



MINISTRY OF CIVIL AVIATION

অসম চৰকাৰ



GOVERNMENT OF ASSAM



AIRPORTS AUTHORITY OF INDIA

(Implementing Agency)

International Air Connectivity Scheme

– UDAN International

(July 2019)

Name of Selected Airline:

Address:

IAC Routes:

Selected Airline Agreement No.: /AAI/RCS/IACS-
2/ /2019 [A1]

**Rajiv Gandhi Bhawan,
Sri Aurobindo Marg, New Delhi
Delhi: 110003**



SECTION [●]

SELECTED AIRLINE AGREEMENT

This SELECTED AIRLINE AGREEMENT (“**Agreement**”) is entered into on this the _____ day of _____, _____ by and between:

1. **The Airports Authority of India** represented by its Chairman, acting as the Implementing Agency on behalf of the Ministry of Civil Aviation and having its office at Rajiv Gandhi Bhawan, Safdarjung Airport, New Delhi-110003 (hereinafter referred to as “**Authority**” or “**Implementing Agency**” which expressions shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns), on behalf of the Ministry of Civil Aviation, Government of India, as the Implementing Agency for the Scheme of the **ONE PART**;

AND

2. M/s _____, a _____ [duly incorporated] under (Indian) Companies Act, {1956/2013}, having its registered office at _____ (hereinafter referred to as the “**Selected Airline**” which expression shall unless repugnant to the context or meaning thereof include its successors and permitted substitutes) of the **SECOND AND FINAL PART**.

Each of the Authority and the Selected Airline shall hereinafter be referred to individually as a “**Party**” and collectively as the “**Parties**”.

WHEREAS

- (i) The Ministry of Civil Aviation, Government of India (“**MoCA**”) notified the International Air Connectivity Scheme on [●] (the “**Scheme**”) to stimulate international air connectivity from/ to select Indian states through the provision of financial support to airlines who fulfill the eligibility criteria set out in the Scheme, to operate IAC Flights on IAC Routes.
- (ii) The Authority has been appointed as the Implementing Agency for the Scheme by MoCA, and its functions include undertaking the selection and appointment of airlines in accordance with the Scheme.
- (iii) The Authority had further issued Notice Inviting Proposals for Selection of Airlines under the Scheme dated [●] (the “**Notice Inviting e-Proposals**” or “**NIP**”) under which it had accordingly invited proposals for operation of scheduled commercial flights under the Scheme, including the route specified in Schedule-A (the “**IAC Network**”).
- (iv) After evaluation of the proposals received for the IAC Network M/s. _____ had been selected as the Selected Airline.



- (v) The Authority in accordance with the provisions of the Scheme and the NIP has agreed accordingly to enter into this Agreement with the Selected Airline for the purposes of providing air services to passengers on the IAC Network subject to and in accordance with the terms and conditions set forth hereinafter.
- (vi) The Selected Airline has, on or prior to the date of this Agreement, provided to the Authority, the Performance Guarantee in accordance with the provisions contained in the NIP read with the Scheme.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and adequacy of which are hereby expressly acknowledged, the Parties, intending to be legally bound, hereby agree 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:

“**Aeronautical Information Publication**” means Manual of the Aeronautical Services issued by the Authority;

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

“**Air Services**” shall have the meaning as set forth in Clause 3.1 of this Agreement;

“**Applicable Laws**” means all laws, promulgated or brought into force and effect by the State Government, the Government of India or any Governmental Agency including rules, regulations, guidelines, bye-laws, circulars, notifications etc. 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;

“**Applicable Permits**” means all clearances, permits, authorizations, consents and approvals required to be obtained or maintained under Applicable Laws in connection with the performance of the Selected Airline’s obligations, including but not limited to the Air Services, during the subsistence of this Agreement.

“**Award**” shall have the meaning as set forth in Clause 19.3(a);



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

“**Commencement Date**” means the date specified in Schedule-A as the Commencement Date for the IAC Network or such other date as may be extended by the Implementing Agency from time to time;

“**DGCA**” means the Directorate General of Civil Aviation, Ministry of Civil Aviation, Government of India;

“**Dispute**” shall have the meaning as set forth in Clause 19;

“**Event of Default**” shall have the meaning as set forth in Clause 15;

[“**Financial Support**” means the financial assistance to be provided by the Authority to the Selected Airline in accordance with the Scheme and this Agreement;]

“**Force Majeure Event**” shall have the meaning as set forth in Clause 14.1;

“**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 airline 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 Air Services and which would be expected to result in the performance of its obligations by the Selected Airline and in the operation and maintenance of the Air Services in accordance with this Agreement, Applicable Laws, Applicable Permits, reliability, safety, environment protection, economy and efficiency;

“**Government Agency**” means any department, division or subdivision of the Government of India or the government of any State or Union Territory in India and includes any commission, board, authority, agency or municipal and other local authority or statutory body including panchayats under the control of the Government of India, as the case may be, and having jurisdiction over the Selected Airline or the performance of all or any of the services or obligations of the Selected Airline under or pursuant to this Agreement;

“**Government Indemnified Person**” shall have the meaning as set forth in Clause 10;

“**GST**” shall mean the goods and services tax levied in India or any other tax which replaces the goods and services tax in future;



“**IAC Flight**” shall have the meaning set out in the Scheme;

“**IAC Flight Capacity**” shall have the meaning set out in the Scheme;

“**IAC Network**” shall have the meaning as set forth in Recital (iii) of this Agreement;

“**IAC Route**” shall have the meaning set out in the Scheme;

“**INR**” shall mean the Indian Rupee(s);

“**MoCA**” shall have the meaning as set forth in Recital (i) of this Agreement;

“**Notice of Intention to Terminate**” shall have the meaning as set forth in Clause 17.3;

“**Notice Inviting Proposal**” or “**NIP**” shall have the meaning as set forth in Recital (ii) of this Agreement;

“**Parties**” shall have the meaning ascribed to it in the Preamble;

“**Passengers**” mean the passengers using the Air Services;

“**Performance Guarantee**” shall have the meaning as set forth in the Scheme;

“**Person**” shall be construed as a reference to any natural person, individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;

“**Proposal**” means the proposal submitted by the Selected Airline to the Authority in accordance with the Scheme and the NIP, pursuant to which this Agreement has been entered into;

“**Scheme**” shall have the meaning as set forth in Recital (i) of this Agreement;

“**Selection Process**” shall have the meaning set out in the NIP;

“**State Government**” shall mean the Government(s) of the State(s) of [●];

“**Taxes**” means any Indian taxes including GST, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on services incorporated in and forming part of this Agreement, charged, levied or imposed by any Government Agency, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever;



“**Termination**” means a termination of this Agreement in accordance with its terms but shall not, unless the context otherwise requires, include the expiry of this Agreement due to efflux of time in the normal course;

“**Termination Date**” means the date on which this Agreement is terminated by a Termination Notice;

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

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) Reference to bilateral Air Service Agreement (ASA) shall include the Air Service Agreement (if any) executed between India and the concerned country (to which the IAC Network pertains to);
- (c) 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;
- (d) 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);
- (e) 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;
- (f) 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; any capitalized term not defined herein shall have the meaning ascribed to them in the Scheme.
- (g) The Words “include” and “including” are to be construed without limitation;
- (h) 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;



- (i) Any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (j) Any reference to day shall mean a reference to a calendar day;
- (k) Any reference to month shall mean a reference to a calendar month;
- (l) Any reference to year unless the context otherwise requires shall mean the calendar year.
- (m) 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;
- (n) 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.
- (o) References to Preamble, Recitals, Articles, Clauses, Sub-clauses, Paragraphs, Schedules or Annex to Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to Preamble, Recitals, Articles, Clauses, Sub-clauses, Paragraphs, Schedules and Annex to Schedules of or to this Agreement;
- (p) 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;
- (q) 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;
- (r) unless otherwise expressly provided in this Agreement any documentation required to be provided or furnished by the Selected Airline to Authority shall be provided free of cost and in three copies and on a computer CD/pen drive 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;
- (s) In the event of any dispute in respect of interpretation of any clause of the Agreement, the decision of Authority 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 Republic of India 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 in case(s) of errors/discrepancies

- (a) The terms of the Scheme as amended and updated up to the date of submission of Proposal by the Selected Airline are deemed to be incorporated into this Agreement. This Agreement and the Scheme are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and the Scheme shall, in the event of any conflict between them, be in the following order:
 - (i) This Agreement; and
 - (ii) The Scheme.
- (b) In case of ambiguities or discrepancies within this Agreement the following shall apply:
 - (i) 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;
 - (ii) Between the Clauses and the Schedules, the Clauses shall prevail save as otherwise expressly set forth in this Agreement;
 - (iii) Between any two Schedules, the Schedule relevant to the issue shall prevail; and
 - (iv) Between any value written in numerals and that in words, the latter shall prevail.
- (c) In the event of any conflict between this Agreement and the Applicable Laws, the Applicable Laws shall prevail over this Agreement.

2. TERM

This Agreement shall become effective from [*the date hereof*] and shall expire on the date which is 3 (three) years from the Commencement Date.



3. PROVISION OF AIR SERVICES

3.1 The Selected Airline shall, commencing from the Commencement Date:

- (a) schedule and operate commercial flights on the IAC Network at a weekly frequency set out in Schedule-A; and
- (b) utilize the aircraft set out in Schedule-A and having the seating capacity set out in Schedule-A for the flights referred to in Clause 3.1 (a) above,

in each case, in accordance with the provisions of this Agreement and the Scheme (collectively, the “Air Services”).

3.2 The Selected Airline shall be entitled to change the deployed capacity pursuant to the provisions under Section 3.9 of the Scheme.

4. PERFORMANCE GUARANTEE

4.1 The Selected Airline has submitted to the Authority, a Performance Guarantee prior to the execution of this Agreement.

4.2 After the commencement of IAC Flight operations, the Selected Airline shall be entitled to replace its Performance Guarantee with another Performance Guarantee of an amount equivalent to 5% (five percent) of the total Financial Support amount to be provided to such Selected Airline or Rs 5 lakhs, whichever is higher, in the first year of its operations and for the same validity period. In such a case, the Authority shall return the previously submitted Performance Guarantee within a period of seven (7) days to the Selected Airline.

4.3 The Performance Guarantee submitted by the Selected Airline may be encashed and appropriated by the Authority in full or in part, upon occurrence of the events specified in Clause 15.

4.4 Upon appropriation of the Performance Guarantee by the Authority pursuant to Clause 4.3 above, the Selected Airline shall replenish the Performance Guarantee within 7 (seven) days from the date of appropriation, failing which the Authority shall, in its sole discretion, be entitled to terminate this Agreement and encash the balance amount of Performance Guarantee, if any.

4.5 Subject to Clauses 4.2 and 4.4, the Authority shall return to the Selected Airline, the balance amount of the Performance Guarantee available with it on the earlier of: (a) the date which is 1 (one) year from the Commencement Date; or (b) termination of this Agreement in accordance with Clause 16 or Clause 17.



5. OBLIGATIONS OF THE SELECTED AIRLINE

5.1 The Selected Airline shall, at its own cost and expense, undertake, comply with and perform in addition to and not in derogation of its obligations elsewhere set out in this Agreement, the following:

- (a) obtain a valid letter of designation for providing air transport services on the IAC Network from the concerned authority as per AIC 03 of 2017 issued by DGCA before commencement of operations under the Scheme;
- (b) provide the Air Services in accordance with Applicable Laws, bilateral Air Service Agreements, Applicable Permits, Good Industry Practice, and in accordance with the rules and regulations, guidelines and directions of all Government Agencies, including without limitation, the DGCA;
- (c) procure, renew and maintain in full force and effect, all Applicable Permits, and all agreements and documents necessary for the performance of its obligations under this Agreement;
- (d) pay all Taxes, levies, duties, cess and all other statutory charges, dues, assessments or outgoings payable by it under Applicable Laws in respect of the services to be performed by it and obligations to be complied by it under this Agreement;
- (e) keep the aircraft and crew in a state of readiness to ensure that the declared flying schedule is strictly adhered to;
- (f) adhere to the safety standards as per the Good Industry Practice and more specifically as per rules, regulations and directions of the DGCA, Bureau of Civil Aviation Security and Directorate of Civil Aviation, and in accordance with the requirements of the bilateral Air Service Agreements (if any).
- (g) make adequate arrangements for, and where necessary, coordinate with the airport operators for adequate provision of various facilities in accordance with Applicable Laws, Applicable Permits, Good Industry Practice, and in accordance with the rules and regulations, guidelines and directions of all Government Agencies.
- (h) obtain and maintain in full force and effect, all insurances in accordance with the provisions of this Agreement and Good Industry Practice;
- (i) provide non-discriminatory, safe, punctual and efficient services to the Passengers;
- (j) make available a web based application for providing online booking service for Passengers. All such bookings shall be made through secure

online payment system at least permitting the use of credit/debit card with a facility to revert payment online if the flight / ticket is cancelled;

- (k) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of the its obligations under this Agreement;
- (l) maintain its books and records in accordance with Applicable Laws including without limitation, directions of the DGCA;
- (m) comply with the requirements of the Scheme in letter and spirit;
- (n) The Integrity Pact signed by the Selected Airline as a part of its Bid under the NIP shall be deemed to be a part of this Agreement and therefore the Selected Airline shall abide by its obligations under the Integrity Pact; and
- (o) The provisions on Fraud and Corrupt practice
- (p) Clause 25 of the NIP shall be deemed to be a part of this Agreement and the Selected Airline shall at all times comply with its provisions.

6. OBLIGATIONS OF AUTHORITY

Authority shall undertake, comply with and perform in addition to and not in derogation of its obligations elsewhere set out in this Agreement, its obligation to make payment of Financial Support to the Selected Airline in accordance with Annex-I of Schedule-A within 30 (thirty) days from the receipt of the invoice from the Selected Airline along with necessary evidences as mentioned in Clause 12 of this Agreement.

7. REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of the Selected Airline

The Selected Airline represents and warrants to Authority that:

- (a) it is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) 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;

- (d) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (e) the information furnished in the Proposal submitted by it is true and accurate in all respects as on the date of this Agreement;
- (f) 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;
- (g) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (h) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Agency which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (i) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material and adverse effect on its ability to perform its obligations under this Agreement;
- (j) 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 fee, commission or otherwise in the course of the Selection Process or for entering into this Agreement or for influencing or attempting to influence any officer or employee of Authority in connection therewith; and
- (k) it has received a copy of the relevant bilateral Air Service Agreement, and has examined and understood the contents thereof.



7.2 Representations and Warranties of the Authority

The Authority represents and warrants to the Selected Airline that:

- (a) It has taken all necessary actions to execute, deliver and perform his Agreement; and
- (b) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof.

8. 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 within 3 (three) days of such occurrence or circumstance. 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.

9. DISCLAIMER

- 9.1 The Selected Airline acknowledges that prior to the execution of this Agreement, the Selected Airline has after a complete and careful examination made an independent evaluation of likely revenue from the Air Services 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 Selected Airline in the course of performance of its obligations hereunder.
- 9.2 The Selected Airline 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, MoCA or the State Government(s) shall not be liable for the same in any manner whatsoever to the Selected Airline or any other Person.

10. INDEMNITY

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



breach or default of this Agreement on the part of the Government Indemnified Persons.

11. INSURANCE

The Selected Airline shall effect and maintain, or cause to be effected and maintained, at no cost to Authority during the term of this Agreement such insurance as is commensurate with prevailing Applicable Laws and Good Industry Practice.

12. REPORTING OBLIGATIONS OF THE SELECTED AIRLINE

12.1 The Selected Airline will be required to submit following information to the Implementing Agency to enable the Implementing Agency to monitor adherence to the terms and conditions under this Agreement:

- (i) Flight operation details in accordance with the relevant provisions in connection with provision of statistics under the relevant bilateral Air Service Agreement with the concerned country; and
- (ii) Scheme specific information as specified in Schedule-B.

13. AUDIT

13.1 The Authority at its sole discretion may have an independent auditor conduct an audit on the Selected Airline to ascertain, *inter alia*, whether or not the Selected Airline is in compliance with its obligations under this Agreement and the Scheme.

13.2 The Selected Airline shall extend all possible cooperation to the independent auditor and provide to the independent auditor, all records, information and documents as may be required by the independent auditor for conducting an audit on the Selected Airline.

13.3 The Selected Airline shall maintain all records, information and documents in connection with its operations under this Agreement for a period of at least 3 (three) years after the expiry of this Agreement. This Clause 13.3 shall survive the Termination of this Agreement.

13.4 In case the independent auditor determines that the Selected Airline is in non-compliance with its obligations under this Agreement, the Selected Airline shall be provided 15 (fifteen) days to remedy the same.

13.5 If the Selected Airline fails to remedy the default in the time period stipulated above in Clause 13.4, it shall intimate the Authority in writing, of the reasons for such failure. If the Authority deems such explanation to be satisfactory, it reserves the right to grant reasonable time to the Selected Airline to comply with its obligations under this Agreement.



13.6 If the Authority deems, at its sole discretion, that the reasons provided for such non-compliance are not satisfactory or if the Selected Airline continues to be in default even after being provided such extended time as mentioned in Clause 13.5 above, the Authority reserves the right to forthwith terminate the Agreement in accordance with Clause 16 and 17.

14. FORCE MAJEURE

14.1 The Selected Airline shall be entitled to suspend the performance of its obligations under this Agreement to the extent that it is prevented from performing its obligations by an event of Force Majeure (a “**Force Majeure Event**”).

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

- (i) Materially and adversely affects the performance of an obligation;
- (ii) Situation is beyond the reasonable control of the Selected Airline;
- (iii) The Selected Airline could not have prevented or reasonably overcome with the exercise of Good Industry Practice or reasonable skill and care; and
- (iv) Does not result from the negligence or misconduct of the Selected Airline or its failure to perform its obligations hereunder.

14.3 Force Majeure Event includes the following events and/ or circumstances to the extent that they or their consequences satisfy the requirements set forth in Clause 14.2:

- (i) After the Commencement Date, if any airport on the IAC Network becomes unusable for flight operations by the Selected Airline;
- (ii) War (whether declared or undeclared), invasion, armed conflict or act of foreign enemy;
- (iii) Revolution, riot, insurrection or other civil commotion, act of terrorism or sabotage;
- (iv) Nuclear explosion, radioactive or chemical contamination or ionizing radiation, unless the source or cause of the explosion, contamination, radiation or hazard happens due to any act of the Selected Airline or any Affiliate of the Selected Airline or any sub-contractor of the Selected Airline or any of their respective employees, servants or agents;

- (v) Strikes, working to rule, go-slows and/or lockouts which are in each case widespread, nationwide or political but excluding strikes by the employees or personnel of the Selected Airline;
- (vi) Any effect of the natural elements, including epidemic or plague, lighting, fire, earthquake, heavy rains, tidal wave, flood, storm, cyclone, typhoon or tornado;
- (vii) Explosion (other than a nuclear explosion or an explosion resulting from an act of war);
- (viii) Any event or circumstances of a nature analogous to any events set forth in paragraphs (i) to (vii) of this Clause.

14.4 Procedure for Force Majeure

14.4.1 If the Selected Airline claims relief on account of a Force Majeure Event, it shall, immediately on becoming aware of the Force Majeure Event, give notice of and describe in detail:

- (i) That the Force Majeure Event(s) that has occurred;
- (ii) The obligation(s) affected;
- (iii) The dates of commencement and estimated cessation of such Force Majeure Event;
- (iv) The manner in which the Force Majeure Event(s) affects its ability to perform its obligation(s) under this Agreement; and
- (v) The nature and extent of relief sought if any, the Selected Airline shall not be able to suspend or excuse the non-performance of its obligations hereunder unless it has given the notice specified above.

14.4.2 The Selected Airline 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 Selected Airline, to the extent it is prevented from performing its obligations 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.

14.4.3 The time granted for performance of any obligation or compliance and for the exercise of any right by the Selected Airline, 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 Selected Airline to achieve the level of activity prevailing before the event of Force Majeure Event.

- 14.4.4 The Selected Airline shall bear its own costs, if any, incurred as a consequence of the Force Majeure Event.
- 14.4.5 The Authority shall, if it wishes to dispute the claim, give a written notice of dispute to the Selected Airline 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, the Authority shall be deemed to have accepted the validity of the claim. If the Authority disputes a claim, the Parties shall follow the procedures set forth in Clause 19 regarding dispute settlement.
- 14.4.6 It is clarified that the term of the Agreement 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 Selected Airline to achieve the level of activity prevailing before the event of Force Majeure Event.

14.5 Mitigation

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

15. EVENT OF DEFAULT

15.1 For the purposes of this Agreement, each of the following events or circumstances, to the extent not caused by a breach or default of the Authority or Force Majeure Event, shall be considered, as Events of Default (the “**Event of Default**”) which, if not remedied within the cure period, if any, set out below shall provide Authority the right to terminate this Agreement in accordance with Clause 17.3:

- (a) Failure by the Selected Airline to operate at least seventy percent (70%) of the flights scheduled by the DGCA continuously for a period of 3 (three) months or for an aggregate period of 4 (four) months within a continuous period of 6 (six) months;
- (b) Any breach of Sub-clauses 3.1 (b) of this Agreement;
- (c) Any other breach by the Selected Airline 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 Selected Airline to remedy the same;

- (d) any representation, warranty, information or statement of the Selected Airline contained in this Agreement, the Selected Airline's Proposal, or otherwise provided by the Selected Airline to the Authority is found to be materially false, incorrect or misleading at the time it was made or the Selected Airline is at any time hereafter found to be in breach of the representations and warranties made under this Agreement;
- (e) a breach by the Selected Airline of the NIP or the Scheme;
- (f) the Selected Airline is ordered to be wound up by a court, filing of a petition for voluntary winding up by the Selected Airline, or levy of an execution or restraint on the Selected Airlines assets, or appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of Selected Airline by a court of competent jurisdiction;
- (g) the Selected Airline is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Selected Airline or for the whole or material part of its assets that has a material bearing on its ability to perform its obligations under this Agreement;
- (h) the Selected Airline 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 and adverse effect on the ability of the Selected Airline to perform its obligations hereunder;
- (i) the Selected Airline doing or permitting to do any act, matter, deed or thing in violation of Applicable Law and/or Applicable Permits 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 Selected Airline to remedy the same; and
- (j) an application for commencement of corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 against the Selected Airline has been admitted before the relevant National Company Law Tribunal;
- (k) failure to commence operations from the Commencement Date.

15.2 In the event that the Selected Airline commits the default set out in Clause 15.1 (b) above, the Authority shall, without prejudice to its other rights and remedies

hereunder or in law, be entitled to not make payment towards the Financial Support to the Selected Airline for the IAC Flight in respect of which the default occurred.

16. TERMINATION EVENTS FOR SELECTED AIRLINE

For the purposes of this Agreement, each of the following events or circumstances, to the extent not caused by a breach or default of the Selected Airline, shall entitle the Selected Airline the right to terminate this Agreement:

- (a) *[The Authority does not make payment towards Financial Support to the Selected Airline in accordance with this Agreement for 2 (two) consecutive months;]*
- (b) Any exemption (provided under the Scheme, if any) is withdrawn, revoked or cancelled, and: (i) is not restored within 60 (sixty) days, or (ii) the Authority or the relevant State Government has not, at its option, adequately compensated the Selected Airline for the loss of such exemption. Any concessions offered by Airports Authority of India, at its sole discretion, will not fall under the ambit of this Clause.

17. TERMINATION

17.1 Notwithstanding anything contained under this Agreement or the NIP:

- (a) the Authority may, due to unforeseen or exceptional circumstances or due to factors beyond the control of the Authority or MoCA, terminate this Agreement without any liability on the Authority, MoCA, the relevant State Government(s) or the relevant airport operator towards the Selected Airline in tort, contract or otherwise, provided that this Clause shall not relieve the Authority from its obligation to make any payments to the Selected Airline which had become payable at the time of such termination;
- (b) the Selected Airline may, at any time after the expiry of one (1) year from the Commencement Date, terminate this Agreement without any liability towards the Authority in tort, contract or otherwise, provided that this Clause shall not relieve the Selected Airline from its obligations prior to such termination;

17.2 Upon a termination under Clause 16, or Clause 17.1 above, this Agreement shall terminate with immediate effect, and the Authority shall return to the Selected Airline, the Performance Guarantee provided that the Authority shall be entitled to appropriate the Performance Guarantee for breaches of the Selected Airline prior to such termination. Provided that the Authority shall not encash and/or appropriate the Performance Guarantee submitted by the Selected Airline only if a breach or non-performance of the obligations of Selected Airline has substantially been caused by any of the events specified in Clause 16 hereof.

- 17.3 Without prejudice to any other rights or remedies which the Authority may have under this Agreement or Applicable Law, upon the occurrence of an Event of Default, the Selected Airline shall be liable for the breach caused and consequences thereof and the Authority shall have the right to issue a notice expressing its intention to terminate this Agreement to the Selected Airline (the “**Notice of Intention to Terminate**”). Upon the issuance of a Notice of Intention to Terminate, the Selected Airline shall have the right to represent against such notice to the Authority 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 Authority considers it appropriate to allow curing of the default it will give such period as it may consider appropriate to cure, failing which the Authority may terminate the Agreement by issuing a Termination Notice. On the event of failure on the part of Selected Airline to cure the breach or default in specified time limit as specified by the Authority, the Agreement shall stand terminated on the expiry of such period.
- 17.4 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 Selected Airline under this Agreement including any Event of Default, the Authority shall be entitled to appropriate part or whole of the Performance Guarantee (as it deems appropriate) and to terminate this Agreement by a communication in writing to the Selected Airline, if it has failed to cure such breach or default within the period provided for in the notice.
- 17.5 If a Force Majeure Event continues for: (a) a continuous period of 90 (ninety) days or (b) an aggregate period of 180 (one hundred eighty) days within a continuous period of 365 (three hundred sixty five) days, either Party may terminate this Agreement.
18. **ASSIGNMENT**
- 18.1 The Selected Airline shall be permitted to assign its rights and obligations under this Agreement to any other airline satisfying the provisions under the Section 3.2.1 in the Scheme for operations through a similar type of aircraft as required under this Agreement. Provided that the Selected Airline shall only be entitled to assign its rights and obligations under this Agreement in accordance with this clause if it has completed at least six (6) months of providing Air Services in accordance with this Agreement from the Commencement Date.
- 18.2 In the event of a merger of the Selected Airline with another entity, the successor entity pursuant to such merger shall be permitted to operate as the Selected Airline under this Agreement, provided that such successor entity continues to satisfy the provisions under the Section 3.2.1 of the Scheme and submits a written undertaking to the Authority to perform the Selected Airline’s obligations under this Agreement.



19. DISPUTE 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.

19.1 Amicable Settlement

In the event of any Dispute between the Parties, either Party may call upon the other Party to resolve the issue raised in the Dispute and arrive at an amicable settlement thereof. Each Party shall nominate a responsible person to resolve the issue through amicable settlement within a period of 30 (thirty) days.

19.2 Arbitration

- (a) Any Dispute, which is not resolved amicably, as provided above, shall be finally decided by reference to arbitration through an Arbitral Tribunal comprising of Sole Arbitrator to be mutually appointed by the Parties, and if not agreed within 30 (thirty) days, 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.
- (b) The place of arbitration shall be New Delhi and the language of the arbitration shall be English.

19.3 Arbitration Awards to be binding

- (a) The Selected Airline 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 Selected Airline and Authority agree that an Award may be enforced against the Selected Airline and the Authority as the case may be.
- (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.



20. INSPECTION

The Selected Airline 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.

21. GOVERNING LAW

This Agreement shall be construed and interpreted in accordance with the Laws of India.

22. MISCELLANEOUS

22.1 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.

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

22.3 In case, it is found after the execution of this Agreement and during the period of subsistence thereof, that one or more of the eligibility conditions have not been met by the Selected Airline, or the Selected Airline has made material misrepresentation, or has given any materially incorrect or false information, this Agreement shall, notwithstanding anything to the contrary contained therein, be liable to be terminated, by a communication in writing by Authority to the Selected Airline, as the case may be, without the Authority being liable in any manner whatsoever to the Selected Airline. In such an event, Authority shall be entitled to encash and appropriate the Performance Guarantee without prejudice to any other right or remedy that may be available to Authority.

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



22.5 The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 10 (ten) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 4% (four per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof. Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis and shall be compounded on the basis of quarterly rests.

23. SURVIVAL

- (a) Termination of this Agreement (a) shall not relieve the Selected Airline 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.
- (b) All obligations surviving the cancellation, expiration or Termination of this Agreement shall only survive for a period of 5 (five) years following the date of such Termination or expiry of this Agreement.

24. NOTICES

- 24.1** 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 in the case of the Selected Airline, 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 Selected Airline may from time to time designate by notice to the Authority, and in the case of Authority, be given by letter and be addressed to the Director of the Authority.
- 24.2** Copies of all notices shall also be sent by facsimile and by registered acknowledgement due pre-paid post or courier.

25. SEVERABILITY

If for any reason whatsoever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing on 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.

26. 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.

27. 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.

28. EXCLUSION OF IMPLIED WARRANTIES

This Agreement expressly excludes any warranty, condition or other undertaking implied by 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.

29. COUNTERPARTS

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

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

Airports Authority of India, acting as the Implementing Agency for MoCA

by:

Signature _____

Name _____

Designation _____

Address _____

Phone No _____



Fax No _____

Signed, Sealed and Delivered

For and on behalf of [_____] by:

Signature _____

Name _____

Designation _____

Address _____

Phone No _____

Fax No _____

Signed, Sealed and Delivered

In the presence of:

1. _____

2. _____



SCHEDULE-A
(Refer to Clause 3)

1. The Selected Airline shall schedule and operate commercial flights under this Agreement in accordance with the mechanism set out below:

- (a) Details of the IAC Network

Route(s)	Financial Support per Passenger Seat (in INR)	Number of Passenger Seats per IAC Flight for Financial Support

- (b) The Selected Airline shall deploy [*aircraft type*] for provision of flight services;
- (c) The Commencement Date¹ shall be within 6 months from the issue of letter of award [•];
- (d) The IAC Flight Capacity shall be [•];
- (e) The Selected Airline shall operate [•] flights per week;

¹ As per the Scheme provisions, the Selected Airline is required to commence operations on IAC Network within a period of 180 days from the issuance of Letter of Award.



Annex I to Schedule-A

Payment of Financial Support

(Refer Clause 6)

1. For the sanction of monthly Financial Support payment, the Selected Airline shall submit to the Authority, the following information for the previous month by the 7th (seventh) day of every month:
 - (a) flight operation details in accordance with the relevant provisions in connection with provision of statistics under the relevant bilateral Air Service Agreement with the concerned country;
 - (b) information as required under Schedule-B; and
 - (c) any other information in connection with the compliance of the provisions of this Agreement as may be required by the Authority.
2. The Authority shall scrutinize the information received by it from the Selected Airline under paragraph 1 above for the purposes of ascertaining whether the Selected Airline has complied with the conditions set forth in this Agreement.
3. The Financial Support shall be disbursed by the Authority to the Selected Airline only for the passenger seats which remain unsold at the time of IAC Flight operations out of the total Number of Passenger Seats for which Financial Support has been committed under this Agreement, as mentioned in Schedule A of this Agreement, for every IAC Flight operated on the IAC Network during the previous month, after adjustments for any defaults committed by the Selected Airline under this Agreement or unless there is any change in deployed capacity as per the provisions under Section 3.9 of the Scheme.
4. [The Authority shall disburse the Financial Support amount due and payable to the Selected Airline in the bank account number [] maintained with [] Bank at [] branch not later than 21st (twenty first) day of every month.



SCHEDULE-B Reporting Obligation

(Refer Clause 12.1)

IAC Route	Scheduled Date	Operated / Cancelled	Flight Number	Aircraft Registration	Departure Details	Arrival Details	Total Seats Sold	Number of Passenger Carried
					<Date, Time>	<Date, Time>		

Self-Declaration by SAO:

"It is hereby certified that in pursuance to the Selected Airline Agreement executed by us on date (*Date of the agreement*) vide (Reference of the agreement) to operate IAC Flight on the IAC Network (*specify the network*), we have complied with provisions set forth in the above mentioned agreement and never defaulted of our duties and responsibilities as reflected in clause 15 of the agreement for the billing period of (*mention the billing period*)."