F. No. 2/5/2018-PPP
Ministry of Finance
Department of Economic Affairs
(PPP Cell)

North Block, New Delhi
Dated 13th December, 2018

OFFICE MEMORANDUM

Subject: Record of Discussion of the 85th Meeting of Public Private Partnership Appraisal Committee (PPPAC) for leasing out six airports of Airport Authority of India (AAI) through PPP mode

The undersigned is directed to enclose a copy of Record of Discussion of the 85thPPPAC Meeting for leasing out of six airports of Airport Authority of India (AAI) through PPP mode held on 11.12.2018 under the chairmanship of Secretary (Economic Affairs), Ministry of Finance for information and necessary action.

Encl: as stated above

(Manoj Kumar Madholia)
Deputy Director (PPP)

To,

1. CEO, NITI Aayog, Sansad Marg, New Delhi
2. Secretary, Ministry of Civil Aviation, Rajiv Gandhi Bhawan, New Delhi
3. Secretary, Department of Expenditure, North Block, New Delhi
4. Secretary, Department of Legal Affairs, Shastri Bhawan, New Delhi
5. Chairman, Airport Authority of India, Rajiv Gandhi Bhawan, New Delhi

Copy to:

1. Sr. PPS to Secretary (EA)
2. PPS to JS (IPF)

F. No. 2/5/2018-PPP
Ministry of Finance
Department of Economic Affairs
PPP Cell

Record of Discussion of 85th Meeting of Public Private Partnership Appraisal Committee held on 11 December, 2018 for leasing out of six airports of Airport Authority of India (AAI) through PPP mode

The 85th Meeting of Public Private Partnership Appraisal Committee (PPPAC) for leasing out of six airports of Airport Authority of India (AAI) through PPP mode, chaired by Secretary, EA was held on 11.12.2018. The list of participants is annexed. It was decided that the PPPAC would consider Ministry of Civil Aviation's proposal for leasing out six airports of Airport Authority of India (AAI) through PPP mode for grant of in-principle and final approval.

1. Proposal from Ministry of Civil Aviation

Proposal for Operation, Management and Development (OMD) of 6 Airports viz Ahmedabad, Jaipur, Lucknow, Guwahati, Thiruvananthapuram & Mangaluru of Airports Authority of India (AAI) through PPP mode

Ministry of Civil Aviation (MoCA) submitted PPPAC memo, draft RFP and Project Reports for Operation, Management and Development of Six Airports, under PPP model to DEA on 06.12.2018 for "In principle" and "Final Approval" of the said project. The Draft Concession Agreement (DCA) was submitted on 07.12.2018.

2. As per the Guidelines for Formulation, Appraisal and Approval of Central Sector Public Private Partnership Projects (PPPAC Guidelines), PPPAC should consider the proposal for "in-principle" approval within three weeks from the time of submission of the proposal by the Administrative Ministry. Further, the Guidelines allow three more weeks after submission of final documents by the Administrative Ministry for "final approval". However, the PPPAC agreed to consider the proposal in the limited time considering the nature of project, tight time-table which Ministry of Civil Aviation is pursuing in this case and as decided in the meeting of Empowered Group of Secretaries (EGoS). Appraisal Note of DEA and NITI Aayog (annexed) were circulated on 10.12.2018 to PPPAC members. However, the quality and the rigour of the examination was not at all compromised.

3. Secretary, MoCA submitted that PPPAC Memo, DCA, draft RFP and Project Report are submitted for "in principle" and "Final Approval" of the PPPAC. JS (IPF) pointed out to the time-table as contained in the PPPAC Guidelines (para 6.3). Adviser (NITI Aayog) clarified that there is no duly approved MCA for brownfield airports. Upon request, the PPPAC decided, for the reasons explained above, to consider the proposal for both 'in-principle' and 'final approval'.

4. It was also clarified that after PPPAC's appraisal, the competent authority for approval of project is decided on the basis of the Total Project Cost (TPC) in light of the D/o Expenditure Guidelines which state that for project cost of more than Rs. 1,000 crore, competent authority for approval will be the Cabinet Committee on Economic Affairs

(CCEA). For projects having TPC between Rs. 500 crore and Rs.1,000 crore, approval of the Finance Minister and the Minister of Line Ministry is necessary.

5. Thereafter, all the issues which PPPAC is required to discuss were taken up. PPPAC decided not to examine the matters which were already decided by the EGoS in its meetings held on 17.11.2018 and 04.12.2018 unless there is an apparent deviation from the PPPAC Guidelines.

6. Regarding eligible projects, the draft RfP submitted by AAI states that "*Subject to the provisions of Clause 2.2 and Clause 3.2.2, projects undertaken in the infrastructure sub-sectors set forth in the Harmonized Master List of Infrastructure Sub-sectors issued by the Department of Economic Affairs,....... would qualify as eligible projects ("Eligible Projects").* While, the Harmonized Master List of Infrastructure includes all infrastructure sub-sectors (including those not related to airports and also include some sectors like soil testing labs which might require only much small amounts to be invested), it was agreed that critical element in all infrastructure sectors which is relevant for present proposal is that these all involve construction and operation of facility and that makes it quite suitable that experience in all infrastructure projects may be considered appropriate. It was also recognised that eligibility criterion as proposed require a single project to be of at least Rs. 1400 crore and therefore small projects' experience would not actually count. Finally, it was felt that segregating infrastructure projects would be too tedious and would hardly add value. It is also pertinent to mention that EGoS had already decided that "*Prior airport experience may neither be made a pre-requisite for bidding, nor a post-bid requirement. This will enlarge the competition for brownfield airports which are already functional.*" Therefore, it was decided to keep the experience in all infrastructure sub-sectors as per the Harmonised Master List unchanged.

7. On Technical Capacity for qualification, AAI stated that the Bidder shall, over the past 7 (seven) financial years preceding the Bid Due Date, have: (i) paid for, or received payments for, construction of Eligible Projects; and/or (ii) paid for development of Eligible Project(s); and/or (iii) collected and appropriated revenues from Eligible Project(s), such that the amount is equal to or more than: (i) 80% of Rs. 3,500 Crore in case of one Eligible Project; or (ii) 50% of Rs. 3500 Crore in each case of two Eligible Projects; or (iii) 40% of Rs. 3,500 Crore in each case of three Eligible Projects. Since 80% of Rs.3,500 crore does not add up to Rs.3,500 technical capacity threshold, after deliberations, it was decided that 80% be increased to 100% in case of one Eligible project.

8. On the rationale of Rs.3,500 crore as technical capacity threshold and Rs.1,000 crore as financial capacity threshold, AAI explained that as per Model RfQ of D/o Expenditure, technical experience should be twice the TPC and financial capacity should be one-fourth of TPC. However, in this case, it is not possible to work out the TPC over the proposed concession period of 50 years. Taking into account the estimated CAPEX to be incurred by the Concessionaire for Phase-I along with the amount to be reimbursed to the Authority by Concessionaire (estimated AAI RAB in the table below), technical and financial capacity as given in the table below have been worked out. EGoS, in its meeting held on 17/11/2018 has also decided that no restriction needs to be placed on the number of airports to be bid for or to be awarded to a single entity. In view of this decision, AAI stated that, although as per Model RfQ, financial capacity required in terms of net worth in none of the airports should be more than Rs. 500 crore, it has been increased to Rs. 1,000 crore.

Rs. in crore

Name of the Airport (1)	Estimated AAI RAB (2)	Estimated CAPEX by Concessionaire (Phase-I) (3)	Estimated Investment by Concessionaire (4)	Technical Capacity - Twice of (4)	Financial Capacity - 25% of (4)
Jaipur	365	1,473	1,838	3,676	460
Lucknow	583	1,090	1,673	3,346	418
Guwahati	823	684	1,507	3,014	377
Ahmedabad	384	1,320	1,704	3,408	426
Mangaluru	363	1,119	1,482	2,964	371
Trivandrum	400	413	813	1,626	203

RAB: Regulatory Asset Base

9. Adviser (NITI Aayog) felt that in case of Trivandrum Airport, a technical capacity criterion of Rs. 3,500 crore appears to be quite high. Secretary, MoCA explained that to maintain uniformity and for simplification of the Bid Procedure, AAI should go ahead with the same criteria for all Airports. PPPAC agreed with this and decided to keep it as proposed by MoCA.

10. It was also clarified that as decided in the first meeting of EGoS held on 17.11.2018, single stage bidding with two envelope system is to be done keeping in view the requirement to complete the transaction by 28.02.2019.

11. JS(IPF) suggested that TPC should be estimated upfront since it helps in framing the eligibility criteria in terms of Technical Capacity and Financial Capacity and other financial covenants such as bid security, performance security, etc. Secretary (MoCA) clarified that it is not possible to work out the TPC over the proposed concession period of 50 years. Additionally, It would depend on the view taken by concessionaire on the basis of demand. Further, Secretary (MoCA) stated that termination payments are taken care of in a unique manner in the proposed transaction and not in terms of TPC as done in the past PPP projects. Secretary (EA) agreed with the view expressed by MoCA, further adding that there is no one size fits all strategy and necessary justifiable changes should be done to suit this innovative model.

12. On the issue of Termination Payment (*as defined in DCA*), AAI stated that Termination Payment is an amount equal to the lower of (a) or (b). *Here (a) will be sum of Amount of depreciated Deemed Initial Regulatory Asset Base (RAB) and Depreciated value of (i) investment by the Concessionaire in any Aeronautical Assets post COD, as considered by the Regulator, (ii) any additional Aeronautical Assets which may have been constructed, acquired or installed by the Concessionaire after the latest tariff determination of Aeronautical Charges by the Regulator, (iii) depreciated book value of the investment in Non-Aeronautical Assets, not being assets forming part of City Side Development, using the overall asset value & allocation ratio between Aeronautical Assets and Non-Aeronautical Assets, (iv) depreciated book value of all Project Assets forming part of the City Side Development in the books of the Concessionaire; & (v) actual costs, as assessed by the Independent Engineer, incurred by the Concessionaire in the works-in-progress handed over to the Authority by the Concessionaire as on the Transfer Date. Here (b) will be sum of the replacement values of the assets set out in sub-clause (a) above, as determined by an Approved valuer, who shall be selected and appointed by the Authority.* On this issue, Adviser (NITI Aayog) pointed that AERA will take care of (i), (ii) and (iii) above, but (iv)

and (v) are open ended. After discussion, it was decided that for the purpose of Termination Payment, (iv) and (v) will be combined and then assessed by the Approved valuer, who will be selected and appointed by the Authority.

13. AAI also explained that as per clause *37.3 of DCA*, upon Termination on account of Authority Default, the Authority shall pay to the Concessionaire an amount equal to 115% of the Termination Payment and on account of Concessionaire Default, the Authority shall pay to the Concessionaire an amount equal to 65% of the Termination Payment (*less Insurance Cover*). Secretary (EA) agreed that although termination payment are usually defined in terms of debt in earlier MCAs, it will be better in this case to link it to the assets as the Debt Equity Ratio is not constant over the Concession Period and may not actually be meaningful after some time. Moreover, assets represent better link to fairness of what needs to be paid. After deliberations and discussion, it was decided to revise the Termination Payment to 120% of the Termination Payment (if Authority Defaults) and 70% of Termination Payment (*less Insurance Cover*) (if Concessionaire Defaults).

14. JS (IPF) suggested that the land available for City Side Development should be capped at 5% of the total available land for development of airport. MoCA and Secretary (EA) felt that capping the land for city side development may lead to under-utilization of land and Concessionaire should be able to utilize the remaining land for city side development which is not required for Airport facilities. The available land as a proportion of the airport land was also looked at. It was found that such land is ranging between 3% to 9% only. It was also confirmed by AAI that land proposed to be reserved for airport side would be sufficient to accommodate future airport expansion or there is a need for land acquisition. It was therefore decided not to restrict city side development to 5% of the total land and entire available land was decided to be offered for city side development.

15. The mode of return of land and building on city side development after the concession period was also discussed. JS (IPF) suggested that all assets should be returned back to the Authority free of cost. During the discussion, there was overwhelming support for the proposal that all Aeronautical Assets should come back free of cost to the Authority and depreciated value of assets can be paid for the assets created for city side development (except land). After deliberations, it was decided that only 50% of the value of the assets created in the initial 30 years for city side development may be paid for by the Authority after the Concession period. Value can be assessed in the same way as in case of termination payment.

16. The proposed arrangement that at least 60% of the Employees would be transferred to the Concessionaire for three years while up to 40% of the employees would be retained by AAI was also agreed to.

17. JS (IPF) mentioned that Model RfQ limits the percentage of the shareholding to 5% in case of conflict of interest, which has been revised to 20% in this case. AAI clarified that as per Companies Act, 2013, Associate/Associate Company means the company which has at least 20% of total Share Capital. Model RFQ and RfP issued by the D/o Expenditure are framed before the Companies Act, 2013. Therefore, this limit of the shareholding has been kept as 20%. The PPPAC agreed with the justification from AAI and it was decided to keep that intact.

18. JS (IPF) also suggested that amount of Performance Security should be fixed in terms of percentage of TPC and the Performance Security should not be escalated every 5 years. AAI explained that, in the present case, the value of Performance Security shall be increased by the Concessionaire after every 5 concession years in proportion to the increase in the Total

passenger throughput. PPPAC found the proposal of the MoCA to be better aligned and more appropriate and agreed to the AAI suggestion. However, AAI was asked to fix the performance security at 10% of the revenue from Total Annual Passenger Fee.

19. The PPPAC recommended the proposal for the approval of Competent Authority subject to the following conditions:

a. In clause 2.2.2 (a), “80% of Rs. 3,500 Crore in case of one Eligible Project" may be replaced with 100% of Rs. 3,500 crore in case of one Eligible Project.
b. Experience of Associates and Affiliates should also be considered while evaluating the technical criteria.
c. Provision relating to the termination payment may be revised as stated in para 12.
d. AAI may re-confirm the land required for future expansion of Airports
e. All Aeronautical Facilities should come back to the Authority free of cost after the efflux of Concession Period.
f. 50% value of the Assets created in the initial 30 years of Concession period for city side development may be paid for by the Authority. Value of these assets to be derived in the same way as in case of termination.
g. Performance Security would be fixed at 10% of the Total Annual Passenger Fee with escalation every 5 Concession Years.

20. The meeting ended with vote of thanks to chair.

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Annexure I

Record of Discussions of 85th Meeting of Public Private Partnership Appraisal Committee held on 11 December, 2018

List of Participants:

S.No.	Name	Designation
1.	Shri Subhash Chandra Garg	Secretary (Economic Affairs) – in Chair
2.	Shri Rajiv Nayan Choubey	Secretary, Civil Aviation
3.	Shri S Suresh	Member (Finance) & Officiating Chairman, Airport Authority of India (AAI)
4.	Shri Arun Kumar	Additional Secretary, Civil Aviation
5.	Dr. Kumar V. Pratap	Joint Secretary (IPF), DEA
6.	Shri Sonjay K Saha	Adviser, NITI Aayog
7.	Shri Mukesh Kumar Gupta	Director (PPP), DEA
8.	Shri R. Madhavan,	ED(KID), AAI
9.	Shri Venkatraman Hegde	Director, M/o Civil Aviation
10.	Shri Chittaranjan Dash	Director, D/o Expenditure
11.	Dr. R.J.R. Kasibhatla	Deputy Legal Adviser, D/o Legal Affairs
12.	Shri Manoj Kumar Madholia	Deputy Director (PPP), DEA
13.	Shri Shubham Goyal	Assistant Director (PPP), DEA

Annexure -II

F. No. 2/5/2018-PPP
Government of India
Ministry of Finance
Department of Economic Affairs
PPP Cell

North Block, New Delhi
Dated 10th December, 2018

Office Memorandum

Subject: Proposal for leasing out of six airports of Airport Authority of India (AAI) Ahmedabad, Jaipur, Lucknow, Guwahati, Thiruvananthapuram and Mangaluru through Public Private Partnership (PPP): Appraisal Note of DEA

The undersigned is directed to forward the Appraisal Note of DEA on the captioned project to be discussed in the 85th Meeting scheduled to be held on 11.12.2018 at North Block, New Delhi for further necessary action.

Encl. as above

(Mukesh Kumar Gupta)
Director (PPP)

Shri R N Choubey, Secretary, Ministry of Civil Aviation, Rajiv Gandhi Bhawan, New Delhi

To

1. Shri Amitabh Kant, CEO, NITI Aayog, Yojana Bhawan, New Delhi
2. Shri Ajay Narayan Jha, Secretary, Department of Expenditure, North Block
3. Dr. Alok Srivatava, Secretary, Department of Legal Affairs, Shastri Bhawan, New Delhi
4. Shri Guruprasad Mohapatra, Chairman, Airport Authority of India (AAI)

File No: 2/5/2018-PPP
Ministry of Finance
Department of Economic Affairs (PPP Cell)
PPPAC Appraisal Note (Dec, 2018)

Operation, Management and Development (OMD) of Six Airports under PPP mode

1. **Project Snapshot:**

Project Name	Operation, Management and Development (OMD) of the Six Airports under PPP Mode. The details of Six Airports are as follows: a. Jaipur International Airport, Jaipur, Rajasthan b. Chaudhary Charan Singh International Airport, Lucknow, UP c. Lokpriya Gopinath Bordoloi International Airport, Guwahati, Assam d. Sardar Vallabhbhai Patel International Airport, Ahmedabad, Gujarat e. Mangaluru International Airport, Karanataka f. Thiruvananthapuram International Airport, Kerala
Project Rationale	This project is proposed to be implemented under PPP model due to reasons cited below: • Airport Authority of India (AAI) intends to select a strategic partner for OMD of these Six Airports and city side facilities to harness private sector operational and development efficiencies. It is also to maximize non aeronautical revenues. Further, National Civil Aviation Policy 2016 also advocates maximization of non- aeronautical revenues. Airport Authority of India will continue to manage Air Traffic Control (ATC), Communications, Navigation and Surveillance systems (CNS). • Strong traffic growth in the past decade has resulted in congestion at many of AAI airports • These airports are expected to require additional capital expenditure in the coming years to not only meet projected demand levels but also increase the quality of facilities
Type of PPP	Operation, Management and Development (OMD)
Ministry	Ministry of Civil Aviation (MoCA)
Sponsoring Agency	Airport Authority of India (AAI)
Implementing Agency	Airport Authority of India (AAI)
Location	Jaipur (Rajasthan), Lucknow (UP), Guwahati (Assam), Ahmedabad (Gujarat), Mangaluru (Karnataka) and Thiruvananthapuram (Kerala)
Estimated Project Cost	Not mentioned. However, it is mentioned in the PPPAC Memo that *"the development/expansion/renovation works at the airport shall be determined by the Concessionaire based on the growth of traffic at the airport, required KPIs as well as any capital work-in-progress of AAI which the concessionaire shall be required to complete. As part of the Conditions Precedent, the*

<table>
<tr><td></td><td>concessionaire shall be required to submit a development plan of the airport along with estimated capital cost for such works (para2.4). The estimated value of Regulatory Asset Base and Capital Works to be transferred to the Concessionaire which the Concessionaire shall be required to fund and reimburse to the Authority. The Airport wise details of these are given below:
<table>
<tr><th>Name of the Airport</th><th>Amount to be reimbursed by Concessionaire [Rs. in crore]</th><th>As per Project Report, estimated value of capital projects as planned and proposed by AAI (considered to be undertaken by Concessionaire) [Rs. in crore]</th></tr>
<tr><td>Jaipur Airport</td><td>782.30</td><td>1472.70</td></tr>
<tr><td>Lucknow Airport</td><td>583.00</td><td>1090.40</td></tr>
<tr><td>Guwahati Airport</td><td>823.70</td><td>684.40</td></tr>
<tr><td>Ahmedabad Airport</td><td>384.40</td><td>1320.00</td></tr>
<tr><td>Mangaluru Airport</td><td>363.00</td><td>1118.90</td></tr>
<tr><td>Thiuvananthapuram</td><td>400.50</td><td>413.00</td></tr>
</table></td></tr>
<tr><td>Scope of Work</td><td>The broad scope of Concessionaire includes design, development, financing, construction, up gradation and expansion of the Airport in a phased manner, operations, maintenance and management of the Airport and development, operation and maintenance of City Side on the Site</td></tr>
<tr><td>Construction Period</td><td>This needs to be provided. However it is mentioned in the PPPAC memo that "The construction period for various works shall depend upon the nature of works being undertaken by the Concessionaire based on the growth of traffic at the airport as well as any capital work-in-progress of AAI which the concessionaire shall be required to complete. As part of the Conditions Precedent, the concessionaire shall be required to submit a development plan of the airport along with the schedule".

Key performance Indicators need to be provided in DCA, based on which the development plan will be developed. Construction period needs to be a part of the Concession Period to incentivize early construction of the Project.</td></tr>
<tr><td>Concession Period</td><td>50 years</td></tr>
<tr><td>Financial Structure</td><td>Project cost and its financing details not provided. However, it is the responsibility of the Concessionaire to arrange the required capex in form of debt and equity to meet the future capital expenditure requirements.</td></tr>
<tr><td>Concessionaire's Revenues</td><td>Aeronautical Revenues and Non Aeronautical Revenues</td></tr>
<tr><td>Tariff / User Charges fixation</td><td>Tariff fixation of aeronautical services is done by Airports Economic Regulatory Authority (AERA). Concessionaire will be responsible for submitting tariff proposal to AERA. User charges will be fixed and collected by the Concessionaire in case of non-aeronautical services.</td></tr>
<tr><td>Financial Viability/Returns</td><td>As per the PPPAC Memo, it is mentioned that number of critical factors such as traffic forecast, investment, revenues, operational expenditure are not known, hence could not be possible to arrive the values. (para 4.2 of the PPPAC Memos may be referred.)</td></tr>
<tr><td>Land Details</td><td>As per the PPPAC Memo, not applicable as the Airports are brownfield</td></tr>
</table>

	projects.
Clearances/ Approvals	Existing airport is under operation - hence it is mentioned that already obtained by AAI. Further additional conditions are stipulated in the DCA. ***Project Authority should facilitate the PPP operator in obtaining these clearances.***
Approval sought	"In principle" and "Final Approval" from PPPAC
Concession Agreement	As per PPPAC Memo, it is mentioned that there is no approved MCA for this structure. However references have been taken from other airports projects such as Bhogapuram and Nagpur airports and MCA for Brownfield PPP.
Bidding Parameter	"Per Passenger Fee" from domestic passengers (exclusive of all taxes) to be quoted by bidders. ***Why only domestic passengers? Should be amended to all passengers.***
Bidding Process	Single Stage with two envelope process (No separate Request for Qualification (RfQ) is invited)
Status of bidding process	Submitted the PPPAC Memo, Draft Concession Agreement (DCA), RFP Document and Project Report for "in principle" and "Final Approval" of the PPPAC.

2. **Background of the Project:**

a. Airport Authority of India (AAI) is currently responsible for development, operation and management of above mentioned six airports. AAI intends to select a private partner through bidding process under PPP model to bring in private investments and its sectoral expertise, which will induce operational efficiencies and also devise strategies to augment the revenues through non aeronautical services. This will be beneficial in terms of better commercials, better utilization of existing assets and quality services to end users.

b. It was decided during a PMO review meeting held on 22.07.2015, that as far as airports at Ahmedabad and Jaipur are concerned, AAI will ensure high standards of service by entering into O&M contracts, either with or without the responsibility of maximization of non-aeronautical revenue in the terminal building (excluding land on city side and air side). The city side and airside will continue to be managed directly by AAI.

c. MoCA has placed the proposal for "in principle" and "Final approval" of the PPPAC. PPPAC in its 80th meeting held on 28th Oct 2016 recommended the captioned proposal to the Competent Authority for grant in –principle and Final approval subject to fulfilment of stated conditions in the Records of Discussion.

d. Subsequently, on conducting the bidding process, AAI received only one valid bid each for Ahmedabad and Jaipur airports. Therefore, AAI decided to cancel the entire bidding process for both the projects considering the tepid response from the bidders.

e. Further, in the meeting held on 18.05.2018 in the PMO, it was decided that AAI to revise the project structure by including Airside and Cargo facilities in the Concessionaire's existing scope of work and the bid conditions be framed in a manner that attract wider participation and infuse competition in operation of airports.

f. Subsequently, a meeting was Chaired by CEO, NITI Aayog and attended by Secretary, DEA, Secretary, CA and Chairman, AAI, on 20th October, 2018, to discuss the key features of a long-term lease based PPP transaction for 6 AAI Airports. Subsequently, a note was submitted to the Cabinet on 30th October 2018 to seek in-principle approval for leasing out six airports of Airports Authority of India for development, operations and management under PPP, appraisal of transaction documents through PPPAC and for constitution of an Empowered Group of Secretaries (EGoS) to decide any issues falling beyond the scope of PPPAC.

g. **The Union Cabinet, in its meeting held on 8th November 2018 provided an "in-principle" approval for leasing out six airports of AAI viz. Ahmedabad, Jaipur, Lucknow, Guwahati, Thiruvananthapuram & Mangaluru for operation, management and development under PPP, processing through PPPAC. Based on inter-ministerial consultations and discussions, the revised PPP structure was proposed to enhance the role of private sector to include development of airport facilities (except ANS) through required capital investments over the lease / concession period. The model was decided to be based on the lines of the PPP model adopted for brownfield development of Delhi and Mumbai airports with required changes, and private sector is to be invited to participate in operations, management and development of 6 brownfield airport projects.**

h. Hence, Ministry of Civil Aviation (MoCA) has submitted the PPPAC Memo with RFP and Project Report in line with the above decisions for Six Airports (Jaipur, Ahmedabad, Lucknow, Guwahati, Mangaluru and Thiruvananthapuram) to DEA to obtain "in principle" and "final" approval from the PPPAC on the mentioned proposals

3. **Scope of work**

a. The broad scope of Concessionaire includes the following:

i. design, development, financing, construction, upgradation and expansion of the Airport in a phased manner
ii. operations, maintenance and management of the Airport
iii. development, operation and maintenance of City Side on the Site

4. **Project cost**

a. Not provided in the PPPAC Memo and that "the development/expansion/renovation works at the airport shall be determined by the Concessionaire based on the growth of traffic at the airport, required KPIs as well as any capital work-in-progress of AAI which the concessionaire shall be required to complete. As part of the Conditions Precedent, the concessionaire shall be required to submit a development plan of the airport along with estimated capital cost for such works.

b. The details pertaining to project cost for six airports, as per AAI has been furnished in the project report and the details are given below:

Airport	Amount to be reimbursed by Concessionaire [Rs. in crore]	As per Project Report, estimated value of capital projects as planned and proposed by AAI (considered to be undertaken by Concessionaire) [Rs. in crore]
Jaipur	782.30	1472.70
Lucknow	583.00	1090.40
Guwahati	823.70	684.40
Ahmedabad	384.40	1320.00
Mangaluru	363.00	1118.90
Thiuvananthapuram	400.50	413.00

However no bifurcation of stated figures have been furnished.

5. **Financial Structure**

a. Not provided the project cost and its financing details in the PPPAC Memo. However, it is mentioned that it is the responsibility of the Concessionaire to arrange the required capex in form of debt and equity to meet the future capital expenditure requirements.

6. **Revenue Streams to Concessionaire and AAI**

a. As per the PPPAC Memo, Concessionaire will recover their capex and opex from the revenues generated from the proposed Project Facilities in form Aeronautical and non-Aeronautical revenues:

i. **Aeronautical Revenues**

- Landing, Parking and Housing charges and User Development Fee
- Fuel Throughput Revenue
- Royalty on Ground handling
- Revenue from Cargo operations
- Revenues from Cute Charges
- Revenues from any other aeronautical charge levied on users of the airport as approved by AERA from time to time

ii. **Non Aeronautical Revenues**

- Concessions within the terminal building
- Concessions outside the terminal building within the Concessionaires' scope as detailed in the Concession Agreement
- Car Park Revenues and Rentals from users of airport services
- Porterage and Admission Fee
- Any other non-aeronautical revenue services provided by the Concessionaire within the scope of the Concessionaire.

iii. Apart from that the Concessionaire will collect the Passenger Service fee (Security).

b. **Revenues to AAI**

- Per Passenger Fee (Bid parameter) that Concessionaire shall pay to AAI

7. **Financial Viability**

As per PPPAC Memo, it is mentioned that number of critical factors such as traffic forecast, investment, revenues, operational expenditure are not known, hence it could not be possible to arrive the actual values. However the indicative values of financial returns as per the PPPAC Memos and Project Reports are as under:

Airports	Financial Returns as per PPPAC Memo	Financial Returns as per Project Report
Jaipur	Project IRR: 12%, NPV: Rs.236.20 Crore	Project IRR:11% to 14%, Equity IRR: 18%-20%
Lucknow	Project IRR: 17.2%, NPV: Rs.978.5 Crore	Project IRR:10% to 12%, Equity IRR: 18%-20%
Guwahati	Project IRR: 20%, NPV: Rs.325.6 Crore	Project IRR:10% to 11%, Equity IRR: 18%-20%
Ahmedabad	Project IRR: 16%, NPV: Rs.698.70 Crore	Project IRR: 10% to 11%, Equity IRR: 18%-20%
Mangaluru	Project IRR: 20.6%, NPV: Rs.78.4 Crore	Project IRR:10% to 11%, Equity IRR: 18%-21%
Thiuvananthapuram	Project IRR: 21.5%, NPV: Rs.713.80 Crore	Project IRR:10% to 12%, Equity IRR: 18%-20%

The values mentioned in the PPPAC memos and Project Reports are not same and indicative range has been provided. Further, it may be noted that the detail financial calculations and assumptions have not been furnished to validate these stated figures.

8. **Bid Parameter**

a. The Bidder shall be selected on the basis of financial quote i.e. **highest Per Passenger Fee** from domestic passengers.

9. **<u>Issues for Consideration:</u>**

Ministry of Civil Aviation vide OM dated 5th Dec 2018 (*received on 06.12.2018*) has submitted PPPAC memos, RFP documents and Project Reports for Operation, Management and Development of Six Airports, under PPP model to DEA for "In principle" and "Final Approval" of the said project. MoCA, further submitted the Draft Concession Agreement and changes to RFP document on 7th Dec 2018. It must be noted that, as per the Guidelines for Formulation, Appraisal and Approval of Central Sector Public Private Partnership Projects (PPPAC Guidelines), pg 12, the in-principle approval by PPPAC should be in the three weeks from the time of submission of the proposal by the Administrative Ministry. Further three more weeks are required after the appraisal of PPPAC members and submission of final documents by the Administrative Ministry for final approval. However, in the limited time as decided in the meeting of EGoS for approval, following issues need to be clarified by MoCA.

a. **<u>PPPAC Approval Process</u>**

As per PPPAC Memo, there is no approved MCA for this structure. However references have been taken from other airports projects such as Bhogapuram and Nagpur airports and MCA for

Brownfield PPP. In this regard, para 6.3 of the PPPAC Guidelines may be referred which states that "*In cases where the PPP project is based on a duly approved Model Concession Agreement (MCA), 'in principle' clearance by the PPPAC would not be necessary. In such cases, approval of the PPPAC may be obtained before inviting the financial bids.*" ***In the instant case, the proposal is submitted for the in-principle and final approval simultaneously while as per the PPPAC Guidelines, approval should be in two stages.***

b. **PPPAC Memo: Estimated Project Cost**

The project cost details have not been furnished in the PPPAC Memo and it has been stated that *"the development/expansion/renovation works at the airport shall be determined by the Concessionaire based on the growth of traffic at the airport, required KPIs as well as any capital work-in-progress of AAI which the concessionaire shall be required to complete. As part of the Conditions Precedent, the concessionaire shall be required to submit a development plan of the airport along with estimated capital cost for such works".* Keeping the project cost and KPIs vague will mean comparing technical proposals submitted by the bidders, which would be very difficult. Therefore, output specifications may be outlined.

It may be noted that it is critical to calculate the capital investment details for at least Phase I with all assumptions to set the common platform for all the interested bidders from investment point of view and to induce transparency in the bidding process, on which they will estimate their financial returns from the project. ***It is not advisable to keep the project cost open ended*** (*considering the financial obligations with regards to Termination Payments to be paid by Authority in case of any untoward events)* and ***it is essentially required to frame the eligibility criteria in terms of Technical capacity, Financial Capacity and O&M experience and other financial covenants such as bid security, performance security, etc, which are always in percentage terms of estimated Total Project Cost (TPC).***

Further, it may be noted that ***TPC is essential the determining factor for the Appraisal and Approval Authority of PPP projects***. As per, OM no. 24(35)/PF-II/2012 of Department of Expenditure dated 5.08.2016, the Proposals having the project cost of more than Rs. 500 crore but less than Rs. 1000 crore is to be approved by the Finance Minister and the Minister of the Administrative Ministry and the proposal having the Project Cost of more than Rs. 1000 crore requires the approval of CCEA.

c. **PPPAC Proposal: Required Documents:**

MoCA is has not submitted the Deviation Statement from the Documents followed for the preparation of the Bid Documents (RfQ/RfP and DCA), Legal Vetting Certificate and Detailed Financial Calculations in support of the financial figures as stated in the PPPAC Memos and Project Report. This is especially important because the financial viability numbers mentioned in PPPAC memo and the Project Report are vastly different. It is requested to submit the same.

d. **Bidding Process**

Single stage bidding has been proposed for the Project. It is suggested that in accordance with internationally accepted principles, two stage bidding may be followed. It may be noted that the these projects are the brown field projects in which the existing facilities are to be handed over to the Concessionaire, therefore, adequate time should be given to the bidders to complete the required due diligence. Further, it may be noted that all the existing airports implemented under PPP model have followed ***two stage bidding process***.

e. **Selection of Bidders**

These six airports projects are highly capital intensive projects, hence it is suggested to incorporate the clause that not more than two Airports will be awarded to the same bidder duly factoring the high financial risk and performance issues. Awarding them to different companies would also facilitate yardstick competition. In the case of project failure, there would be capable bidders available. It must be remembered that in the case of Delhi and Mumbai Airports, though GMR was the only qualified bidder originally, both the airports were not given to the same company. In the case of Delhi Power Distribution Privatization, the city was carved out into three zones, and given to two companies. ***Therefore, it is suggested to incorporate the clause that not more than two Airports will be awarded to the same bidder.***

f. **Bidding Parameter: Per Passenger Fee**

It is suggested that the examples may be provided for proposed transaction structure (Per Passenger fee as bid parameter) followed by existing airports worldwide and its benefits over revenue sharing model.

g. **PPPAC Memo: Tariff/User Charges**

It is mentioned that "Concessionaire will be responsible for submitting tariff proposals to AERA". It is suggested that ***Multi-Year Tariff Orders be passed by AERA, giving some regulatory certainty to landing charges and User charges and incentivizing efficiency***. However, it is suggested that the Project Authority (AAI) may approach AERA to follow a Hybrid Till Model so that 30% of the revenues from non-aeronautical services will be captured so as to lower the aeronautical charges

h. **RFP Document**

Though single stage bidding process is opted, but it is suggested to follow the RfP and the relevant clauses of eligibility criteria of RfQ issued by Department of Expenditure.

i. **RFP Document, Eligibility Criteria, Clause 2.2.2**

It states the following:
(a) Technical Capacity
The Bidder shall over the past 7 (seven) financial years preceding the Bid Due Date have:
paid for, or received payments for, construction of Eligible Projects; and/or (ii) ***paid for development of Eligible Project(s)****; and/or (iii) collected and* ***appropriated revenues from Eligible Project(s), such that the above amount is equal to or more than:***

80% (eighty percent) of Rs. 3500,00,00,000 (Rupees Three Thousand Five Hundred Crore) in case of 1 (one) Eligible Project; or (ii) 50% (fifty percent) of Rs. 3500,00,00,000 (Rupees Three

Thousand Five Hundred Crore) in case of 2 (two) Eligible Projects; or (iii) 40% (forty percent) of Rs. 3500,00,00,000 (Rupees Three Thousand Five Hundred Crore) in case of 3 (three) Eligible Projects.

(b) Financial Capacity

*The Bidder shall have a minimum Net Worth ("**Financial Capacity**") of Rs. 1000,00,00,000 (Rupees one Thousand Crore). In case the Bidder is an AIF or fund, it should have a minimum ACI at the close of the preceding financial year of Rs. 1000 crore (Rupees One thousand Crore).*

However, the basis of defining the Technical and Financial Capacity without any total project cost estimate is not clear in the submitted draft RfP. It is suggested to define the TPC which will accordingly decide eligibility criteria in accordance of the RfQ of Department of Expenditure (Technical capacity: twice the TPC; Financial capacity: one-fourth of TPC as net worth).

j. RFP Document, Clause 3.8.1 (a)

It states that *"Bids are invited for the Project on the basis of the Per-Passenger Fee".*

It is suggested to put a reserve price in the RFP document and AAI should award the contract only if the highest bid is above the reserve price specified. Therefore, it is suggested to furnish the detailed project financials with estimated project cost to support the reserve price to safeguard the interest of the Authority. ***The current Per Passenger Fee can serve as the Reserve Price.*** But, the current per passenger fee would have to be worked out.

k. RFP Document: Conflict of Interest

The Clause 2.2.1 c(i) of RfQ documents limits the percentage of the shareholding to 5% in case of conflict of interest, which has been revised to 20% (Twenty percent) in the submitted RFP document. Provision of model RfQ and model RfP of DoE may be followed.

l. PPPAC Memo: Concession Period

Concession period is 50 years for the proposed project. Therefore, the detailed project financials with all assumptions including financial model to support the 50 years Concession Period needs to be submitted. It is also suggested that the Concession period should be co-terminus with all the project facilities including City side development facilities. Further, it is suggested that after efflux of Concession Period, all assets should be returned back to the Authority free of cost. It is also suggested to follow the licence model instead of lease model factoring the benefits of the licence model over lease model.

n. RFP Document: Bid Security

The value of the bid security has been kept blank. This may be clarified. Typically bid security should be 1% of the Total Project Cost. However in the present proposal, there are no details of project cost in the RfP document.

o. **Project Report**

It has been observed that the project report has been submitted in the presentation format, hence it is suggested to provide all the details such as project scoping, project sizing, demand supply analysis to ascertain the gap, periodic capital investment, regulatory framework with regard to AERA and National Civil Aviation Policy 2016, demand-supply analysis to justify the projected revenues and financial returns, and component wise break up of project cost with assumption/ benchmarks. Financial feasibility should include revenues/projections, operational expenses, P/L, Balance sheet, Cash Flows, tax and depreciation calculations, repayment schedule, financial returns with and without financial consideration to Authority as per the defined bid parameter.

p. As per the para 2.4 of the PPPAC Memo, as a part of the Condition Precedent, the concessionaire shall be required to submit a development plan of the airport along with estimated capital cost for such works. However, it should be made the part of the Conditions Precedents as mentioned in the Draft Concession Agreement.

q. **Financial Viability**

The stated values of financial returns as per the PPPAC Memos and Project Reports are as under:

Airports	**Financial Returns as per PPPAC Memo**	**Financial Returns as per Project Report**
Jaipur	Project IRR: 12%, NPV: Rs.236.20 Crore	Project IRR:11% to 14%, Equity IRR: 18%-20%
Lucknow	Project IRR: 17.2%, NPV: Rs.978.5 Crore	Project IRR:10% to 12%, Equity IRR: 18%-20%
Guwahati	Project IRR: 20%, NPV: Rs.325.6 Crore	Project IRR:10% to 11%, Equity IRR: 18%-20%
Ahmedabad	Project IRR: 16%, NPV: Rs.698.70 Crore	Project IRR: 10% to 11%, Equity IRR: 18%-20%
Mangaluru	Project IRR: 20.6%, NPV: Rs.78.4 Crore	Project IRR:10% to 11%, Equity IRR: 18%-21%
Thiuvananthapuram	Project IRR: 21.5%, NPV: Rs.713.80 Crore	Project IRR:10% to 12%, Equity IRR: 18%-20%

There is a large discrepancy between PPPAC memo numbers and Project Report numbers. Hence the mentioned discrepancy may be clarified. The calculated NPV appears to be on lower side considering the values of Project IRR. Further, it may be noted that the detailed financial calculations and assumptions have not been furnished to validate these stated figures. Therefore it is suggested to provide the all the details along with financial model to validate the stated values. It is mentioned in the PPPAC Memos that number of critical factors such as traffic forecast, investment, revenues, operational expenditure are not known, hence could not be possible to arrive the values. (para 4.2 of the PPPAC Memos may be referred.) However, being brownfield airports, data on traffic growth, required investment, revenue projections and operating expenditure should be available. More and better data need to be shared would elicit better bids.

r. **Clearances**

It is suggested to obtain all the required clearances before the commercial operation date.

s. **Land**

As per the PPPAC Memo, issues related to land are not applicable as the Airports are brownfield projects. It may be noted that as the expansion needs to be done on the basis of traffic growth, therefore. it is suggested to assess the land requirement to accommodate future expansion and it may be confirmed whether the existing land is able to accommodate the future expansion or the respective governments need to acquire land. Project should not be bid out unless at least 90% of the required land is available. It is suggested that the land for City Side Development should be capped at 5% of the total available land to protect the public interest and to avoid windfall gains to Concessionaire. Unless this is done, there is every likelihood of the bidding degenerating into a land grab activity given the poor project preparation.

t. **Equity Shareholding**

It is suggested to include the provision of equity shareholding of AAI/ respective state governments of minimum 26% in the proposed projects duly factoring the involvement of the AAI/respective state governments, in existing assets and land to be acquired for future development. This will also make AAI/ respective state governments partners (including upside) in the venture.

u. **Project Report: Amount to be reimbursed by Concessionaire**

Amount stated in the PPPAC memo are as under:

Name of the Airport	**Amount to be reimbursed by Concessionaire (Rs. in crore)**
Jaipur Airport	782.30
Lucknow Airport	583.00
Guwahati Airport	823.70
Ahmedabad Airport	384.40
Mangaluru Airport	363.00
Thiuvananthapuram Airport	400.50

This may not be reimbursed and would be reflected in the higher per passenger fee offered by Concessionaire.

v. **City Side Development**

It is suggested that the land for City Side Development should be capped at 5% of the total available land activities to avoid windfall gains to Concessionaire.

x. **Existing Manpower of AAI at Six Airports**

It is suggested to devise a suitable mechanism to absorb the existing staff of AAI at these Airports. VRS for existing employees at these Airports may also be introduced.

y. **Construction Period**

Construction Period needs to be provided. It is suggested that Key performance Indicators should be provided in DCA, based on which the development plan will be developed. Construction period needs to be a part of the Concession Period to incentivize early construction of the Project.

z. **Project Preparation**

Proper project preparation is crucial for eliciting private sector interest. This is a poorly prepared project as evident from poor data inclusion (no definite data on total project cost, which is crucial for determining bidder eligibility conditions, termination payments; no definite project viability numbers, etc). Therefore, the bid is unlikely to evoke good investor interest.

Annexure-III

N-14033/02/2018-PPPAU
Government of India
NITI Aayog
(PPP Vertical)

Sansad Marg, New Delhi
Dated: 10th December, 2018

OFFICE MEMORANDUM

Subject: Proposal for leasing out of six airports of Airports Authority of India (AAI) Ahmedabad, Jaipur, Lucknow, Guwahati, Thiruvananthapuram and Mangaluru through Public Private Partnership (PPP) –reg.

The undersigned is directed to refer to O.M. F.No. 10/7/2018-PPP dated 6.12.2018 of Department of Economic Affairs on the above stated project.

2. In this regard, a copy of the comments of NITI Aayog on the above mentioned subject is sent herewith for kind information and necessary action.

3. This issues with the approval of CEO, NITI Aayog.

Encl: As above

(R. K. Bhatheja)
Economic Officer (PPP)
Phone No. 23042603
E-mail: rk.bhatheja@nic.in

Sh. Mukesh Kumar Gupta
Director (PPP),
Department of Economic Affairs
North Block,
New Delhi -110001.

Copy to:

Sh. S.V. Ramana, Under Secretary, Ministry of Civil Aviation, B-Block, R.G. Bhawan, Safdarjung Airport, New Delhi.

Proposal for leasing out of six airports of Airports Authority of India (AAI) Ahmedabad, Jaipur, Lucknow, Guwahati, Thiruvananthapuram and Mangaluru through Public Private Partnership (PPP)

Background:

The Union Cabinet in its meeting held on November 8, 2018 accorded in-principle approval for leasing out of six airports of Airports Authority of India (AAI, Authority), viz. Ahmedabad, Jaipur, Lucknow, Guwahati, Thiruvananthapuram and Mangaluru for operation, management and development under Public Private Partnership (PPP) through Public Private Partnership Appraisal Committee (PPPAC).

In this regard e-mail communications have been received from PPP cell of Department of Economic Affairs (DEA), Ministry of Finance (dated December 6 & 7, 2018), referring OM of Ministry of Civil Aviation (MoCA) dated December 5, 2018, circulating following documents pertaining to the proposal and requesting comments of NITI Aayog on same:

i. Term Sheet for proposed Concession Agreement;
ii. Single Stage (two envelope) Request for Proposal (RfP) document; and
iii. Draft Concession Agreement along with Project Report for each of the six airports.

Framework/Assumptions:

The said RfP, Term Sheet/Draft Concession Agreement and eligibility criteria have been preliminarily examined in accordance with the model documents for PPP projects (RfP/RfQ and Model Concession Agreement for Brownfield Airport Terminals) released by erstwhile Planning Commission in April 2014.

For the purpose of assessment, it has been assumed that the documents received have been prepared by replicating standard templates and all the contents, excluding Project specifics, are exactly same for all six airports under consideration. It is hence hereby clarified that the below observations are based on documents for the Ahmedabad Airport and it is assumed that the same shall also be applicable for the other five airports proposed. MoCA, may kindly communicate in case of any deviations in same. Also, it be noted that these are the broad comments on the documents received, including and based on observations on the Draft Concession Agreement received from our legal consultant.

Further, as mentioned above, erstwhile Planning Commission had released the updated model documents for PPP projects including Model Concession Agreement for Brownfield Airports in April 2014. It is believed that the usage of standard documents with only proposal specific changes (including those pertaining to extant laws, regulations etc.) would have been more appropriate, considering that the proposed leasing of airports is under PPP mode and there exists an experience of using these documents in other sectors such as highways etc.

Observations:

Eligible Projects

1. As per the RfP:

   'Eligible Projects are projects undertaken in the infrastructure sub-sectors as set forth in the Harmonized Master List of Infrastructure Sub-sectors, issued by the Department of Economic Affairs, Ministry of Finance, Government of India, and as may be revised and updated from time to time *Clause 3.2.1 of RfP*

   It is suggested that the definition of Eligible Projects is suitably modified to account for the kind of experience of the bidder (pure construction experience vis' a vis' project/development experience) as well as to differentiate between sectors in terms of Core and Other sectors as detailed herein.

   One of the critical factors that determines the success of a PPP project is the selection of a credible project sponsor. A bidder lacking in sufficient technical capacity can well jeopardise the project and compromise the quality of services that the government is committed to provide.

   It has been agreed in the first meeting of Empowered Group of Secretaries (dated November 17, 2018) that airport experience shall neither be a pre-requisite nor a post bid criteria. In view of this it is appropriate to include projects of other sub-sectors from the Harmonized list of Infrastructure as Eligible Projects. However, inclusion/exclusion of such sectors should be based on the similarity of development/operation experience in these sectors with that of Airport terminals. Here it is pertinent to mention that while certain sectors in the Harmonized list such as ports, shipyards, railway stations and adjoining infrastructure etc. may share close similarity with that of Airport terminals (Core Sectors), other sectors such as power, oil pipelines/storage, telecommunications etc., although not particularly similar, can be considered under Eligible Projects (Other Sectors). Further others such as irrigation, cold chain, soil testing laboratories etc. are significantly different and it may not be reasonably appropriate to include them as Eligible Projects (Non-Related Sectors).

   Additionally, with respect to nature of experience, no differentiation has been made in the RfP as far as experience of project construction, project development and operations & management (O&M) is concerned. While each of these are equally important, a player with mostly construction experience will qualify more as an EPC players and may not be best suited for the proposed O&M and development of Airport terminals.

   While it is important to enlarge the spectrum of bidders through inclusion of players from other sectors, it is also important to ensure that the quality of experience is suitable to the technical capabilities required for undertaking proposed projects. Also it needs to be mentioned that such differentiation of *sectors and quality of experience has already been captured under the model RfQ through classification of experience in the following categories:*

a. Project experience in the sector to which proposal pertains;
b. Project experience in other core sectors;
c. Construction experience in the sector to which proposal pertains; and
d. Construction experience in other core sector

Suitable categorization for the purpose of proposed RfP hence may be considered on lines of:

a. Project experience in Airport terminal & other related sectors (Core Sectors)
b. Project experience in other relevant infrastructure sector (Other Sectors);
c. Construction experience in Core Sectors; and
d. Construction experience in Other Sectors.

List of Core and Other sectors may be suitably decided from the Harmonized Master List of Infrastructure Sub-sectors and included accordingly.

2. As per the model RfQ for a project to qualify as Eligible Project it should have been undertaken as a PPP project on BOT, BOLT, BOO, BOOT or other similar basis for providing its output or services to a public sector entity or for providing non-discriminatory access to users in pursuance of its charter, concession or contract, as the case may be. Also pay-outs received for construction projects shall not include supply of goods or equipment except when such goods or equipment form part of a turnkey construction contract/ EPC contract.

   Aforementioned qualifications may be considered for inclusion in the RfP.

Evaluation Parameter: Per Passenger Fee

1. Per Passenger Fee has been considered as the parameter for the financial bid evaluation for the Shortlisted Bidders. *Clause 2.2.1 (b) of RfP*. In this regards it may be mentioned that:
   a. Method for calculation of Per Passenger Fee has not been elaborated.
   b. The selection of the Concessionaire as per the RfP is based on the 'Per Passenger Fee' quoted. Bidder with the highest 'Per Passenger Fee' shall be selected. While the challenges of monitoring and finalizing the gross revenue in case of Gross Revenue Share model is valid, challenges with the proposed parameter may also need to be evaluated. It needs to be noted that the actual payment received by the Authority in this case shall be determined by the actual passenger volume every month/year. Hence during periods of low passenger volume, the receipts shall be adversely impacted. From the Concessionaire's perspective, on the other hand, the passenger volume shall only impact part of his revenues and in a scenario where the passenger volume for particular periods are low but the other non-aeronautical revenues are high the Authority shall lose out on the portion of the non-passenger related

revenues. Under the Gross Revenue Share model, no party can be unilaterally disadvantaged/benefitted because of fluctuation in passenger volume, real estate rates etc. In light of this there may be a case to reconsider the Financial Bid evaluation parameter.

Eligibility of Bidders

1. As per the RfP (including amendments received as Annexure I to the RfP):

   'the Bidder may be a single entity (which may be a natural person, private entity, AIF, Foreign Investment Fund, government-owned entity, etc.) or a group or combination of such entities coming together to implement the Project' *Clause 2.2.1 (b) of RfP*

   Alternative Investment Fund and Foreign Investment Fund have been included here, in addition to the categories included as per the Model RfQ. While the importance of including domestic AIFs and Foreign Investment Fund in the bidding process is appreciated, it needs to be clarified as to:

   (i) What is the need for specific inclusion of AIFs and Foreign Investment Fund (FIF) herein, considering that whatever form they are incorporated in (trust, corporate etc.), or otherwise, they would still classify either as a private entity or a government owned entity?

   (ii) In case the AIF or the FIF, which primarily is a funding/investing institution, happens to be a sole bidder, how would the technical/project development experience be considered for Technical Capacity of such bidder?

   It needs to be mentioned that considering projects undertaken directly or indirectly by the AIF/FIF, through its portfolio companies (or otherwise as passive investor), may not be appropriate for evaluating Technical Capacity. The objective of including pay-outs from construction/development/O&M of projects under Technical Capacity is more from an active project experience to ensure sufficient technical capability within the entity or the group. Experience through investee companies with no direct dealing in day to day affairs hence may not be appropriate. While passive investors incorporated as AIFs/FIFs may collaborate with developer entities to bid as consortium, standalone bidding by such players needs to be reconsidered.

Technical Capacity

1. Threshold for Technical Capacity for all six Projects has been stipulated at the same level of Rs 3500 crores irrespective of difference in estimated costs for Project as may be concluded from respective Project Reports (prepared by Deloitte). Also no rationale for fixing the amount at Rs 3500 crores has been provided. This needs to be modified and threshold for each Project needs to be linked to its Estimated Project Cost. As per the Model RfQ this ideally should be 1.5 to 2.5 the Estimated Project Cost. *Clause 2.2.2 (a) of RfP*

2. The consideration period for experience under Technical Capacity in **Model RfQ** is five years whereas in the proposed RfP it is seven years. Reason for same be provided. *Clause 2.2.2 (a) of RfP*

Financial Capacity Parameters

1. Financial capacity criterion has been stipulated as- minimum net worth of Rs 1000 Crores for the preceding FY – and at the same level for all six projects. Also no rationale for fixing the value at Rs 1000 crores has been provided. This needs to modified and linked to the Estimated Project Cost for respective projects. As per the Model RfQ this ideally should be 25% of the Estimated Project Cost. *Clause 2.2.2 (b) of RfP*
2. It is not clear as to whether the above threshold of minimum net-worth is applicable to each Member individually in a Consortium or on a combined basis. Model RfQ provides for compliance with Financial Capacity parameter on a combined basis for Members, who have an equity share of at least 26% each in the Consortium. *Clause 2.2.2 (b) of RfP*

Other Capacity Parameters

1. No pre-condition has been stipulated with respect to Operations & Management Experience. As per the Model RfQ (2.2.3):

   > *In the event that the Applicant does not have the requisite O&M experience, it shall either enter into an agreement, for a period of 5 (five) years from COD, with an entity having the aforesaid experience relating to the performance of O&M obligations, or engage experienced and qualified personnel for discharging its O&M obligations in accordance with the provisions of the Concession Agreement, failing which the Concession Agreement shall be liable to termination*

<u>Other Observations:</u>

1. Basic details of the Project such as existing and proposed capacity, years in operation, cost estimated by the Authority etc. have not been provided in the Background section of the RfP document. Also there is no mention of any Information Memorandum/Feasibility Report/Project Document being provided to the Bidders for preliminary assessment. Details of same need to be included. (*Clause 1.1.1 of RfP*)
2. It needs to be mentioned that the leasing is being done under PPP route and the specific mode followed for same viz. Operate Manage Transfer (OMT) etc., as applicable, needs to be mentioned. (*Clause 1.1.1 of RfP*)
3. 'Procurement' to be added as part of scope for Concessionaire. (*Clause 1.1.3 of RfP*)
4. 'Date of Sale of Bidding Documents' and 'Date of signing of Concession Agreement' may be included in the Schedule of Bidding (*Clause 1.3 of RfP*)

5. Threshold for disqualification in case of common controlling shareholders or other ownership interest is 5% in the Model RfQ; however in the proposed RfP the same is 20%. Rationale to be provided. (*Clause 2.2.1 c of RfP*)
6. No provision for avoidance of Conflict of Interest in case an advisor/consultant was engaged by the Bidder in the past but its assignment expired or was terminated prior to the Bid Due Date (*Clause 2.2.1 i of RfP*)
7. No provision for Lead Member in case of Consortium (*Clause 2.2.5 of RfP*)
8. Net Worth is defined as

   'the aggregate value of the paid up <u>share capital</u> and all reserves created out of the profits and securities premium account, <u>after deducting expenditure and miscellaneous expenditure</u> not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write back of depreciation and amalgamation' (*Clause 2.2.3 b of RfP*)

   It should be modified to:

   'the aggregate value of the paid up <u>equity share capital</u> and all reserves created out of the profits and securities premium account, <u>after deducting miscellaneous expenditure</u> not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write back of depreciation and amalgamation'
9. USD/INR rate for conversion of foreign currency denominated contracts has been considered at Rs 70 in Annexure II of the RfP. It should be noted that while the current exchange rate hovers in the stipulated range, in view of contract receipts being spread over last seven years the stipulated conversion rate may end up increasing the value of actual contracts undertaken by a reasonable amount. Hence an alternative such as the average over last seven years may be considered as the conversion rate for the purpose of Annexure II.

<u>Draft Concession Agreement</u>

Comments on the Draft Concession Agreement are as follows:

1. ***Recital***

   As per the MCA, Authority shall adopt a two stage bidding process (RFQ and RFP) for selection of the bidder. However, as per the DCA, the Authority shall adopt a single stage bidding process for selection of the bidder. The said deviation from the scheme be reviewed as per specific requirement of the Project.

2. ***Clause 3.1 (The Concession)***

   Clause 3.1.1 of the MCA provides that the Concessionaire shall be granted a Concession Period of 30 years and shall additionally be entitled to an additional Concession Period of 30 years.

   However, the DCA has been amended to provide that total Concession Period shall be a period of 50 years as opposed to the 30 years envisaged under the MCA.

Furthermore, the entitlement of Concessionaire to an extension of the additional Concession Period of 30 years has been deleted from the DCA.

It is submitted said changes be reviewed as per specific requirement of the Project.

3. ***Clause 4 (Conditions Precedent)***

a. Clause 4.1.2 of the DCA has been amended to insert the following additional conditions precedent required to be fulfilled by the Authority:

> *"(d) caused the execution of the relevant following agreements (subject to Concessionaire being in compliance with its corresponding obligations):*
> *(i) Escrow Agreement in the form provided in Schedule O;*
> *(ii) Memorandum of Understanding in the form provided in Schedule V; and*
> *(iii) CNS-ATM Agreement in the form provided in Schedule S, by itself, upon receiving its duly executed copy from the Concessionaire and compliance of all the terms thereunder respectively, which may be necessary for the execution thereof."*

It may be noted that the afore-mentioned conditions are not envisaged under the MCA. The said changes be reviewed as per specific requirement of the Project.

b. The MCA under Clause 4.1.3 (f) requires that the Concessionaire shall execute the Financing Agreements for and in respect of Debt Due equivalent to at least 40% (forty per cent) of the Total Project Cost as a Condition Precedent. However, the DCA has no provision for the Concessionaire to act upon the financing agreements as a Condition Precedent. It is submitted that the same may compromise the Project finance envisaged under the PPP Model and should be reviewed accordingly.

c. The DCA is at variance with the MCA in terms of the timelines afforded to each party with respect to fulfilment of their respective Conditions Precedents under the Agreement and also the deemed termination of the Agreement in case of non-fulfilment of the Conditions Precedent. It is therefore suggested that such change in timelines be reviewed as per the requirements of the Project.

4. ***Clause 4.2 & 4.3 (Damages for delay by the Authority and Concessionaire)***

As per the MCA, in the event Authority fails to fulfil its conditions precedent within prescribed time line, it shall liable to pay to the Concessionaire Damages in an amount calculated at the rate ***of 0.1% (zero point one percent) of the Performance Security*** for each day's delay until the fulfilment of such Conditions Precedent, ***subject to a maximum amount equal to the Bid Security***. Same if Concessionaire fails to fulfill its conditions precedent within prescribed time line, then Concessionaire shall liable to pay an amount calculated at the rate of ***0.3% (zero point three per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum amount equal to the Bid Security.***

As per DCA in the same case, if delay by the Authority, it is liable to pay to the Concessionaire an amount calculated at the rate of ***0.1% (zero point one percent)*** of the Performance Security for each day, ***subject to a maximum of 20% (twenty percent) of the Performance Security***. and if delay by the Concessionaire , it is liable to pay damages to the Authority at the rate ***of 0.3% (zero point three percent)*** of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, ***subject to a maximum of 20% (twenty percent) of the Performance Security***.

It may be noted that the amount of damages payable by the Authority and Concessionaire in case of failure to fulfil the conditions precedent have been amended under the DCA substantially .

5. ***Clause 4.5 (Deemed Termination upon delay)***

Clause 4.5 of the MCA provides deemed termination of the Concession Agreement upon failure of the parties to achieve the COD or fulfilled condition precedent within a period of 180 days of the execution of the Concession Agreement or extension thereof. The DCA has been amended to change said time period to 240 days from 180 as envisaged in the MCA. The said changes be reviewed as per specific requirement of the Project.

6. ***Article 5 (Obligations of the Concessionaire)***

a. Clause 5 1.6 (d) of the MCA provides that Concessionaire shall make reasonable efforts to facilitate the acquisition of land required for the purposes of this Agreement;

The said clause DCA has been deleted entirely. Please note that section 46 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 allows private entity to purchase the land through direct negotiation. In case Authority/Government fails/is unable to acquire the requisite land required for the Project, the Authority may ask the Concessionaire to purchase the land through direct negotiation.

b. Clause 5.1.7 of the DCA has been amended to insert following new clauses as obligations of the Concessionaire:

"5.1.5 *(k) procure the supply of electricity, telecommunications services, water and other such utilities to the Airport at levels that are not less than as on the date of this Agreement, including procuring standby arrangements for supply of such utilities necessary for maintenance of Aeronautical Services and Non-Aeronautical Services in the event of outages or failure of supply, and also arranging for the availability of such utilities for the Users of the Airport and various Aeronautical Services and Non-Aeronautical Services in accordance with Applicable Laws:*

Provided that this obligation shall only commence from the date which is 6 (six) months from the COD, until which date the supply of such utilities shall continue under the existing arrangements entered into by the Authority. It is clarified that the Concessionaire shall be liable to make all payments in respect of the supply of suchutilities during the aforementioned 6 (six) month period, subject to the condition that the relevant invoices shall be furnished by the Authority to the Concessionaire no later than 7 (seven) days from the receipt of such invoices by the Authority;
(l) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement, Applicable Laws and Applicable Permits;
(n) operate, maintain, and refurbish (if necessary) the existing Airport assets including but not limited to the Terminal Building, Runway, cargo terminal, car park, apron, taxiway and other Airport assets as provided in Annex I of Schedule A

It is submitted that insertion of said clauses may be reviewed as per specific requirement of the Project.

7. ***Obligations Relating to Golden Share***

The provisions relating to golden share as envisaged in clause 5.4 of the MCA have been deleted from the MCA. The MCA provides that Authority shall hold 1 transferable share of the Concessionaire and by virtue of such share it shall have veto rights on decision of certain subjects taken by the Concessionaire at its general meeting or board meeting.

It is therefore suggested that such deletion be reviewed as per the requirements of the Project.

8. ***Obligations relating to Change in Ownership***

It is submitted that as per the DCA, a change in ownership resulting from acquisition or control of equity greater than 15% is required to be brought for prior written approval of Authority. The MCA however lays down that such approval shall be required only in case of equity greater than 25%.

Therefore, the stricter provisions with regard to Change in Ownership should be reviewed as per the requirements of the Project.

9. ***Obligations relating to DGCA license***

The MCA stipulates that Authority shall provide necessary support to the Concessionaire for obtaining the Applicable Permits from DGCA provided that on the date of such application, the Concessionaire shall have complied with (i) the requirements of Rule 83 of the Aircraft Rules, 1937; (ii) any special directions or guidelines issued by the DGCA pursuant to Rule 133A of the Aircraft Rules, 1937; and (iii) any other requirement of the DGCA in connection with the issuance of an airport licence.

It may be noted that the requirements with regard to compliance by the Concessionaire with the requirements of the Aircraft Rules and other requirements of the DGCA have not been included in the DCA. Further, the timelines with regard to the listed obligations have also been relaxed under the DCA.

10. *Obligations relating to procurement of goods and services*

a. It may be noted that the obligations relating to procurement of goods and services imposed on Concessionaire have been revised from the value of 1 crore under MCA to 25 crore under DCA. It is submitted that the said deviation from the scheme of the MCA be reviewed as per the requirements of the Project.

b. Clause 5.6.2 of the MCA provides that Concessionaire shall not enter into a Contract with any Associated Firm except with the prior written consent of the Authority. The expression "Associated Firm" has been ascribed the same meaning as ascribed to the expression "Associate", provided that the reference to 50% (fifty per cent) of voting shares in respect of an Associate shall be read as 10% (ten per cent) of voting shares in the case of an Associated Firm.

The said restriction has been changed and provided under clause 5.6.4 of the DCA to provide as under:

"the Concessionaire shall not enter into any Related Party Transaction or a Contract with any Related Party. It is clarified that this restriction will not apply in case of the Existing Contracts"

The term 'related party transaction' is defined under DCA as any transaction of lease, sub-lease, license, sub-license, transfer or allocation of function(s), resource(s) or obligation(s) between Related Parties regardless of whether or not a price is charged, and includes the prescribed transactions under sub-section (1) of Section 188 of the Companies Act, 2013.

It may be noted that the provision for consent of Authority in respect of related party transactions has been deleted from the DCA. It is suggested that along with the transactions listed under Section 188 of Companies Act, provision of Authority's consent should be included in the DCA.

11. *Obligations relating to non-discriminatory access*

It may be noted that Clause 5.10 of the DCA deals with the non-discriminatory access and provides that the the Concessionaire shall operate and manage the Airport on a common user basis and provide non-discriminatory access to all airlines, aircraft, and other persons in accordance with the provisions of this Agreement and shall refrain from adopting any unfair or discriminatory practice against any User or potential user thereof.

However, the said provision is silent on the specific requirements to be met with by the Concessionaire while dealing with any Associated Firm or any other person in whom it has a direct or indirect financial interest. The same is a deviation from the scheme of the MCA and should accordingly be reviewed.

12. *Competing Facility*

The MCA, under Clause 6.3, provides that the Authority shall procure that during the subsistence of the Agreement, neither the Authority nor any Government Instrumentality shall, at any time before expiry of the period specified in Clause 35.1.1, commission or operate or cause to be commissioned or operated, any new airport within 50 kms.

However, no such provision has been included under the DCA. It is submitted that such provisions are included under a Concession Agreement to provide additional comfort to the Concessionaire and to secure its financial interest. Therefore, the said omission be reviewed as per the specific requirements of the Project.

13. *Authority's Employees*

The DCA is at a variance with regard to the scheme envisaged under the MCA with respect to the employees of the Authority. The MCA takes into account those employees who existed on the rolls six months prior to Bid Date and the DCA deals with employees of the Authority on COD.

While the MCA creates a situation of deemed deputation of select employees, the DCA provides for the Concessionaire to pay a fixed sum during joint management period to the Select Employees.

Further, the DCA mandates that Concessionaire shall make offers of \employment to no less than 60% of Selected Employees; such provisions are not envisaged under the MCA.

It is submitted that the said deviation from the scheme of the MCA be reviewed as per the requirements of the Project.

14. *Works in Progress*

It may be noted that the MCA provides that each of the Works in Progress shall be constructed in accordance with its respective contract and, until its completion, the Authority shall have all the obligations and liabilities associated with such works.

However, the DCA provides for novation of such contracts and agreements in favour of the Concessionaire or for provisioning of a power of attorney designating the Concessionaire as its attorney and agent with powers to act on behalf of the Authority.

It is submitted that the said deviation from the scheme of the MCA be reviewed as per the requirements of the Project.

15. *Performance Security*

It may be noted that while the MCA requires for the Performance Security to be furnished within 30 days of agreement, the DCA stipulates a timeline of 120 days in respect thereof.

More importantly, the MCA envisages that the Performance Security shall be valid for a period of one year from COD. However, the DCA stipulates that such performance security shall be in force for the entire Concession Period and the value thereof shall be increased every 5 years. It is submitted that having such long validity for the Performance Security has implications on the viability of Project and should be reviewed accordingly.

16. *Site*

a. Clause 10.1 of the MCA provides that Authority shall grant and provide the Project Site to the Concessionaire on license basis. However, the DCA provides that Project Site shall be provided to the Concessionaire on Lease Basis.

   It may be noted that lease is a transfer of a right in a specific immovable property, whereas, licence is a bare permission with only limited right available to the licensee. It is therefore suggested that the said deviation be reviewed as per the requirements of the Project.

   Furthermore, no format for lease agreement/ deed is provided along with the DCA. The party responsible for the payment of stamp and registration charges of said lease deed is also ambiguous under the DCA.

b. The timelines with respect to procurement and grant of Right of way by Authority envisaged under the DCA is at a variance with the MCA. Further, any delays in such timelines are penalized on pre-defined per day charge under the MCA. However, the DCA provides that any delay that adversely affects the construction works, reasonable extension may be granted in Development period/Concession Period subject to the will of Authority.

c. The MCA empowers the Authority to procure any additional land that may be required for Aeronautical Assets, Non-Aeronautical Assets or City Side Development or for construction of works, and upon procurement thereof, such land shall form part of the Site. However, the DCA does not contain such provisions and the same may lead to ambiguity with regard to any additional procurement by the Authority.

17. *Termination Payments*

It is important to note that the termination payments envisaged under the DCA are at a variance with the scheme envisaged under the MCA. While the MCA calculates the Termination Payments as a factor of Debt Due and Adjusted Equity, the DCA envisages the same as being linked to assets and investments instead.

It is submitted that the same is a major deviation from the scheme of the MCA and would have to be carefully reviewed to ensure that the financial risks of both the Authority and the Concessionaire are adequately covered.

18. *Change of Scope (Clause 23 of the MCA and Clause 17 of the DCA)*

Clause 23.4, 23.6 and 23.7 of the MCA dealing with restriction on certain works, reduction in scope and rectification of latent defects respectively have been deleted from the DCA. The non –inclusion of such provisions under the DCA should be reviewed as per specific requirement of the Project.

19. *Concessionaire's Condition Precedent*

As per MCA execution of the Substitution Agreement is condition precedent of the Concessionaire. However, in DCA said requirement has been removed from the Condition Precedent. The execution of Substitution Agreement is an essential condition and for comfort of Lenders it has to be executed before achieving Financial Close. It is suggested that execution of Substitution Agreement should be made Concessionaire Condition Precedent.

20. *Representation and Warranties of the Concessionaire*

Clause 7.1 k of the MCA provides to read as under:

"it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3; and that the {selected bidder/ Consortium Members}, together with {its/their} Associates, hold not less than 51% (fifty one per cent) of its issued and paid up Equity as on the date of this Agreement; and that no Member of the Consortium whose technical and financial capacity was evaluated for the purposes of pre-qualification and short-listing in response to the Request for Qualification shall hold less than 26% (twenty-six per cent) of such Equity during 5 (five) years commencing from COD, which shall also be no less than 5% (five per cent) of the Total Project Cost"

Further clause 7.1 (n) of the DCA provides to read as under:

"it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3"

The DCA does not provide the details warranty as envisaged in the MCA. It is suggested a warranty and representation in respect of Change in Ownership should be in line of Clause 7.1 (k) of the MCA.

21. *Event of Default: Clause 37.1.1 of the MCA)*

It may be noted that the following event of default has been added in the DCA:

"the amount of Damages liable to be paid by Concessionaire for a Concession Year due to breach of IATA 'Level of Service C (optimum)' as per Clause 19.6.9 equals to or is more than 2% (two percent) of the Monthly Concession Fee for the preceding Accounting Year;]"

It is submitted that the utility and requirement of said clause be reviewed as per specific requirement of the Project.

22. *Comments on Draft CNS/ATM Agreement (Schedule S)*

(i) As per *Format of CNS/ATM* Agreement as provided under Schedule J of the MCA (Model Agreement), the signed Concession Agreement should be annexed with the CNS/ATM AGREEMENT. The said requirement has been deleted from the *Draft CNS/ATM* Agreement. Since the *CNS/ATM* Agreement is going to be a separate document therefore the Concession Agreement is need to be annexed for reference purposes.

(ii) Clause 2 1 of the Model Agreement provides that the Authority shall at all times (including twenty-four hours each day) during the Concession Period, subject to and in accordance with the provisions of this Agreement, the Concession Agreement, Applicable Laws and in accordance with applicable standards prescribed in relevant ICAO Documents.
The said clause under DCA has been amended to read as under:

"AAI shall at all times (including by means of multi-shift operations as required over 24 (twenty four) hours each day), during the term hereof, in accordance with the relevant ICAO Documents and Annexes and DGCA Civil Aviation Requirements ***at its own cost and expense."***

As per Draft CNS/ATM Agreement Authority (AAI) is required to provide CNS/ATM services at its cost and expenses.

(iii) Clause 2.1.1 (b) of the Model Agreement provides that AAI cause to be maintained, the CNS/ATM Equipment, including carrying out of periodic flight calibration and tests of the CNS/ATM Equipment.

The said clause has been amended under *Draft CNS/ATM* AGREEMEN to read as under:

"AAI Maintain the AAI Equipment including carrying out periodic flight calibration of the AAI Equipment and other tests"

(iv) *Draft CNS/ATM* Agreement insert following additional obligation of the AAI which is not envisaged in the MCA
'Deploy such manpower as may be required to perform the AAI Services'

(v) Clause 2.2 © of the Model Agreement provide following as Concessionaire Obligation:

"in the event of relocation of the CNS/ATM Equipment and facilities in accordance with the provisions of this Agreement, make the ATC Facility and mast available to the Authority or Designated GOI Agency, as the case may be, for provision of the CNS/ATM Services"

However under the *Draft CNS/ATM* Agreement said Concessionaire obligation made AAI obligation and changed to read as under :

"AAI shall relocate AAI Equipment on the Concessionaire's request on account of Expansion, at the Concessionaire's cost and expense, provided such relocation does not adversely affect AAI's obligations under this Agreement"

(vi) *Draft CNS/ATM* Agreement insert following additional obligation of the AAI (clause 4.1.4) which is not envisaged in the Model Agreement
"AAI shall provide to the Concessionaire all statistics of air traffic movement for daily, weekly and monthly movements in such format, and at such frequency and through such method of delivery as may be agreed to by the Parties from time to time."

(vii) Following obligation of Concessionaire as envisaged in Clause 2.2 (h) of the Model Agreement has been deleted from Clause 5.2 of the *Draft CNS/ATM* Agreement;
"provide and maintain, free of any cost or charge to the Authority, residential flats for employees of the ATC Facility"

(viii) *Draft CNS/ATM* AGREEMEN insert following additional obligation of the AAI (clause 6.4) which is not envisaged in the Model Agreement

"in accordance with the requirements of the Final CNS/ ATM Development Plan, at its own cost and expense, design, build, install, test, commission and operate such additional equipment and facilities identified to be within the scope of AAI ("AAI Development Equipment");

(ix) Clause 8.1 ,8.4. and 8.5 of the *Draft CNS/ATM* Agreement provide to read as under:

" 8.1 AAI shall, in consideration of it performing the AAI Services, be entitled to recover the Route Navigation Facilities Charges and Terminal Navigation Landing Charges (the "CNS/ ATM Charges") directly from airlines and ***the Concessionaire shall incur no liability in respect of such charges.***

8.4 *All costs and expenses, whether operating or capital in nature, directly incurred by AAI pursuant to provisions of this Agreement, towards provision of CNS/ATM Services and other services being provided by it at the Airport or otherwise, would be admissible for determination of charges that AAI can levy for such services.* ***No cost or expenses directly borne by AAI would be reimbursed by the Concessionaire, or admissible for determination of Aeronautical Charges which can be levied, collected and appropriated by the Concessionaire.***

8.5 All costs and expenses, whether operating or capital in nature, directly incurred by the *Concessionaire pursuant to provisions of this Agreement, would be admissible for determination of Aeronautical Charges by AERA, which charges can be levied, collected and appropriated by the Concessionaire pursuant to provisions of the Concession Agreement. No cost or expenses directly borne by the Concessionaire would be reimbursed by AAI, or admissible for determination of charges which can be levied, collected and appropriated by AAI."*

Please note that *Draft CNS/ATM* Agreement has been amended to add the bold terms though these terms are not envisaged in the Model Agreement.

(x) Clause 13.2 of Draft CNS/ATM Agreement provide to read as under:

"Assignment by the Concessionaire Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 18.6, the Concessionaire shall not assign or otherwise transfer all or any portion of its rights or obligations under this Agreement without the prior written consent of AAI: Provided, however, that the Concessionaire may, without such prior written consent, but upon prior written notice to AAI"

It may be noted that this clause needs to be reviewed since assignment of rights are permissible to Concessionaire only with written notice and not consent, it could be added that such assignment would not prejudice in any manner rights of AAI under this Agreement

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