default it will give such period as it may consider appropriate to cure, failing which the non-defaulting party may terminate the agreement by issuing a termination notice.

16.2 Save and except as otherwise provided in this agreement and without prejudice to any other right or remedy which Authority may have in respect thereof under this Agreement, upon the occurrence of any breach by the Operator under this Agreement including any Event of Default, the Authority shall be entitled to appropriate part or whole of the commitment Security and to terminate this Agreement by a communication in writing (the "Termination Notice") to the Operator, if it has failed to cure such breach or default within the period provided for in the same notice.

17. DISPUTE AND ITS RESOLUTION-

Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature howsoever arising under, out of or in relation to this Agreement and so notified in writing by either Party to the other (the “Dispute”) in the first instance shall be attempted to be resolved in accordance with the procedure set forth below.

17.1 Amicable Resolution

In the event of any Dispute between the Parties, either Party may call upon Managing Director, BIACL, Authority to mediate and assist the Parties in arriving at an amicable settlement thereof.

17.2 Arbitration

17.2.1 Any Dispute, which is not resolved amicably, as provided above, shall be finally decided by reference to Arbitration by a Board of Arbitrators appointed as per the provisions of the Arbitration & Conciliation Act, 1996 and any subsequent amendment thereto. Such arbitration shall be held in accordance with the Rules of Arbitration of the Indian Council of Arbitration and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996 and as amended from time to time thereafter.

17.2.3 The arbitration proceedings shall be conducted by a sole arbitrator. The arbitrator shall be appointed by mutual consent of both the parties. The venue of the arbitration proceeding shall be at Vijayawada, AP. Both the parties shall bear the expenses of arbitration proceedings equally. The language of the arbitration proceeding shall be in English.

17.3 Arbitration Awards to be binding

a) The Operator and Authority undertake to carry out any decision or award of the arbitrators

(the "Award") without delay. Awards relating to any Dispute shall be final and binding on the Parties as from the date they are made

- b) The Operator and Authority agree that an Award may be enforced against the Operator and the Authority as the case may be and their respective assets wherever situated.
- c) This Agreement and rights and obligations of the Parties shall remain in full force and effect pending the Award in any arbitration proceeding hereunder.

18. DISCLOSURE

The Operator shall make available for inspection during normal business hours on all working days copies of all records and reports to Authority as and when required.

19. GOVERNING LAW AND JURISDICTION

This Agreement shall be construed and interpreted in accordance with the Applicable Laws and the Courts in ANDHRA PRADESH shall have jurisdiction over all matters arising out of or relating to this Agreement.

20. MISCELLANEOUS

Waiver by either Party of any default by other Party in the observance and performance of any provision of or obligations of or 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 authorized representative of the Party; and
- c) Shall not affect the validity or enforceability of this Agreement in any manner.

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 there under nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

In case, it is found after the execution of this agreement and during the period of subsistence thereof, that

- d) one or more of the eligibility conditions have not been met by the Bidder, or
- e) the Bidder has made material misrepresentation, or
- f) has given any materially incorrect or false information,

This agreement shall, notwithstanding anything to the contrary contained therein or in this RFP DOCUMENT, be liable to be terminated, by a communication in writing by Authority to the Bidder or Operator, as the case may be, without Authority liable in any manner whatsoever to the

Bidder or Operator, as the case may be. In such an event, Authority shall forfeit and appropriate the Bid Security or the Commitment security, as the case may be, without prejudice to any other right or remedy that may be available to Authority.

Authority reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP DOCUMENT. Failure of Authority to undertake such verification shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any right of Authority hereunder.

21. SURVIVAL

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

22. NOTICES

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

- a) In the case of the Operator, be marked for the attention of the person set out opposite the corresponding signature below or to such other address marked for such other attention as the Operator may from time to time designate by notice to the Authority, provided that notices or other communications be confirmed by sending a copy thereof by first class registered mail or by courier and/or also be sent by official email / facsimile to the number as the Operator may from time to time designate by notice to Authority; and
- b) In the case of Authority, be given by letter and be addressed to the MD, BIACL, of the Authority

22.2 Copies of all notices shall also be sent by facsimile and by registered acknowledgement due pre-paid post or courier.

23. 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 one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under this Agreement or otherwise.

24. NO PARTNERSHIP

Nothing contained in this Agreement shall be construed or interpreted as constituting a partnership between the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever.

25. LANGUAGE

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

26. EXCLUSION OF IMPLIED WARRANTIES

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.

27. COUNTERPARTS

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

28. CONDITION PRECEDENCE

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

SIGNED SEALED AND DELIVERED

For and on behalf of

**BHOGAPURAM INTERNATIONAL AIRPORT CORPORATION LIMITED,
GOVERNMENT OF ANDHRA PRADESH.**

By

_____(Signature)

_____(Date)

_____(Place)

BHOGAPURAM INTERNATIONAL AIRPORT CORPORATION LIMITED,

Hyderabad – 500028 Phone:

Fax: _____

_____(Name)

_____ (Designation)

SIGNED, SEALED AND DELIVERED

For and on behalf of

OPERATOR by:

_____ (Signature)

_____ (Name)

_____ (Designation)

In the presence of

BANK GUARANTEE / PERFORMANCE SECURITY
[To be executed on the stamp paper of appropriate value]

BHOGAPURAM INTERNATIONAL AIRPORT CORPORATION LIMITED,

#10-2-1, 3rd Floor, FDC Complex,

AC Guards Hyderabad,

India -500028

WHEREAS:

- A. [] (“**Concessionaire**”) and the **BHOGAPURAM INTERNATIONAL AIRPORT CORPORATION LIMITED (“Authority”)** have entered into a Concession Agreement dated [] (“**Agreement**”), whereby the Authority has authorised the Concessionaire to undertake the construction, operation, maintenance and management of the Bhogapuram International Airport at Bhogapuram, in the State of Andhra Pradesh on DBFOT basis, subject to and in accordance with the provisions thereof.
- B. The Agreement requires the Concessionaire to furnish a Performance Security to the Authority in a sum of Rs. [] (Rupees [] Crore) (“**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, for a period of 7 (seven) years from the COD for the Phase [] of the Project.
- C. We, [] through our Branch at [] (“**Bank**”) have agreed to furnish this Bank Guarantee by way of Performance Security in terms of the Performance Security.

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

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

committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations under the Agreement and its decision in this regard shall be final and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.

3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/ or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. The Authority has the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid, or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would, but for this provision, have the effect of releasing the Bank from its liabilities and obligations under this Guarantee, and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for a period of 7 (seven) years from the COD for the Phase [] of the Project and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no later than 3 (three) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Security shall cease to be in force and effect after the expiry of a period of 42 months (forty two months) from the agreement data of the O&M contract, with a claim period of

3 (three) months thereafter. Upon request made by the Concessionaire for release of the Performance Security along with the particulars required hereunder, duly certified by a statutory auditor of the Concessionaire, the Authority shall release the Performance Security forthwith after the period of 3 (three) months from the date of expiry of this Guarantee.

9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course through post and in proving such notice, when given by post, shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of

the BANK by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

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

