

AGREEMENT

Engagement of Consultant to Assist Airports Economic Regulatory Authority of India (AERA) in Determination of Tariffs for Aeronautical Services at Major Airports

AGREEMENT No. [●]

This agreement (hereinafter called the “**Agreement**”) is made on the [●] day of the month of [●] 2016, between, on the one hand, the Secretary, Airports Economic Regulatory Authority of India (hereinafter called the “**Authority**” or “**AERA**”, which expression shall, include their respective successors and permitted assigns, unless the context otherwise requires) and, on the other hand, [●] (hereinafter called the “**Consultant**”, which expression shall, include their respective successors and permitted assigns).

WHEREAS

- (A) The Authority vide its Request for Proposal (RFP No. [●]) (“**RFP**”) for Appointment of Consultant to assist AERA in determination of tariffs for aeronautical services at major airport’s (hereinafter called the “**Consultancy**”) invited proposals from applicants possessing the requisite experience and capabilities required for undertaking this consultancy;
- (B) The Consultant submitted its proposal for the aforesaid work, whereby the Consultant represented to the Authority that it had the required professional skills, and in the said proposal the Consultant also agreed to provide the Services to the Authority on the terms and conditions as set forth in the RFP read together with the clarifications/ addendum issued by the Authority and this Agreement;
- (C) The Authority, on acceptance of the aforesaid proposal of the Consultant, awarded the Consultancy to the Consultant vide its Letter of Award dated [●] (the “**LOA**”); and
- (D) In pursuance of the LOA, the parties have agreed to enter into this Agreement.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. GENERAL

1.1 Definitions and Interpretation

1.1.1 The words and expressions beginning with capital letters and defined in this Agreement shall, unless the context otherwise requires, have the meaning hereinafter respectively assigned to them:

- (a) “**Agreement**” means this Agreement, together with all the Annexures;
- (b) “**Agreement Value**” shall have the meaning set forth in Clause 6.1;
- (c) “**Applicable Laws**” means the laws and any other instruments having the force of law in India as they may be issued and in force from time to time;
- (d) “**Confidential Information**” shall have the meaning set forth in Clause 3.3;
- (e) “**Conflict of Interest**” shall have the meaning set forth in Clause 3.2 read with the provisions of RFP;
- (f) “**Dispute**” shall have the meaning set forth in Clause 9.2.1;

- (g) **“Effective Date”** means the date on which this Agreement comes into force and effect pursuant to Clause 2.1;
- (h) **“Government”** means the Government of India.
- (i) **“INR, Re. or Rs.”** means Indian Rupees;
- (j) **“Party” or “Parties”** means the Authority or the Consultant, individual and collectively means Parties;
- (k) **“Key Personnel”** means the Team Leader and Sector Experts read with the provisions of Clause 2.5.2 of the RFP;
- (l) **“RFP”** means the Request for Proposal (RFP No. [●]) document in response to which the Consultant’s proposal for providing Services was accepted;
- (m) **“Services”** means the work to be performed by the Consultant pursuant to this Agreement, as described in the Terms of Reference hereto;
- (n) **“Sector Experts”** means the personnels who will bring in experience, particularly in the field of financial analysis, econometric modeling & forecast & data base management;
- (o) **“Team Leader”** means the personnel who will lead, co-ordinate and supervise the team for the Consultancy and shall be responsible for the timely, efficient and satisfactory delivery of services in relation to the Consultancy; and

All terms and words not defined herein shall, unless the context otherwise requires, have the meaning assigned to them in the RFP.

1.1.2 The following documents along with all addenda issued thereto shall be deemed to form and be read and construed as integral part of this Agreement and in case of any contradiction between or among them the priority in which a document would prevail over another would be as laid down below beginning from the highest priority to the lowest priority:

- (a) Agreement;
- (b) Annexures of Agreement;
- (c) RFP and clarifications issued by the Authority pursuant thereof; and
- (d) Letter of Award

1.2 Relation between the Parties

Nothing contained herein shall be construed as establishing a relation of master and servant or of agent and principal as between the Authority and the Consultant. The Consultant shall, subject to this Agreement, have complete charge of Key Personnel performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

1.3 Rights and obligations

The mutual rights and obligations of the Authority and the Consultant shall be as set forth in the Agreement, in particular:

- (a) the Consultant shall carry out the Services in accordance with the provisions of the Agreement; and
- (b) the Authority shall make payments to the Consultant in accordance with the provisions of the Agreement.

1.4 Governing law and jurisdiction

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

1.5 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.

1.6 Table of contents and headings

The table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement.

1.7 Notices

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

- (a) in the case of the Consultant, be given by email and by letter delivered by hand to the address given and marked for attention of the Consultant's Representative set out below in Clause 1.9 or to such other person as the Consultant may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside India specified in Subclause (b) below may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or email to the number/ address as the Consultant may from time to time specify by notice to the Authority;
- (b) in the case of the Authority, be given by email and by letter delivered by hand and be addressed to the Authority with a copy delivered to the Authority Representative set out below in Clause 1.9 or to such other person as the Authority may from time to time designate by notice to the Consultant; provided that if the Consultant does not have an office in the same city (Delhi) as the Authority's office, it may send such

notice by facsimile or email and by registered acknowledgement due, air mail or by courier; and

- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered. It shall be deemed to have been delivered on the actual date and time of the delivery; provided that in the case of facsimile or email, it shall be deemed to have been delivered on the working days following the date of its delivery.

1.8 **Location**

The Services shall be performed, delivered at the offices of the Authority or any other place of the Authority as required, in accordance with the provisions of RFP and at such locations as are incidental thereto, including the offices of the Consultant.

1.9 **Authorized Representatives**

1.9.1 Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement by the Authority or the Consultant, as the case may be, may be taken or executed by the officials specified in this Clause 1.9.

1.9.2 The Authority may, from time to time, designate one of its officials as the Authority Representative. Unless otherwise notified, the Authority Representative shall be:

Secretary

Airports Economic Regulatory Authority of India

AERA Building,
Administrative Complex,
Safdarjung Airport,
New Delhi- 110003
Tel: +91 11 24695040
Fax: +91 11 24695039

1.9.3 The Consultant may designate one of its employees as Consultant's Representative. Unless otherwise notified, the Consultant's Representative shall be:

[•]

[•]

Tel: [•]

Fax: [•]

1.10 **Taxes and duties**

Unless otherwise specified in the Agreement, the Consultant shall pay Service tax, as may be levied under the Applicable Laws and the Authority shall reimburse the same to the Consultant as per actuals.

2. COMMENCEMENT, COMPLETION AND TERMINATION OF AGREEMENT

2.1 Effectiveness of Agreement

This Agreement shall come into force and effect from the date of LOA or from the actual date of handing the assignment proposal received from airport operators/ ISPs by AERA to the Consultant, whichever is later (the “**Effective Date**”).

2.2 Commencement of Services

The Consultant shall commence the Services within a period of 7 (seven) days from the Effective Date, unless otherwise agreed by the Parties.

2.3 Termination of Agreement for failure to Commence Services

If the Consultant does not commence the Services within the period specified in Clause 2.2 above, the Authority may, by not less than 1 (one) weeks’ notice to the Consultant, declare this Agreement to be null and void, and in the event of such a declaration, this Agreement shall stand terminated and the Consultant shall be deemed to have accepted such termination.

2.4 Validity of Agreement

Unless terminated earlier pursuant to Clause 2.9 hereof, the agreement shall be valid for a period of 12 months from the date of LOA. However, AERA reserves the right to extend the period in its own discretion.

2.5 Entire Agreement

2.5.1 This Agreement and the Annexures together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn; provided, however, that the obligations of the Consultant arising out of the provisions of the RFP shall continue to subsist and shall be deemed to form part of this Agreement.

2.5.2 Without prejudice to the generality of the provisions of Clause 2.5.1 above, on matters not covered by this Agreement, the provisions of RFP shall apply.

2.6 Modification of Agreement

Modification of the terms and conditions of this Agreement, including any modification of the scope of the Services, may only be made by written agreement between the Parties.

2.7 Force Majeure

2.7.1 Definition

- (a) For the purposes of this Agreement, “Force Majeure” means an event which is beyond the reasonable control of a Party, and which makes a Party’s performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by government agencies.
- (b) Without prejudice to the generality of clause (a) above, it is specifically clarified that Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both (A) take into account at the time of the conclusion of this Agreement, and (B) avoid or overcome in the carrying out of its obligations hereunder.
- (c) Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

2.7.2 No breach of Agreement

The failure of a Party to fulfil any of its obligations hereunder shall not be considered to be a breach of, or default under, this Agreement insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Agreement.

2.7.3 Measures to be taken

- (a) A Party affected by an event of Force Majeure shall take all reasonable measures to remove such Party’s inability to fulfil its obligations hereunder with a minimum of delay.
- (b) A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any event not later than 7 (seven) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.

- (c) The Parties shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

2.7.4 Extension of time/Termination of Services

Any period within which a Party shall, pursuant to this Agreement, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure, to be decided at the sole discretion of the Authority.

Not later than fifteen (15) days after the Consultant has, as the result of an event of Force Majeure, become unable to perform a material portion of the Services, the Authority will be at liberty to terminate the Agreement and award the same to another party.

2.7.5 Payments

During the period of its inability to perform the Services as a result of an event of Force Majeure, the Consultant shall be entitled to be reimbursed for additional costs reasonably and necessarily incurred by it during such period for the purposes of the Services and in reactivating the Services after the end of such period.

2.7.6 Consultation

Not later than 30 (thirty) days after the Consultant has, as the result of an event of Force Majeure, become unable to perform a material portion of the Services, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.

2.8 Suspension of Agreement

Notwithstanding any other clause in this Agreement, the Authority may, by written notice of suspension to the Consultant, suspend all payments to the Consultant hereunder if the Consultant shall be in breach of this Agreement or shall fail to perform any of its obligations under this Agreement, including the carrying out of the Services; provided that such notice of suspension (i) shall specify the nature of the breach or failure, and (ii) shall provide an opportunity to the Consultant to remedy such breach or failure within a period not exceeding 15 (fifteen) days after receipt by the Consultant of such notice of suspension.

2.9 Termination of Agreement

2.9.1 By the Authority

The Authority may, by not less than 15 (fifteen) days' written notice of termination to the Consultant, such notice to be given after the occurrence of any of the events specified in this Clause 2.9.1, terminate this Agreement if:

- (a) the Consultant fails to remedy any breach hereof or any failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause 2.8 hereinabove, within 15 (fifteen) days of receipt of such notice of suspension or within such further period as the Authority may have subsequently granted in writing;
- (b) the Consultant becomes insolvent or bankrupt or enters into any agreement with its creditors for relief of debt or take advantage of any law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary;
- (c) the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 9 hereof;
- (d) the Consultant submits to the Authority a statement which has a material effect on the rights, obligations or interests of the Authority and which the Consultant knows to be false;
- (e) any document, information, data or statement submitted by the Consultant in its Proposals, based on which the Consultant was considered eligible or successful, is found to be false, incorrect or misleading;
- (f) as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than 15 (fifteen) days;
- (g) a situation of conflict of interest as set out in Clause 2.9 of the RFP and Clause 3.2 of this Agreement;
- (h) the Authority, in its sole discretion and for any reason whatsoever, decides to terminate this Agreement.

2.9.2 By the Consultant

The Consultant may, by not less than 30 (thirty) days' written notice to the Authority, such notice to be given after the occurrence of any of the events specified in this Clause 2.9.2, terminate this Agreement if:

- (a) the Authority fails to pay any money due to the Consultant pursuant to this Agreement and not subject to dispute pursuant to Clause 9 hereof within 45 (forty five) days after receiving written notice from the Consultant that such payment is overdue;
- (b) the Authority is in material breach of its obligations pursuant to this Agreement and has not remedied the same within 45 (forty-five) days (or such longer period as the Consultant may have subsequently granted in writing) following the receipt by the Authority of the Consultant's notice specifying such breach in question, the manner in which such breach has

affected the performance of the Services of the Consultant under this Agreement and the action required from the Authority with regard to such breach;

- (c) as the result of the Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than 60 (sixty) days; or
- (d) the Authority fails to comply with any final decision reached as a result of arbitration pursuant to Clause 9 hereof.

2.9.3 Cessation of rights and obligations

Upon termination of this Agreement pursuant to Clauses 2.3 or 2.9 hereof, or upon expiration of this Agreement pursuant to Clause 2.4 hereof, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, or which expressly survives such Termination; (ii) the obligation of confidentiality set forth in Clause 3.3 hereof; (iii) any right or remedy which a Party may have under this Agreement or the Applicable Laws.

2.9.4 Cessation of Services

Upon termination of this Agreement by notice of either Party to the other pursuant to Clauses 2.9.1 or 2.9.2 hereof, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner without causing any detrimental effect to the work/service in question and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultant and materials furnished by the Authority, the Consultant shall proceed as provided respectively by Clauses 3.8 or 3.9 hereof. Further, the Consultant agrees to render all assistance to the Authority in this regard.

2.9.5 Payment upon Termination

Upon termination of this Agreement pursuant to Clauses 2.9.1 or 2.9.2 hereof, the Authority shall make the necessary payments to the Consultant after offsetting against these payments any amount that may be due from the Consultant to the Authority having due regard to the completed milestones or deliverable by the Consultant.

2.9.6 Disputes about Events of Termination

If either Party disputes whether an event specified in Clause 2.9.1 or in Clause 2.9.2 hereof has occurred, such Party may, within 30 (thirty) days after receipt of notice of termination from the other Party, refer the matter to arbitration pursuant to Clause 9 hereof, and this Agreement shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award. However, the provisions of

this Clause 2.9.6 will not affect the right of the Authority to initiate the process for fresh award of this Agreement or to award this Agreement to some other Consultant.

3. OBLIGATIONS OF THE CONSULTANT

3.1 General

3.1.1 Standards of Performance

The Consultant shall perform the Services and carry out its obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this Agreement or to the Services, as a faithful adviser to the Authority, and shall at all times support and safeguard the Authority's legitimate interests.

3.1.2 Terms of Reference

The scope of Services to be performed by the Consultant is specified in the Terms of Reference (the “**TOR**”) at Annexure-I of this Agreement. The Consultant shall provide the Deliverables specified therein in conformity with the time schedule stated therein.

3.1.3 Applicable Laws

The Consultant shall perform the Services in accordance with the Applicable Laws and shall take all practicable steps to ensure that the Key Personnel of the Consultant, comply with the Applicable Laws.

3.2 Conflict of Interest

3.2.1 The Consultant shall not have a Conflict of Interest and any breach hereof shall constitute a breach of the Agreement making this Agreement liable to termination at the behest of the Authority.

3.2.2 Prohibition of conflicting activities

Neither the Consultant nor the Key Personnel shall engage, either directly or indirectly, in any of the following activities:

- (a) during the term of this Agreement, any business or professional activities which would conflict with the activities assigned to them under this Agreement;

- (b) after the termination of this Agreement, such other activities as may be specified in the Agreement; or
- (c) at any time, such other activities as have been specified in the RFP as Conflict of Interest.

3.2.3 **Consultant not to benefit from commissions, discounts, etc.**

The remuneration of the Consultant pursuant to Clause 6 hereof shall constitute the Consultant's sole remuneration in connection with this Agreement or the Services and the Consultant shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Agreement or to the Services or in the discharge of its obligations hereunder, and the Consultant shall use its best efforts to ensure that the Key Personnel, similarly shall not receive any such additional remuneration.

3.2.4 The Consultant and its Key Personnel, employees, officers, agents, and advisors shall observe the highest standards of ethics and not have engaged in and shall not hereafter engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively "**Prohibited Practices**"). Notwithstanding anything to the contrary contained in this Agreement, the Authority shall be entitled to terminate this Agreement forthwith by a communication in writing to the Consultant, without being liable in any manner whatsoever to the Consultant, if it determines that the Consultant has, directly or indirectly or through an agent, engaged in any Prohibited Practices in the Selection Process or before or after entering into of this Agreement. In such an event, the Authority shall forfeit and appropriate the Performance Security, as genuine pre-estimated compensation and damages payable to the Authority towards, inter alia, time, cost and effort of the Authority, without prejudice to the Authority's any other rights or remedy hereunder or in law.

3.2.5 Without prejudice to the rights of the Authority under Clause 3.2.4 above and the other rights and remedies which the Authority may have under this Agreement, if the Consultant is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices, during the Selection Process or before or after the execution of this Agreement, the Consultant shall not be eligible to participate in any tender or RFP issued during a period of 2 (two) years from the date the Consultant is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices.

3.2.6 For the purposes of Clauses 3.2.4 and 3.2.5, the following terms shall have the meaning hereinafter respectively assigned to them:

- (a) "**corrupt practice**" means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Selection Process (for removal of doubt, offering of employment or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in

any manner, directly or indirectly with Selection Process or LOA or dealing with matters concerning the Agreement before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Selection Process); or (ii) engaging in any manner whatsoever, whether during the Selection Process or after the issue of LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a legal, financial or technical adviser the Authority in relation to any matter concerning the Project

- (b) “**fraudulent practice**” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Selection Process;
- (c) “**coercive practice**” means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Selection Process or the exercise of its rights or performance of its obligations by the Authority under this Agreement;
- (d) “**undesirable practice**” means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Selection Process; or (ii) having a Conflict of Interest; and
- (e) “**restrictive practice**” means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating a full and fair competition in the Selection Process.

3.3 Confidentiality

The Consultant and its Key Personnel shall not, either during the term or within two years after the expiration or termination of this Agreement disclose any proprietary information, including information relating to reports, data, drawings, design software or other material, whether written or oral, in electronic or magnetic format, and the contents thereof; and any reports, digests or summaries created or derived from any of the foregoing that is provided by the Authority to the Consultant, its Key Personnel; any information provided by or relating to the Authority, its technology, technical processes, business affairs or finances or any information relating to the Authority’s employees, officers or other professionals or suppliers, customers, or contractors of the Authority; and any other information which the Consultant is under an obligation to keep confidential in relation to the Project, the Services or this Agreement (“**Confidential Information**”), without the prior written consent of the Authority.

Notwithstanding the aforesaid, the Consultant, its Key Personnel or either of them may disclose, with prior written approval of the Authority, Confidential Information to the extent that such Confidential Information:

- (a) was in the public domain prior to its delivery to the Consultant, its Key Personnel or becomes a part of the public knowledge from a source other than the Consultant, its Key Personnel;
- (b) was obtained from a third party with no known duty to maintain its confidentiality;
- (c) is required to be disclosed by Applicable Laws or judicial or administrative or arbitral process or by any governmental instrumentalities, provided that for any such disclosure, the Consultant, its Key Personnel shall give the Authority, prompt written notice, and use reasonable efforts to ensure that such disclosure is accorded confidential treatment; and
- (d) is provided to the professional advisers, agents, auditors or representatives of the Consultant or its Key Personnel, as is reasonable under the circumstances; provided, however, that the Consultant or Key Personnel, as the case may be, shall require their professional advisers, agents, auditors or its representatives, to undertake in writing to keep such Confidential Information, confidential and shall use its best efforts to ensure compliance with such undertaking.

Subject to the confidentiality obligations above, the Consultant shall be allowed to use this engagement as an experience citation with other clients.

3.4 Liability of the Consultant

3.4.1 The Consultant's liability under this Agreement shall be determined by the Applicable Laws and the provisions hereof.

3.4.2 The Consultant shall, subject to the limitation specified in Clause 3.4.3, be liable to the Authority for any direct loss or damage accrued or likely to accrue due to deficiency in Services rendered by it.

3.4.3 The Parties hereto agree that in case of delay, error, variation, negligence or willful misconduct on the part of the Consultant or Key Personnel or on the part of any person or firm acting on behalf of the Consultant in carrying out the Services, the Consultant, with respect to damage caused to the Authority's property, shall be liable to the Authority not exceeding an amount equal to 0.5% (zero point five percent) of the total value of the contract per day, subject to a maximum of 5% (five percent) of the total value of the contract. AERA will take into consideration the reasons for delay, error or variation, if any, while imposing liquidated damages on the selected applicant. However, in the event of delay caused due to reasons beyond the control of the Consultant, AERA may, in its sole discretion, consider granting of appropriate extension of time, without imposition of liquidate damages.

3.4.4 In addition to the above Clause 3.3.3, the Consultant may be censured and/ or debarred for deficiencies on its part.

3.5 Consultant's actions requiring the Authority's prior approval

The Consultant shall obtain the Authority's prior approval in writing before taking any of the following actions:

- (a) Appointing such members of the professional Key Personnel as are not listed in Annexure-II; or
- (b) Any other action that is specified in this Agreement.

3.6 Reporting obligations

3.6.1 The Consultant shall submit to the Authority the reports and documents specified in the Agreement, in the form, in the numbers and within the time periods set forth therein.

3.7 Documents prepared by the Consultant to be property of the Authority

3.7.1 All reports and other documents (collectively referred to as “**Consultancy Documents**”) prepared by the Consultant (or any Third Party) in performing the Services shall become and remain the property of the Authority, and all intellectual property rights in such Consultancy Documents shall vest with the Authority. Any Consultancy Document, of which the ownership or the intellectual property rights do not vest with the Authority under law, shall automatically stand assigned to the Authority as and when such Consultancy Document is created and the Consultant agrees to execute all papers and to perform such other acts as the Authority may deem necessary to secure its rights herein assigned by the Consultant.

3.7.2 The Consultant shall, not later than termination or expiration of this Agreement, deliver all Consultancy Documents to the Authority, together with a detailed inventory thereof. The Consultant may retain a copy of such Consultancy Documents. The Consultant, or a Third Party shall not use these Consultancy Documents for purposes unrelated to this Agreement without the prior written approval of the Authority.

3.7.3 The Consultant shall hold the Authority harmless and indemnified for any losses, claims, damages, expenses (including all legal expenses), awards, penalties or injuries (collectively referred to as “**Claims**”) which may arise from or due to any unauthorized use of such Consultancy Documents, or due to any breach or failure on part of the Consultant or a Third Party to perform any of its duties or obligations in relation to securing the aforementioned rights of the Authority.

3.8 Materials furnished by the Authority

Materials made available to the Consultant by the Authority shall be the property of the Authority and shall be marked accordingly. Upon termination or expiration of this Agreement, the Consultant shall furnish forthwith to the Authority, an inventory of such

materials and shall dispose of such materials in accordance with the instructions of the Authority. The Consultant would be allowed to retain a copy of its working papers to maintain a professional record of its involvement in the engagement and to comply with applicable legal and regulatory requirements. Also, it is appreciated that it may not be possible for the Consultant to permanently dispose-off all information so furnished (for instance in terms of information embodied in project related emails). In all cases, the Consultant shall be responsible for not using such information for purposes unrelated to this Agreement without the prior written approval of the Authority.

3.9 Accuracy of Documents

The Consultant shall be responsible for accuracy of the documents drafted and/ or vetted and data collected by it directly or procured from other agencies/authorities, estimates and all other details prepared by it as part of these services. Subject to the provisions of Clause 3.4, it shall indemnify the Authority against any inaccuracy in its work which might surface during implementation of the Consultancy, if such inaccuracy is the result of any negligence or inadequate due diligence on part of the Consultant or arises out of its failure to conform to good industry practice. The Consultant shall also be responsible for promptly correcting, at its own cost and risk, the documents including any re-survey / investigations.

3.10 Providing access to the Consultant Office and Key Personnel

The Consultant shall ensure that the Authority, and officials of the Authority having authority from the Authority, are provided unrestricted access to the Consultant's Office and to all Key Personnel during office hours. The Authority's any such official shall have the right to inspect the Services in progress, interact with relevant Key Personnel of the Consultant and verify the record of their satisfaction.

4. CONSULTANT'S KEY PERSONNEL

4.1 General

The Consultant shall employ and provide such qualified and experienced Key Personnel as may be required to carry out the Services.

4.2 Deployment of Key Personnel

The designations, names and other particulars of each of the Consultant's Key Personnel required in carrying out the Services are described in Annexure-II of this Agreement.

4.3 Approval of Key Personnel

4.3.1 The Key Personnel listed in Annexure-II of this Agreement are hereby approved by the Authority. No other Key Personnel shall be engaged without prior approval of the Authority.

4.4 Substitution of Key Personnel

If the Consultant hereafter proposes to engage any person as professional Key Personnel, it shall submit to the Authority its proposal along with a CV of such person in the form provided at Appendix-I (Form 10) of the RFP. The Authority may approve or reject such proposal with 14 (fourteen) days of receipt thereof. In case the proposal is rejected, the Consultant may propose an alternative person for the Authority's consideration. In the event the Authority does not reject a proposal with 14 (fourteen) days of the date of receipt thereof under this Clause 4.4, it shall be deemed to have been approved by the Authority.

Notwithstanding to the above, the Authority expects all the Key Personnel specified in the Proposal to be available during implementation of the Agreement. Since the qualifications and profile of the Key Personnel is the sole ground of consideration of this Agreement, it is agreed by the Parties that substitution of Key Personnel shall not be permitted. Substitution will, however, be permitted if the Key Personnel is not available for reasons of any incapacity or due to ill health, subject to equally or better qualified and experienced Key Personnel being provided to the satisfaction of AERA. Such substitution shall be limited to only one Key Personnel. AERA expects all the Key Personnel to be available during implementation of the Agreement.

Substitute of the Team Leader will not normally be considered and may lead to disqualification of the Applicant or termination of the Agreement.

- 4.5 The Consultant shall be liable to the Authority for any costs or effect of or damage to the performance of services to the Authority or any other event of loss or damage incurred or likely to be incurred by the Authority, if any during such period of substitution of the Key Personnel, or as a result thereof.

4.6 Team Leader

The person designated as the Team Leader of the Consultant's Key Personnel shall be responsible for the coordinated, timely and efficient functioning of the Key Personnel. In addition, he shall be responsible for day to day performance of the services, as specified in Clause 2.5.2 of the RFP.

5. OBLIGATIONS OF THE AUTHORITY

5.1 Assistance in clearances etc.

Unless otherwise specified in the Agreement, the Authority shall make best efforts to ensure that the Government shall:

- (a) provide the Consultant, its Key Personnel with work permits and such other documents as may be necessary to enable the Consultant, its Key Personnel to perform the Services; and
- (b) issue to officials, agents and representatives of the Government all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services.

The Authority shall assist in arranging meetings / interactions / consultations with stakeholders, setting out the context and expectations from stakeholder. In this regard, the Authority may issue such advisories to stakeholders, as may be necessary, for provision of required data, information or responses on consultations to the Consultant.

5.2 Access to Major Airports in connection with the Services

The Authority shall make best efforts to ensure that the Consultant have unimpeded access to the Major Airports in respect of which access is required for the performance of Services.

5.3 Payment

In consideration of the Services performed by the Consultant under this Agreement, the Authority shall make to the Consultant such payments and in such manner as is provided in Clause 6 of this Agreement.

5.4 Change in Applicable Law

TDS on consultancy fees shall be deducted and service tax shall be reimbursed by the Authority as per the applicable laws.

6. PAYMENT TO THE CONSULTANT

6.1 Agreement Value

An abstract of the cost of the Services payable to the Consultant is set forth in Annexure-III of the Agreement. The payments under this Agreement shall not exceed the agreement value specified herein (the “**Agreement Value**”). The Parties agree that the Agreement Value is Rs. [●] (Rupees [●]).

6.2 Currency of payment

All payments shall be made in Indian Rupees.

6.3 Mode of billing and payment

Billing and payments in respect of the Services shall be made as follows:

- (a) The Consultant shall be paid for its services as per the Payment Schedule at Annexure-IV of this Agreement, subject to the Consultant fulfilling the following conditions:

- (i) No payment shall be due for the next stage till the Consultant completes to the satisfaction of the Authority the work pertaining to the preceding stage.
 - (ii) The Authority shall pay to the Consultant, only the undisputed amount.
- (b) The Authority shall cause the payment due to the Consultant to be made within 21 (twenty one) days after the receipt by the Authority of duly completed bills with necessary particulars (the “**Due Date**”).
- (c) The final payment under this Clause 6.3 shall be made only after the final deliverable (“**Deliverables**”) shall have been submitted by the Consultant and approved as satisfactory by the Authority. The Services shall be deemed completed and finally accepted by the Authority and the Deliverables shall be deemed approved by the Authority as satisfactory upon expiry of 90 (ninety) days after receipt of the Deliverables by the Authority unless the Authority, within such 90 (ninety) day period, gives written notice to the Consultant specifying in detail, the deficiencies in the Services or the Deliverables. The Consultant shall thereupon promptly make any necessary corrections and/or additions, and upon completion of such corrections, the foregoing process shall be repeated. All the Deliverables shall be compiled, classified and submitted by the Consultant to the AERA in soft form, to the extent possible. In addition to the soft form, the Consultant is required to submit two hard copies of the reports of each Deliverables.
- (d) Any amount which the Authority has paid or caused to be paid in excess of the amounts actually payable in accordance with the provisions of this Agreement shall be reimbursed by the Consultant to the Authority within 30 (thirty) days after receipt by the Consultant of notice thereof. Any such claim by the Authority for reimbursement must be made within 1 (one) year after receipt by the Authority of the Deliverables in accordance with Clause 6.3(c). Any delay by the Consultant in reimbursement by the due date shall attract simple interest @ 10% (ten percent) per annum.
- (e) Any such claim by the Authority for reimbursement must be made within 1 (one) year after receipt by the Authority of the Deliverables in accordance with Clause 6.3 (c).
- (f) All payments under this Agreement shall be made to the account of the Consultant as may be notified to the Authority by the Consultant.

7. LIQUIDATED DAMAGES AND PENALTIES

Without prejudice to the generality of Clause 3.4, the Parties agree to the following:

7.1 Performance Security

- 7.1.1 For the purposes of this Agreement, performance security shall be deemed to be an amount equal to 10% (ten per cent) of the Agreement Value (the “**Performance Security**”). The Consultant shall be required to provide a Performance Security in the form of a bank guarantee.

7.1.2 Notwithstanding anything to the contrary contained in Clause 7.1.1, AERA shall invoke the Performance Security, to be appropriated against breach of terms and conditions of the contract in completing the task or towards any amounts as may be payable by the Consultant to AERA. The balance remaining out of the Performance Security, if any or the entire Performance Security, as the case may be, shall be returned to the Consultant within a period of 30 (thirty) days after the completion of the assignment and after issuance of completion certificate by AERA to the Consultant.

7.1.3 The Consultant may, in lieu of retention of the amounts as referred above, furnish a Bank Guarantee. This will be in addition to the Performance Security as referred to in Clause 7.1.1 above.

7.1.4 The Authority shall have the right to invoke and appropriate the proceeds of the Performance Security without notice to the Consultant in the event of breach of this Agreement specified in this Clause 7.1.

7.2 Liquidated Damages

7.2.1 Liquidated Damages for delay, Error or Variation

In case of delay, error or variation in completion of the work as specified in the delivery schedule, the consultant shall be liable to pay liquidated damages not exceeding an amount equal to 0.5% (zero point five percent) of the total value of the contract per day, subject to a maximum of 5% (five percent) of the total value of the contract. AERA will take into consideration the reasons for delay, error or variation, if any, while imposing liquidated damages on the selected applicant. However, in the event of delay, error or variation caused due to reasons beyond the control of the Consultant, AERA may, in its sole discretion, consider granting of appropriate extension of time, without imposition of liquidate damages.

7.3 Penalty for deficiency in Services

In addition to the liquidated damages not amounting to penalty, as specified in Clause 7.2, warning may be issued to the Consultant for minor deficiencies on its part. In the case of significant deficiencies in Services causing adverse effect on the Consultancy or on the reputation of the Authority, the Consultant may be censured.

8. FAIRNESS AND GOOD FAITH

8.1 Good Faith

The Parties undertake to act in good faith with respect to each other's rights under this Agreement and to adopt all reasonable measures to ensure the realization of the objectives of this Agreement.

8.2 Operation of the Agreement

The Parties recognize that it is impractical in this Agreement to provide for every contingency which may arise during the life of the Agreement, and the Parties hereby agree that it is their intention that this Agreement shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this Agreement either Party believes that this Agreement is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but failure to agree on any action pursuant to this Clause 8.2 shall not give rise to a dispute subject to arbitration in accordance with Clause 9 hereof.

9. SETTLEMENT OF DISPUTES

9.1 Amicable settlement

The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Agreement or the interpretation thereof.

9.2 Dispute resolution

9.2.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 9.3.

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

9.3 Conciliation

In the event of any Dispute between the Parties, either Party may call upon Chairman, AERA and the Managing Partner/ Chairman of the Board of Directors of the Consultant or a substitute thereof for amicable settlement, and upon such reference, the said persons shall meet no later than 10 (ten) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 10 (ten) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 9.2.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 9.4.

9.4 Arbitration

9.4.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 9.3, shall be finally decided by reference to arbitration by an Arbitral Tribunal appointed in accordance with Clause 9.4.2. Such arbitration shall be held in

accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act,1996. The place of such arbitration shall be the New Delhi where the Authority has its headquarters and the language of arbitration proceedings shall be English.

- 9.4.2 There shall be an Arbitral Tribunal of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.
- 9.4.3 The Arbitral Tribunal shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Clause 9 shall be final and binding on the Parties as from the date it is made, and the Consultant and the Authority agree and undertake to carry out such Award without delay.
- 9.4.4 The Consultant and the Authority agree that an Award may be enforced against the Consultant and/or the Authority, as the case may be, and their respective assets wherever situated.
- 9.4.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed in their respective names as of the day and year first above written.

SIGNED AND DELIVERED

For and on behalf of Consultant

SIGNED AND DELIVERED

For and on behalf of Airport Economic Regulatory Authority of India

In the presence of:

- 1.
- 2.

Terms of Reference

1. General

- 1.1 The Parliament of India, enacted an Act called “The Airports Economic Regulatory Authority of India Act, 2008” (hereinafter to be referred as the ‘Act’). The said Act envisages the establishment of a statutory authority called the Airports Economic Regulatory Authority (hereinafter referred to as the ‘AERA’) to regulate tariff for the aeronautical services, determine other airport charges for services rendered at major airports and to monitor the performance standards of such airports. The provisions of the said Act came in to force w.e.f. 1st September 2009.
- 1.2 AERA, was established by the Government of India vide notification No. GSR 317(E) dated 12th May 2009. The functions of AERA, in respect of major airports, are specified in Section 13 of the Act.
- 1.3 The terms ‘aeronautical services’ and ‘major airports’ are defined in Sections 2(a) and 2(i) of the Act, respectively.
- 1.4 While discharging its functions, AERA is required to ensure transparency by, *inter alia*, holding due consultations with stake-holders, which includes a licensee of an airport, airlines operating there at and/or a person who provides aeronautical services and any association of individuals, which in the opinion of AERA, represents the passengers or cargo facility users, by permitting such stake-holders to make submissions in writing and by documenting all its decisions and explanations thereof.
- 1.5 After its establishment, AERA has categorized the aeronautical services, in respect of which it is required to determine Tariff, as under:
- i. Aeronautical services provided by the airport operators;
 - ii. Cargo, Ground Handling and Fuel Supply Services;
 - iii. Air Navigation Services.
- 1.6 AERA has, after extensive stakeholder consultation, finalized its approach to the economic regulation of services categorized in (i) & (ii) above. Detailed Guidelines laying down information requirements, periodicity and procedure for Tariff determination have also been issued. The details of Orders and Guidelines issued in this behalf are as under:
- (i) Order No. 13 dated 12.01.2011 and Direction No. 5 dated 28.02.2011
 - (ii) Order No. 5 dated 02.08.2010; Order No. 12 dated 10.01.2011 and Direction No. 4 dated 10.01.2011

These can be downloaded from <http://aera.gov.in>.

- 1.6.1 In pursuance of AERA’s Orders and Guidelines as brought out in para 1.6 above, the regulated entities have filed their tariff proposals for the second Control Period of 5 years, which has commenced w.e.f. 01.04.2016. The proposals in respect of the regulated entities viz. Airport Operator(s) (AO) and Independent Service Provider(s) (ISP) for the purpose of this RFP as listed below:

Groups	Name of the Airport Operator/Service Provider in the Group
A	Rajiv Gandhi International Airport, Hyderabad

B	Kempegowda International Airport, Bengaluru
C	Kannur International Airport, Kannur; Chandigarh International Airport, Chandigarh; and Fuel Farm Operators- a) MAFFFL, CSIA, Mumbai b) DAFFFL, IGIA, Delhi c) IOSL, Kempegowda International Airport, Bengaluru.
D	AAI Airports at Chennai, Kolkata, Jaipur, Trivandrum, Lucknow, Guwahati, Calicut; and civil enclaves at Goa, Pune and Srinagar

2. Objectives

The Objective is engagement of Consultant to assist Airports Economic Regulatory Authority of India (AERA) in Determination of Tariffs for Aeronautical Services at above airports.

3. Scope of Work

The Selected Applicant shall perform the following services:

- a) reviewing the tariff proposals received from the regulated entities as mentioned in para 1.6.1 above for identification of information gaps. These include multiyear and annual tariff proposals and the annual compliance statements received by AERA;
- b) analyzing the Tariff proposals received from the regulated entities with respect to determination of Aggregate Revenue Requirements (comprising various Regulatory Building Blocks) and yield;
- c) identifying key aspects/ observations on the proposals for consideration of AERA including cleaning up of the tariff financial models viz. model should be capable of performing sensitivity analysis as AERA may require;
- d) reviewing impact of change(s) in assumptions/incorporation of AERA's decisions on various aspects of the proposals submitted by the regulated entities in the financial models, sensitivity analysis etc.;
- e) in preparation of consultation paper and organizing the Stakeholder Consultations under Section 13(4) of the AERA Act, 2008;
- f) evaluation of stakeholders' responses and finalization of AERA's decisions thereon; and
- g) preparation of documentation for tariff determination by AERA including preparation of tariff card.

It is clarified that each of the tariff proposals need to be considered separately, based on the submissions made therein as well as other factors that AERA is mandated to consider while determining the aeronautical tariffs or as AERA may instruct from time to time.

4. Deliverables and Payment milestone:

In pursuance of this TOR, the Consultant shall undertake/deliver the following deliverables (the "Deliverables") during the course of this Consultancy.

S.No.	Deliverables	Time Frame for Completion	Payment Schedule*
1.	Submission of initial analysis which includes identification of information		10%

	gaps		
2.	Finalisation and issue of Consultation Paper	9 months	40%
3.	Assisting AERA in Stakeholder consultations and evaluating stakeholders' response.		20%
4.	Assisting AERA in determination of aeronautical tariffs and issuance of tariff orders post stakeholders' consultation and successful completion of the assignment.		30%

** For Group C and Group D, the payment schedule shall be applicable on pro rata basis i.e. pro rata to completion of Milestone for the Airports comprised in the said Group. For instance, if a Group comprises 4 airports and Milestone I is achieved for one Airport then one fourth of the payment as stipulated for that particular milestone shall be payable.*

5. Completion of Services

- 5.1 All the Deliverables shall be compiled, classified and submitted by the Consultant to the AERA in soft form, to the extent possible. In addition to the soft form, the Consultant is required to submit two hard copies of the reports of each Deliverables.
- 5.2 The documents comprising the Deliverables shall remain the property of AERA and shall not be used by the Consultant for any purpose other than that intended under these Terms of Reference without the permission of AERA.
- 5.3 Each Deliverable of the Consultancy shall stand completed on acceptance communicated to the Consultant in writing by AERA. Consultant is not entitled to any payment of the milestones of Deliverables unless the Deliverable is accepted by AERA in writing. Further, AERA may seek clarifications/queries with respect to the Deliverables, which shall be addressed by Consultant within the timelines stipulated by AERA
- 5.4 The period of consultancy services shall not be more than **9 (nine)** months from the date of LOA and shall be completed within the stipulated period.
- 5.5 AERA reserves the right to extend the period of Consultancy beyond the period of 9 (nine) months in its own discretion.

Annexure -II**Deployment of Key Personnel (including Aviation Expert)**

(Refer Clause 4.2 of the Agreement)

Particulars of Key Personnel

S. No.	Designation of Key Personnel	Name	Educational Qualification	Length of Professional Experience			Experience in eligible assignments	Proposed Deployment of the Key Personnel in the Current Assignment
					Name of Firm	Employed Since		
1								
2								

Particulars of Aviation Expert

S. No.	Whether Employee or Consultant.	Name	Educational Qualification	Length of Professional Experience			Experience in eligible assignments	Proposed Deployment of the Aviation Expert in the Current Assignment
					Name of the Organization of employment of Aviation Expert	Employed Since		
1								

Fees payable for services rendered

(Refer Clause 6.1)

Engagement of Consultant for Group [●] to assist Airports Economic Regulatory Authority of India (AERA) in Determination of Tariffs for Aeronautical Services for Major Airports.

Category /Group No. [●]	Name of the Airport Operator/Service Provider in the Category	Amount in Rs. (in numbers) (excluding service tax).	Amount in Rs. (in words) (excluding service tax)

Payment Schedule

The Consultant shall be paid professional fee for the services which shall be linked to milestone achievements as indicated below:

S.No.	Deliverables	Time Frame for Completion	Payment Schedule*
1.	Submission of initial analysis which includes identification of information gaps	9 months	10%
2.	Finalisation and issue of Consultation Paper		40%
3.	Assisting AERA in Stakeholder consultations and evaluating stakeholders' response.		20%
4.	Assisting AERA in determination of aeronautical tariffs and issuance of tariff orders post stakeholders' consultation and successful completion of the assignment.		30%

** For Group C and Group D, the payment schedule shall be applicable on pro rata basis i.e. pro rata to completion of Milestone for the Airports comprised in the said Group. For instance, if a Group comprises 4 airports and Milestone I is achieved for one Airport then one fourth of the payment as stipulated for that particular milestone shall be payable.*