



## NOTICE INVITING TENDER

**MADHYA PRADESH TOURISM BOARD**

**(CIN): U75302MP2017NPL043078**

**6th Floor, Lily Trade Wing Jahangirabad, Bhopal**

**Madhya Pradesh, India. Pin code – 462008**

**Website: [www.tourism.mp.gov.in](http://www.tourism.mp.gov.in)**

<b>NIT No: 758/ MPTB/ 2024</b>	<b>Date: 06/02/2024</b>
<b>System No: 2024_ MPTB _331025</b>	

**" Request for Proposal for Selection of Operator for Providing Air Services to various destinations in Madhya Pradesh "**

MPTB invites offers for Request for Proposal for Selection of Operator for Providing Air Services to various destinations in Madhya Pradesh from reputed Agencies having requisite Experience . The detailed terms & conditions can be downloaded from website: <https://www.mptenders.gov.in/> [www.tourism.mp.gov.in](http://www.tourism.mp.gov.in). For any other information, Contact +91-9407057416 or email on [cs.mptb@mp.gov.in](mailto:cs.mptb@mp.gov.in) or contact no. **0755-2780600** Online Bid submission Last Date is 27/02/2024 at 3:00 PM

**Managing Director**

## **DISCLAIMER**

The information contained in this Request for Proposal (hereinafter referred to as "RFP") document or subsequently provided to the Bidders, whether verbally or in documentary form by or on behalf of the MPTB, their employees or any of its agencies/consultants/advisors, is provided to the Bidder(s) on the terms and conditions set out in this RFP document and all other terms and conditions subject to which such information is provided.

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

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

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

**Section I**  
**INSTRUCTIONS TO BIDDERS (ITB)**

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## **INTRODUCTION**

### **1. Background**

The State Government desires to enhance availability of Air Services connecting various cities located within Madhya Pradesh. This can be done through private initiative and a policy which provides adequate support to such initiative. This bid document and the Air Services Operation Agreement has been designed to encourage private players to start air services in Madhya Pradesh.

### **2. Brief Description of Bidding Process**

- 2.1 MPTB invites bids from interested parties “Request for Proposal for Selection of Operator for Providing Air Services to various destinations in Madhya Pradesh”.
- 2.2 The bidding process (the “Bidding Process”) will be carried out by following a single stage, two packet system i.e., by submission of eligibility proposals (the “Eligibility Proposal”) and financial bids (the “Financial Bid”) separately (together “The Bids”). The eligibility of the Bidders to bid in the RFP stage shall depend upon the Bids being responsive in terms of this RFP document and upon their meeting in entirety the minimum qualification criteria as laid down in this RFP document.
- 2.3 Each Bidder will be required to deposit, along with its Bid, a bid security (the “Bid Security”). The Eligibility Proposal submitted by the Bidders shall be evaluated based on the evaluation parameters contained in this RFP. The Financial Bids of only those Bidders, who are found to be eligible as per their Eligibility Proposal, shall be opened.
- 2.4 The Bidder giving the lowest VGF per flying hour or highest Premium per flying hour as Financial Bid, provided the Bid is responsive in terms of the ITB, shall be asked by MPTB immediately after the opening of the Bids, to furnish a Bank Guarantee, of Rs 50 lakhs within 15(fifteen) days of the receipt of MPTB’s letter to show its commitment (the “Commitment Security”) towards its Financial Bid. The Financial Bid of the bidder quoting the LOWEST VGF/HIGHEST PREMIUM per flying hour shall be considered for declaration as the selected bidder (the “Selected Bidder”) only when MPTB receives the Commitment Security within the specified time hereinabove.

### **3. Availability of RFP Document:**

The RFP document can be downloaded from the following website:

<https://www.mptenders.gov.in/>  
<http://www.tourism.mp.gov.in/>

#### 4. Pre-Bid Meeting:

A pre-bid meeting will be held on 12<sup>th</sup> day of February, 2024 at 11:00AM at the following address:

**Madhya Pradesh Tourism Board**

6th Floor, Lily Trade Wing,  
Jahangirabad, Bhopal Madhya Pradesh,  
India – 462008

#### 5. Validity, Bid Security and Rejection of the Bid

The Bids shall remain valid for 120 days from Bid Due Date or any extended Bid Due Date.

The Bid Security shall be refunded to the unsuccessful Bidders within 30 (thirty) days after the date of expiration of Bid Validity Period. However, no interest shall be payable on the Bid Security.

MPTB reserves the right to accept or reject any Bid, to cancel or modify the process or any part thereof or to vary any of the terms and conditions, and/or to annul the Bidding Process and reject all Bids, at any time during the Bidding Process, without thereby incurring any liability to the affected Bidder(s) or any obligation to inform the affected Bidder(s) of the grounds for MPTB's action.

#### 6. Schedule of Bidding Process

The important dates for the Bidding Process are as follows, subject to future changes, which will be advised through addendums/amendments:

Sl. No.	Event Description	Date/Time
1.	Issue of Bid Documents	06/02/2024
2.	Pre-Bid meeting	12/02/2024 at 11:00 AM
3.	Online Tender Purchase Last Date	21/02/2024 at 5:00 PM
4.	Online Bid submission Last Date (EMD, Technical Bid, Financial Bid)	27/02/2024 at 3:00 PM
5.	Opening date of Proposals	28/02/2024 at 3:00 PM
6.	Opening of Financial Bids	Will be informed to successful bidders.

## **Addresses for Communication:**

### **Managing Director**

Madhya Pradesh Tourism Board (MPTB)  
6th Floor, Lily Trade Wing, Jahangirabad, Bhopal  
Madhya Pradesh, India – 462008  
Contact: **0755-2780600**  
E-Mail on: md[mptb@mp.gov.in](mailto:mdmptb@mp.gov.in)

## **7. Further Information**

- 7.1 Interested Bidders may obtain further information from: -

### **Company Secretary**

Madhya Pradesh Tourism Board (MPTB)  
6th Floor, Lily Trade Wing, Jahangirabad, Bhopal  
Madhya Pradesh, India – 462008  
Contact: **0755-2780600**  
E-Mail on: [cs.mptb@mp.gov.in](mailto:cs.mptb@mp.gov.in)

- 7.2 All communications, including the envelopes, should contain the following information, to be marked at the top in bold letters:

“Request for Proposal for Selection of Operator for Providing Air Services to various destinations in Madhya Pradesh”

- 7.3 Official website (the “**Official Web Site**”) for notices:

<https://www.mptenders.gov.in>

All notices related to this RFP including clarifications/amendments to the RFP document shall be available on <https://www.mptenders.gov.in> and [www.tourism.mp.gov.in](http://www.tourism.mp.gov.in)

## **8. General terms of Bidding**

- 8.1 A Bidder is eligible to participate in only one Bid for taking up the Air Service Operations (AO). If a Bidder bidding individually participates in more than one Bid, it shall be disqualified and shall cause disqualification of all the Bids in which it has participated.
- 8.2 Notwithstanding anything to the contrary contained in the RFP, the detailed terms specified in the Air Service Operations Agreement (AOA) shall have overriding effect, provided, however, that any condition or obligation imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the AOA. However, in case of inconsistency between the ITB and the Agreement relates to the Bidding Process, then, the terms of the ITB shall prevail.



- 8.3 The Bidder should submit a power of attorney (the “Power of Attorney”) authorising the signatory of the Bid to commit the Bidder. The Power of Attorney must include the specimen signature of the authorised signatory (the “Authorised Signatory”) duly attested by a Director from the Board of Directors of the Bidder.
- 8.4 The Bidding documents including this RFP and all attached documents are and shall remain the property of MPTB and are transmitted to the Bidder solely for the purpose of preparation and the submission of the Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for the preparation and submission of their Bids. MPTB will not return any Bid or any information provided to it by the Bidders.

## **9. Conflict of Interest**

MPTB considers conflict of interest (the “Conflict of Interest”) to be a situation in which:

- 9.1 A Bidder (or any constituent thereof) holds controlling shareholding or other ownership interest in any other Bidder (or any constituent thereof). Provided that this shall not apply in cases where the direct or indirect shareholding in a Bidder or a constituent thereof in the other Bidder(s) (or any of its constituents) is less than 1% of its paid up and subscribed capital; or
- 9.2 A constituent of such Bidder is also a constituent of another Bidder; or
- 9.3 A Bidder receives or has received any direct or indirect subsidy from any other Bidder, or has provided any such subsidy to any other Bidder; or
- 9.4 A Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
- 9.5 A Bidder has a relationship with another Bidder, directly or through common third parties, that puts them in a position to have access to each other’s information about, or to influence the Bid of either or each of the other Bidder; or
- 9.6 A Bidder has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.

### 10.1 Scope of the Project

The scope of the Project shall mean and include, during the agreement period:

- (a) Managing the air service operations using/utilising twin engine aircraft with at least two pilot seats falling under the below mentioned category:

S.No	Category	Passenger Seating Capacity
1	Category-1A	<9
2	Category-1	9 - 20

- (b) Ensuring safety and security of the passengers using the air service.
- (c) Performance and fulfilment of all obligations of the Operator in accordance with the provisions of the AOA and matters incidental thereto or necessary for the performance of any or all of the obligations of the operator under the Agreement.
- (d) At least a twin-engine aircraft to be operated
- (e) Tariff for seats to be fixed by the Operator and sold in the open market.
- (f) The Operator, keeping in view, the viability can propose routes for air services operation within the state and shall ensure connectivity amongst the destinations mutually decided between MPTB and the Selected Operator (Destinations/Airstrips mentioned in Annexure B)  
The operator may be permitted to change or increase the routes with the written consent of MPTB.
- (g) The operator is expected to operate the aircraft for at least four (4) days in every week in destinations as mutually decided in point f above.

### 10.2 Period of Agreement

The period of Agreement shall be for a period of Six (6) years from the date of execution of Agreement. However, if the performance of the operator is not found satisfactory, MPTB would be at liberty to rescind the agreement with 04-month prior notice.

## **11. Eligibility of Bidders**

11.1. The Bidder should meet the following minimum eligibility criteria (the “Eligibility Criteria”):

- (a) The Bidder must be a company incorporated and registered in India under the Company Act 2013.
- (b) Bidder should be able to show its capability of deploying two twin engine aircraft for the proposed air service operations with not less than 2 Pilot seats each.
- (c) The Bidder should have at least two persons at senior managerial level (Manager & above) each having at least 3 years of experience of managing commercial air service operations on the rolls of the company at the time of submitting the bids.
- (d) The Bidder should be able to start the operations on mutually decided route within 45 days of receipt of award letter from MPTB.
- (e) Bidder should have valid NSOP/ SCOP issued by DGCA and should have experience of Aircraft operations of minimum 04 years from the date of submission of bid.
- (f) The bidder should have maintenance base approved by DGCA under CAR 145 inside Madhya Pradesh for proper and timely maintenance of the aircraft.
- (g) The bidder shall have a valid proof of ownership/ firm arrangement of atleast 2 (two) twin engine Aircrafts. (Proof of the same shall be submitted along with the bid).
- (h) The Aircraft offered should have all valid documents issued from DGCA and should be airworthy in conditions as on date of submission of bid and should have all relevant certification.
- (i) At the time of bid submission, the bidder who has been blacklisted, suspended by any state or central government, or any agency, authority, or body of any state or central government, or has previously entered into agreement with the state of Madhya Pradesh or the MPTB for Air Taxi Operations and such contract has been terminated for default of the bidder, shall not be eligible to participate in the bid process.  
Provided further that if a bidder (or constituent thereof) is, or has been in the past 12 months, in any of the relationships specified in clause 9 with any legal entity (which may not be a bidder) and such legal entity is disqualified by operation of this clause, then such bidder shall also be disqualified.
- (j) For the purpose of clarification, it is hereby stated that the degree of prohibited relationship between two or more bidders mentioned in clause 9 shall apply, for the purposes of this clause to, to a bidder(s) and the third party legal entity, referred to above.

11.2 The Bidder should fulfil the following parameters (the “Financial Eligibility”).

- 1) The aggregate tangible net worth (the “Net Worth”) of the Bidder should be at least Rs. 03 Crores (Three Crores) (the “Financial Eligibility”) as on 31st March 2023.

Net Worth shall be calculated as per the following formula: [Paid Up Share Capital + Reserves & Surplus – Revaluation Reserves, Goodwill, Miscellaneous Expenses (to the extent not written off) and other Intangible Assets]. The Member of the Consortium who meets this criteria should hold at least 26% (twenty six percent) of equity in Consortium and shall be called lead member.

## **12. Financial Position:**

The Bidder should submit the following documents:

- a. Submission of audited annual reports for the last three financial years, if the company is three years old, ending March 2023 duly certified by the statutory auditor of the Bidder.
- b. If so, requested by MPTB the Bidder shall provide the name, address and contact number of his bankers along with a letter of authority in favour of any authorized person of MPTB in this regard to enable MPTB to make enquiries from the Bidder's bankers.

## **13. Cost of Bidding**

- 13.1. The RFP document can be downloaded from the website of <https://www.mptenders.gov.in/> and <http://www.tourism.mp.gov.in/>.
- 13.2. The Bidders shall bear all costs associated with the preparation and submission of their bids, and MPTB will, in no case, be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.
- 13.3 The Bidder is expected to examine all instructions, forms, terms and conditions in this RFP document before submitting its bid. Submission of a bid that is not responsive in any respect shall be liable to be rejected.

## **14. Clarification of RFP Documents**

- 14.1 Agency may request a clarification on any of the bid documents in Pre-Bid Meeting on the indicated date. MPTB will respond to such requests and will post the response on E-tendering website: [www.mptenders.gov.in](http://www.mptenders.gov.in) and will inform the Pre- Bid Attendees by Email.
- 14.2 At any time before the submission of Proposals, MPTB may, for any reason, whether at its own initiative or in response to a clarification request by an invited firm, modify the bid documents (RFP) by amendment. E -tendering website: [www.mptenders.gov.in](http://www.mptenders.gov.in) and will inform the Pre- Bid Attendees by Email. MPTB may, at its discretion, extend the deadline for the submission of Proposals.

## **15. Language of Bid**

- 15.1 The bid prepared by the bidder, as well as all correspondence and documents relating to the bid exchanged by the bidder and MPTB shall be written in English language. Any printed literature furnished by the bidder may be written in another language as long as such literature is accompanied by a translation of its pertinent passages in the English language duly authenticated by the bidder, in which case, for purposes of interpretation of the bid, the translation shall prevail.

## **16. Bid Security and Commitment Security**

- 16.1. The Bidder shall furnish, as part of its Bid, an Earnest Money Deposit (EMD) amount of Rs. 5,00,000/- (Rupees five Lakhs only) is to be submitted Online Only and bill submitted online through [www.mpeproc.gov.in](http://www.mpeproc.gov.in). MPTB shall not be liable to pay any interest on the bid security so deposited. Any bid not accompanied by the bid security shall be rejected by MPTB as non-responsive.
- 16.2. The selected Bidder shall be asked by MPTB to furnish a bank guarantee for a sum of Rs. 50,00,000 (Rupees Fifty Lakhs only) toward Commitment Security within 15(fifteen) days of the receipt of MPTB 's letter. The LoA shall be issued only after receipt of the Commitment Security by MPTB. In the event the Commitment Security is not provided within the stipulated time, MPTB at its own discretion, shall have the right to reject the bid, forfeit the bid Security submitted by such Bidder. Thereafter, MPTB shall be at liberty to take such further action as deemed appropriate. The Bidder, after he has deposited the valid commitment security shall be called the selected Bidder.
- 16.3 The bid security submitted by the selected Bidder shall be returned. The Commitment Security (CS) shall remain valid for the entire period of AOA.
- 16.4 Commitment Security shall be returned to the Operator on successful completion of the agreement.

## **17. Bid Variable and other conditions**

- 17.1 The bidder will quote the amount for **“Per Hour Flying VGF/Premium”** on operating flights from one town to another town within the State.
- 17.2 The Authority shall guarantee payment for a minimum of 150 flying hours per month. The Maximum VGF extended by the Authority shall however be restricted to Rs 1.20 Crore (Rupees One Crore and Twenty Lakhs) per month. in the event the operator quoting the lowest VGF per flying hour is the selected bidder. In case the selected bidder is the one who has quoted the Highest Premium, they shall guarantee payment of atleast 150 flying hours per month

to MPTB.

Please note that VGF is only payable by MPTB to selected bidder, if he has taken the option of lowest VGF for bid variable. In case the selected bidder has chosen the option of Per Flying Hour Premium, no VGF will be paid to the selected operator by MPTB.

- 17.3 The MPTB shall provide Per Hour Flying VGF to the operator for the first four years at a diminishing ratio of 25% every year and for Fifth and Sixth year the operator shall operate at its own cost. If the operator fails to operate aircraft the Authority will have right to cancel the agreement and forfeit the Bank Guarantee and blacklist the agency for future work.

Further, this reduction in VGF at 25% shall not be applicable in the second year if the operator doubles ( a 100% increase ) his operating capacity in second year of operation (for example if operator initially deploy 6 passenger seat aircraft then from second year operator has to deploy atleast 12 passenger seater aircraft. In such a case the reduction shall be applicable from the third years onwards and from the fifth and sixth year the operator shall have to operate aircraft at its own cost.

Particular	Year1	Year 2	Year 3	Year 4	Year 5	Year 6
Per Flying Hour Flying VGF (In case of non capacity augmentation)	100%	75%	50%	25%	0%	0%
Per Flying Hour VGF ( In case of capacity augmentation@ 100%)	100%	100%	75%	50%	25%	0%

The categories of aircrafts that are eligible for VGF under the RFP have been defined as below;

S.No	Category	Passenger Seating Capacity
1	Category-1A	<9
2	Category-1	9 - 20

- 17.4 The VGF shall not be available on Inter-State Air Taxi Operations.
- 17.5 The Operator shall be responsible for paying all charges (e.g., landing & parking charges, etc.) levied by Government agencies at all the airports.
- 17.6 The MPTB shall reimburse the Ambulance and Fire Brigade charges on actual basis, for Airports/Airstrips owned and controlled by the State Government. Security shall be provided free of charge for flights operated to/from airports owned and controlled by the State Government.

- 17.7 The Operator shall prepare a web-based Booking Portal for providing online booking services. All the bookings shall be done through a secure payment gateway permitting the use of credit/debit cards/NEFT/RTGS/UPI.
- 17.8 The Operator must maintain operational efficiency as mentioned in the agreement and shall adhere to the requirements stipulated by DGCA.
- 17.9 The bidder shall start Air Service Operations within 45 days months from the date of issuing of the LOA.
- 17.10 The Bidder shall sign the AOA within a period of Thirty (30) days from the date of issuance of LOA by the MPTB.
- 17.11 The Operator shall be responsible to provide transport facility between the aircraft and the terminal building, bottled drinking water in the aircraft to the passengers.
- 17.12 The Operator shall provide security staff for frisking of passengers for security to be provided for flights operated to/from airstrips owned and controlled by the State Government.
- 17.13
- a) MPTB shall undertake evaluation for augmentation of services as and when deemed suitable. In case an increase in demand/ increase in passenger traffic is observed in the mutually decided route, the first right of refusal shall be given to the selected operator to deploy an additional aircraft/increase the number of seats on the same terms and conditions within 30 days to cater to such demand. However, if the operator declines to deploy the additional aircraft/increase the number of seats the Authority reserves the right to open the market to other aircraft operators to cater to the increased demand. These operators may be the bidders who had submitted proposals for the same tender previously, however, were positioned at L2, L3, L4 etc. Such bidders will be invited to match the terms and conditions of the existing operator. MPTB may also issue a fresh tender and invite fresh bids for the selected route as deemed appropriate.
  - b) The same shall be applicable if MPTB decides to open other routes (other than the mutually decided route with the selected operator) where the first right of refusal shall be given to the selected operator to deploy an additional aircraft on the same terms and conditions within 30 days on the new route. However, if the operator declines to deploy the additional aircraft/increase the number of seats the Authority reserves the right to open the market to other aircraft operators to cater to the increased demand. These operators may be the bidders who had submitted proposals for the same tender previously, however, were positioned at L2, L3, L4 etc. Such bidders will be invited to match the terms and conditions of the existing operator. MPTB may also issue a fresh tender and invite fresh bids for the selected route as deemed appropriate.

- 17.14 MPTB shall facilitate space for Ticketing Counter at all airports/ airstrips to the Successful bidder for selling the tickets of the operations to General Public and the fees shall be borne by the operator.
- 17.15 MPTB shall also market the air taxi services through their Government online portal. Further, Successful Bidder will have right to use the logo of MP Govt. and images of various tourist places and their details and logo for marketing purposes.
- 17.16 Successful Bidder will have right to utilize all the airstrips available with GoMP for operation of its aircraft and will have right to create its base at any of the airstrips.

### **17.18 Payment Terms**

- 17.18.1 Payment will be released on monthly basis after submission of original invoice with all relevant documents of operation after the end of the month. Total Monthly VGF shall be calculated on the basis of total flying hours per month restricted to 150 hours (per month).
- 17.18.2 The Authority shall be entitled to deduct, in accordance with Applicable Law, applicable Taxes or any other deductions (as the case may be), from any payments made to the Preferred Bidder. The Authority shall provide the details of deduction and a certificate to the Preferred Bidder certifying the deduction so made. It is further clarified that the deductions on account of non-performance / damages on account of the Preferred Bidder/ its' personnel shall also be made from payment of the VGF by the Authority.
- 17.18.3 No payment of the VGF shall be made in advance by the Authority.
- 17.18.4 All taxes duties, levies etc., imposed by the GoMP, GoI and local bodies are inclusive of rates in connection with the Services in force at time of submission of Bids, shall be borne by the Preferred Bidder.
- 17.18.5 The GST will not be payable on VGF claim.
- 17.18.6 In case the selected bidder is the operator who quoted the highest premium per flying hour, they shall pay MPTB the quoted premium GST extra as applicable as per the total flying hours recorded in the month. This payment shall be duly justified with flying hour details and be completed within 15 days of the previous months end. For instance, the payment for January 1<sup>st</sup> to 31<sup>st</sup> shall be made before 15<sup>th</sup> February to MPTB.

### **17.19 Operational Efficiency**

- 17.19.1 Each scheduled flight would be evaluated out of a maximum of 10 (ten) marks on the basis of delay in scheduled departure. For each flight that departs on scheduled time or a delay of up to 90 minutes 10 marks shall be noted. If delayed for more, 7 marks shall be noted. If the flight is cancelled for whatever



reason zero (0) marks shall be noted. For each month the total of such marks shall be submitted by the Operator to MPTB. If the Operator scores less than 90%, the Air Service Operations shall not be considered satisfactory for the month and MPTB shall appropriate damages as provided in the table below not exceeding 10 % of the VGF/Premium paid for the month:

Score of the Operator	Amount of penalty
75% to < 90%	2.5%
50% to < 75%	5.0%
25% to < 50%	7.5%
Less than 25%	10.0%

The damages as above shall be appropriated after the Operator is given an opportunity of hearing and the performance was affected for reasons attributable to the Operator.

17.19.2 Without any prejudice to its right of appropriation in clause 17.19.1 above, in case the scores continue to be less than 90% for three consecutive months, it shall be treated as an event of Operator's default which may lead to termination of the agreement. Without prejudice to its right to appropriate the commitment security and terminate the agreement MPTB may invite any other willing person to start air service operations in any sector covering any cities of the State on the same terms and conditions as are applicable to the Operator.

17.19.3 In the event the Operator fails to score 90% marks as calculated in clause 17.19.1 for three months in a block of six months, the block being calculated from the commencement date, the air service operations shall be considered unsatisfactory, and it shall be treated as an event of Operator's default which may lead to termination of the agreement. Without prejudice to its right to appropriate the commitment security and terminate the agreement MPTB may invite any other willing person to start air service operations in any sector covering any cities of the State on the same terms and conditions as are applicable to the Operator.

17.19.4 MPTB shall not take any action against the Operator without giving it an adequate opportunity of being heard.

17.19.5 The Applicant shall be required to keep daily records of flights for the Aircraft for each day of operation, which record shall include the number of hours flown to be recorded from --- to ---, sectors/areas visited. At the conclusion of each day of operations, the Applicant shall have a copy of record duly certified under the signature of Company Secretary, in charge of Aviation (Cell), MPTB/or other representative of Aviation (Cell), MPTB and each shall retain a copy of such records for billing. The flying time shall mean the time from "engine on till engine off" .

17.19.6 In case of scheduled maintenance of Aircraft, the Operator shall give advance intimation to MPTB regarding dates of non- availability of Aircraft and its re-induction for flight operations. However, if the plane is non-operational/ replacement or backup is required for any contingencies (damage/ repair/breakdown/ maintenance, etc.) beyond 48 hours (2 days), the operator shall deploy another aircraft to fulfil the committed flight operations and ensure continued smooth operations.

17.19.7 In case, the Operator fails to fly the minimum 4 days in every week in cities selected by the operator, an amount equivalent to 10% of the VGF/Premium due for the month shall be deducted as penalty.

17.19.8 In case, the Operator fails to comply with 17.19.7 in a month, an amount equivalent to 10 % of the VGF/Premium for the month shall be deducted as penalty. This penalty will be levied over and above the penalty levied under clause 17.19.1.

## **18. Bid Validity**

18.1 The Bid shall remain valid for a period of 120 days from the bid due date (the “Bid Validity Period”) or the extended bid due date.

## **19. Contents of the Tender**

The proposal should be submitted as follows:-

19.1 Technical Proposal: - The technical proposal shall contain all the documents as required and necessary for evaluation of eligibility criteria and also as described in the annexures of the tender document. )To be uploaded only) at <https://www.mptenders.gov.in>

- a. Checklist on Documents enclosed.
- b. Covering Letter.
- c. General Information about the Bidder.
- d. Information about Technical Qualification.
- e. Information about Financial Qualification.
- f. Bid Security in the form of a Demand Draft.
- g. Power of Attorney for signing of Bid.
- h. A copy of the complete set of RFP Documents, along with corrigendum to RFP, if issued, with each page initialled by the Authorized Signatory as a token of acceptance.

19.2 Financial Proposal: - One original copy duly signed in the format as provided in annexure of this tender document. (To be submitted Online only) at [www.mptenders.gov.in](http://www.mptenders.gov.in)

## **20. Sealing and Marking of Bids**

20.1 The Bidder shall submit the Bid in two Parts as below:

I: Technical Bid (To be submitted Online)

II: Financial Bid (To be submitted Online only)

I. The Technical Bid shall be uploaded on the website [www.mptenders.gov.in](http://www.mptenders.gov.in).

II. The Bidder shall submit its Financial Bid Online only as per the prescribed format - Annexure-\_\_.

## **21. Deadline for Submission of Bids**

21.1 Bids must be submitted online on or before the time & date as per mentioned at clause 6.

21.1 MPTB may, at its discretion, extend this deadline for submission of bids by amending the bidding documents, in which case, all rights and obligations of MPTB and Bidders will thereafter be subject to the deadline as extended.

## **22. Late Bids**

Any bid received by MPTB after the deadline for submission of bids prescribed by MPTB above, will be rejected and returned unopened to the bidder. Bidders may take note that there is likelihood of rush at the last minute, therefore, they must submit their bids well in time. Any bid(s) submitted after the deadline for submission of bids, shall not be considered under any circumstances and the same shall be returned unopened to the bidder.

## **23. Opening of Bids**

23.1 MPTB will open the bids received on the opening date of proposals at 11:00 hours at the address mentioned in clause 6, in presence of the Bidder's representatives, who may choose to attend the opening. In case MPTB extends the deadline for submission of bids, the bids will be opened 30 minutes past such extended deadline at the same address. Each Bidder's representative who desires to attend the opening, shall bring an authority letter and sign the attendance sheet as a proof of his attendance. The names of all Bidders, who have submitted bids will be read out and other such details as MPTB may consider appropriate, will be announced at the opening.

23.2 A Technical bid shall be considered 'responsive' only if:

- a. The Bidder meets the eligibility criteria as laid down in this RFP document.

- b. It is received by the 'Deadline for Submission of Bids' including any extension thereof.
- c. It is signed, sealed and marked as stipulated in this RFP document.
- d. It is accompanied by the bid security as specified in this RFP document.
- e. It is accompanied by the relevant Power(s) of Attorney(ies) and undertakings as specified in this RFP document.
- f. It does not contain any condition or qualification.
- g. There is no Conflict of Interest.
- h. The document is accompanied by the checklist as prescribed.
- i. The information given in the bid is complete in all respects and is strictly in accordance with the forms/ formats prescribed in the bidding document.
- j. The information is true and correct.

23.3 If any of the above criteria is not fulfilled, in any manner whatsoever, the bid shall be treated as non-responsive. The decision of MPTB as to responsiveness of a bid shall be final and conclusive and binding on the Bidder and shall not be called into question by any Bidder on any ground whatsoever. MPTB without being under any obligation to do so, reserves the right to call for any clarifications and additional information and documents during the process of checking of responsiveness of a bid and to reject any bid which is non-responsive. However, no Bidder shall have the right to give any clarification unless asked for by MPTB or to request either MPTB and/or any ministry or department, authority or body whether statutory or non-statutory, of the government that may be concerned or connected, in any manner whatsoever, with this bidding process, to intervene in, any manner whatsoever, in the bidding process.

MPTB reserves its right to ask the Bidder to present additional or modified documents that it considers necessary to make the bid responsive and any such request or directions of MPTB shall not be called in question by any other Bidder.

23.4. Financial Bids (to be submitted online only) of only those Bidders, whose bids have been found to be responsive and who have been found eligible, will be opened. The date and time of opening of financial bids shall be separately communicated to the eligible Bidders. Each eligible Bidder's representative, who desires to attend the opening, shall bring an authority letter and sign the attendance sheet as a proof of his attendance. Each eligible Bidder's name, bid price, and other such details as MPTB may consider appropriate, will be announced at the time of opening of bids.

## **24. Evaluation and Comparison of Bids**

24.1 It is clarified that the selection of the Bidder shall be subject to its meeting the Eligibility Criteria as laid down in this RFP document and the scrutiny of the bid submitted by the Bidder.

- 24.2 It is clarified that the selection of the Bidder shall be subject to the verification of Bank Guarantee and scrutiny of other relevant documents as stipulated in this RFP Document, that the Bidder has submitted.
- 24.3 To facilitate evaluation of bids, MPTB may, at its sole discretion, seek clarifications in writing from any Bidder regarding its bid.
- 24.4 Notwithstanding anything to the contrary contained in this RFP, MPTB may, at its sole discretion, waive any minor infirmity, non-conformity or irregularity in a bid that does not constitute a material deviation, and that does not prejudice or affect the relative position of any Bidder, provided it conforms to all the terms, conditions of the bidding documents without any material deviations, objections, conditionality or reservations. A material deviation, objection, conditionality or reservation is one (i) that affects, in any substantial way, the scope, quality or performance of the contract; (ii) that limits, in any substantial way, inconsistent with the bidding documents, MPTB's rights or the selected Bidder's obligations under the contract; or (iii) whose rectification would unfairly affect the competitive position of other Bidders, who are presenting responsive bids.
- 24.5 The waiver by MPTB in terms of the clause hereinabove, must be in writing and shall be limited to the specific infirmity, non-conformity or irregularity being waived. No waiver, forbearance, indulgence or relaxation or inaction by MPTB shall in any way affect, diminish or prejudice the right of MPTB to seek strict compliance or rectification of irregularity. Any waiver or forbearance by MPTB shall not be construed as a waiver of any right or acquiescence to such irregularity or non-compliance or of the subsequent irregularity or non-compliance or recognition of rights other than as expressly stipulated in this RFP. No party shall have any right to demand waiver or forbearance from MPTB. Waiver of any infirmity, non-conformity or irregularity on one occasion in favour of one Bidder shall not in any manner constitute a continuing waiver. The waiver, by MPTB of any infirmity, non-conformity or irregularity, in case of one Bidder shall not be deemed to be or construed as a waiver of any infirmity, non-conformity or irregularity, whether prior, subsequent or contemporaneous, in case of any other Bidder. Each of the rights of MPTB under this RFP document are independent, cumulative and without prejudice to all other rights available to it, and the exercise or non-exercise of any such rights shall not prejudice or constitute a waiver of any other right of MPTB whether under this RFP document or otherwise.
- 24.6 MPTB will evaluate and compare the bids previously determined to be eligible and responsive. If there is a discrepancy between words and figures, the amount in words will prevail and shall be binding on the Bidder.
- 24.7 Bidders shall note that in case of difference between the calculations submitted by Bidder and the calculations computed by MPTB (if any), the calculations computed by MPTB shall prevail.

24.8 The Bidder found eligible and quoting the LOWEST per flying hour VGF/ HIGHEST per flying hour Premium in the financial bid and who has submitted the Commitment Security shall be declared as the selected Bidder.

24.9 In the event that two or more Bidders quote the same amount of Lowest Per hour flying VGF/ HIGHEST per flying hour Premium (the "Tie Bidders"), MPTB shall ask the tie Bidders to submit their revised financial bid with the amount of per flying hour VGF/ per flying hour Premium quoted earlier by the tie Bidders as the fresh Reserve Price for such bid. The Bidder amongst the tie Bidders, who quotes the LOWEST PER HOUR FLYING VGF/ HIGHEST per flying hour Premium as the case may be in the fresh bidding, will be declared as the selected Bidder.

24.10 In the event that the Lowest VGF/Highest Premium Bidder withdraws or is not selected for any reason in the first instance (the "first round of bidding"), MPTB without being under any obligations to do so, may, at its sole discretion, either invite all the remaining Bidders to revalidate or extend their respective bid security, as necessary, and match the bid of the aforesaid Lowest VGF/Highest Premium Bidder (the "Second round of bidding") or annul the bidding process. If in the second round of bidding, only one Bidder matches the Lowest VGF/Highest Premium Bidder, it shall become selected Bidder. If two or more Bidders match the said Lowest VGF/Highest Premium Bidder in the second round of bidding, then the Bidder whose bid was lower as compared to other Bidder(s) in the first round of bidding shall be the selected Bidder. For example, if the third and fifth Lowest VGF/Highest Premium Bidder in the first round of bidding offers to match the said Lowest VGF/Highest Premium Bidder in the second round of bidding, the said third Lowest VGF/Highest Premium Bidder shall be the selected Bidder.

24.11 In the event that no Bidder offers to match the Lowest VGF/Highest Premium Bidder in the second round of bidding as specified in clause 24.10, MPTB may, in its discretion, invite fresh bids (the "third round of bidding") from all Bidders except Lowest VGF/Highest Premium Bidder of the first round of bidding, or annul the bidding process, as the case may be. In case the Bidders are invited in the third round of bidding to revalidate or extend their bid security, as necessary, and offer fresh bids, they shall be eligible for submission of fresh bids provided, however, that in such third round of bidding only such bids shall be eligible for consideration which are lower than the bid of the second Lowest VGF/Highest Premium Bidder in the first round of bidding.

## **25. Fraud and Corrupt Practices**

25.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the bidding process and subsequent to the issue of the LoA and during the subsistence of the Agreement. Notwithstanding anything to the contrary contained herein, or in the LoA or the agreement, MPTB shall reject a bid, withdraw the LoA, or

terminate the agreement, as the case may be, without being liable in any manner whatsoever to the Selected Bidder, if it determines that the Selected Bidder, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the bidding process. In such an event, in addition to exercise of its right of termination, MPTB shall forfeit and appropriate the bid security or commitment security, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to MPTB towards, inter alia, time, cost and effort of MPTB without prejudice to any other right or remedy that may be available to MPTB hereunder or otherwise.

- 25.2 Without prejudice to the rights of MPTB hereinabove and the rights and remedies which MPTB may have under the LoA or the agreement, if a Bidder or Operator, as the case may be, is found by MPTB to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the bidding process, or after the issue of the LoA or the execution of the agreement, such Operator shall not be eligible to participate in any tender or RFP issued by MPTB during a period of 2 (two) years from the date such Bidder or Operator, as the case may be, is found by MPTB to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.

## **26. MPTB 's right to accept any bid and to reject any or all bids**

- 26.1 Notwithstanding anything contained in this RFP, MPTB reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids, at any time during the bidding process, without thereby incurring any liability to the affected Bidder or Bidders or any obligation to inform the affected Bidder or Bidders of the grounds for MPTB 's action.

- 26.2 MPTB reserves the right to reject any bid and appropriate the bid security and the commitment security as the case may be if:

- a. At any time, a material misrepresentation is made or uncovered, or
- b. The Bidder does not provide, within the time specified by MPTB the supplemental information sought by MPTB for evaluation of the bid.

Such misrepresentation/ improper response shall lead to the disqualification of the Bidder. If such disqualification / rejection occurs after the bids have been opened and the lowest VGF Bidder /highest Premium Bidder gets disqualified / rejected, then MPTB reserves the right to:

- a). Take any such measure (s) as may be deemed fit in the sole discretion of MPTB including annulment of the bidding process.

26.3 In case, it is found during the evaluation or at any time before signing of the agreement or after its execution and during the period of subsistence thereof, that:

- a) One or more of the eligibility conditions have not been met by the Bidder, or
- b) The Bidder has made material misrepresentation, or
- c) Has given any materially incorrect or false information,

the Bidder shall be disqualified forthwith if not yet appointed as the Operator either by issue of the LoA or entering into the AOA.

And if the LoA has already been issued to the Bidder or the AOA has been entered into with the Operator, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by MPTB to the Bidder or Operator, as the case may be, without MPTB liable in any manner whatsoever to the Bidder or Operator, as the case may be. In such an event, MPTB shall forfeit and appropriate the Bid Security and / or the commitment security, as the case may be, without prejudice to any other right or remedy that may be available to MPTB .

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

## **27. Communication of Acceptance**

27.1 After the determination of the selected Bidder, a Letter of Acceptance (the "LoA") shall be issued, in duplicate, by MPTB to the selected Bidder who shall, within 15(fifteen) days of the receipt of the LoA, sign and return the duplicate copy of the LoA in acknowledgement thereof. In the event, the duplicate copy of the LoA duly signed by the Bidder is not received by the stipulated date, MPTB may, unless it consents to extension of time for submission thereof, appropriate the bid security of such Bidder as mutually agreed genuine pre-estimated loss and damage suffered by MPTB on account of failure of the Bidder to acknowledge the LoA.

27.2 Letter of Acceptance (LoA) will constitute the contract between the Lowest VGF/Highest Premium Bidder and MPTB pending execution of AO agreement. The Letter of Acceptance (LoA) shall constitute part and parcel of the subsequent agreement to be entered between the parties.



27.3 The Lowest VGF/Highest Premium Bidder shall deposit the commitment security within 15 days from the date of issue of Letter of Acceptance (LoA).

## **28. Execution of the AOA**

The selected Bidder shall have to execute the Air Service Operation Agreement (AOA) with Madhya Pradesh Tourism Board.

28.1 Compliance of following conditions by the selected Bidder shall be the prerequisites for signing of Air Service Operation Agreement:

- a. Acknowledgment of LoA in terms of this RFP.
- b. Submission of commitment security.

On compliance of the prerequisites specified hereinabove, the AOA shall be executed, in the enclosed format, with the Bidder.

## **29. Return /Forfeiture of Bid Security and Commitment Security**

29.1 The Bid Security of unsuccessful Bidders will be returned as promptly as possible, but not later than 30 (thirty) days after the expiration of the bid validity period. However, no interest shall be payable on the said bid security.

29.2 The bid security of the selected Bidder will be returned when the selected Bidder has executed the Agreement with MPTB as specified in clause 28.

29.3 Without prejudice to the specific provisions in this regard the bid security and/or the commitment security shall be liable to be forfeited.

i. If a Bidder engages in a corrupt practice fraudulent practice, coercive practice, undesirable practice or restrictive practice:

- a. If the Bidder withdraws its bid during the bid validity period.
- b. If the Bidder imposes any condition within the bid validity period.
- c. If the bid of any Bidder is non-responsive.
- d. If the Bidder fails, within the specified time limit:

ii. To acknowledge the receipt of LoA.

iii. To execute the Agreement as per the format enclosed.

iv. To furnish the commitment security.

29.4 MPTB may, if it considers necessary, solicit the Bidder's consent for an extension of the bid validity period. The request and responses thereto shall be made in writing. If a Bidder accepts to prolong the period of validity; the bid security shall also be suitably extended. A Bidder may refuse the request without forfeiting its bid security. A Bidder accepting the request shall not be permitted to modify his bid or impose any condition.

### **30. Confidentiality**

Information relating to the examination, clarification, evaluation and recommendation for the Bidders shall not be disclosed to any person, who is not officially concerned with the process or is not a retained professional advisor advising MPTB in relation to, or matters arising out of, or concerning the bidding process. MPTB will treat all information submitted as part of the bid, in confidence and will require all those who have access to such material to treat the same in confidence. MPTB may not divulge any such information unless it is directed to do so by a Court of Law and/or any statutory entity that has the power under law to require its disclosure.

### **31. Miscellaneous**

- 31.1 The bidding process shall be governed by, and construed in accordance with, the laws of India and the courts at Bhopal shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the bidding process.
- 31.2 MPTB in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to:
- i. Suspend and/or cancel the bidding process and/or amend and/or supplement the bidding process or modify the dates or other terms and conditions relating thereto.
  - ii. Consult with any Bidder in order to receive clarification or further information.
  - iii. Retain any information and/or evidence submitted to MPTB by, on behalf of, and/or in relation to any Bidder.
  - iv. Independently verify, disqualify, reject and/or accept any and all submissions or other information and/or evidence submitted by or on behalf of any Bidder.
- 31.3 No assignment, sale, transfer, conveyance of the project shall be permitted except as otherwise expressly permitted by MPTB . Any breach of this condition shall lead to rejection of the bid and/or termination of the agreement.
- 31.4 For the sake of clarity, the Bidder(s) may note that in case there are any obligation(s) or condition (s) imposed on them under a particular clause of any part of the RFP document, which includes the forms, and on a similar issue some additional conditions are mentioned under another clause of any other part of the RFP document, which includes the forms, then, all the conditions and/or obligations should be read in conjunction with each other and all of them have to be fulfilled.

31.5 It shall be deemed that by submitting the bid, the Bidder agrees and releases MPTB its employees, agents, consultants and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/or performance of any obligations hereunder, pursuant hereto and/or in connection herewith and waives any and all rights and/or claims it may have in their respect, whether actual or contingent, whether present or future. No claim of any nature and to any extent whatsoever shall be made by any Bidder against MPTB its employees, agents, consultants and advisers.

**FORM – A (FINANCIAL BID)**

To

**Managing Director,**

Madhya Pradesh Tourism Board

6th Floor, Lily Trade Wing, Jahangirabad, Bhopal

Madhya Pradesh, India. Pin code – 462008

Contact no. **0755-2780600**

E-Mail: [cs.mptb@mp.gov.in](mailto:cs.mptb@mp.gov.in)

Dear Sir,

We quote \_\_\_\_\_ (in words) towards per flying hour VGF/ per flying hour Premium for operating Air Taxi Services for Madhya Pradesh.

**Note:**

1. No conditions should be attached to the price proposal.
2. In case of any discrepancies in the prices mentioned in the figures and words, the prices mentioned in the words would be considered as final price.
3. Price bid validity should be for at least 180 days.

**Signature**

Full Name : \_\_\_\_\_ Designation: \_\_\_\_\_

Date : \_\_\_\_\_ Place : \_\_\_\_\_

**Yours sincerely,**

Authorized Signatory

Date : \_\_\_\_\_ Place: \_\_\_\_\_

**APPENDIX - I**  
**Letter Comprising the Bid**

Dated:

To,  
The Managing Director,  
Madhya Pradesh Tourism Board  
6th Floor, Lily Trade Wing, Jahangirabad, Bhopal  
Madhya Pradesh, India. Pin code – 462008

**Sub: Request for Proposal for Selection of Operator for Providing Air Services to various destinations in Madhya Pradesh.**

Dear Sir,

With reference to your RFP document dated ....., I/we, having examined the RFP document and understood its contents, hereby submit my/our application for qualification for the aforesaid project. The application is unconditional and unqualified.

2. I/ We acknowledge that the authority will be relying on the information provided in the application and the documents accompanying such application for qualification of the applicant (s) and award of the aforesaid project, and we certify that all information provided in the application and in annexures I to VI is true and correct. Nothing has been omitted which renders such information misleading, and all documents accompanying such application are true copies of their respective originals.
3. This statement is made for the express purpose of qualifying and award as a Bidder for providing air services to various destinations located in Madhya Pradesh.
4. I/ We shall make available to the authority any additional information it may find necessary or require to supplement or authenticate the qualification statement.
5. I/ We acknowledge the right of the authority to reject our application without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
6. I/ We certify that in the last three years, we/ or our/ their associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.

7. I/ We declare that:
- (a) I/ We have examined and have no reservations to the RFP document, including any addendum issued by the authority.
  - (b) I/ We do not have any conflict of interest in accordance with the RFP document.
  - (c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with the authority or any other public sector enterprise or any government, Central or State.
  - (d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 9 of the RFP document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
8. I/ We understand that you may cancel the bidding process at any time and that you are neither bound to accept any application that you may receive nor to invite the applicants to bid for the project, without incurring any liability to the applicants.
9. I/ We believe that we satisfy (ies) the net worth criteria and meet(s) all the requirements as specified in the RFP document and are/ is qualified to submit the bid and for award of project.
10. I/ We declare that we, or our/ its associates are not a member of a/ any other consortium applying for pre-qualification.
11. I/ We certify that in regard to matters other than security and integrity of the country, we or any of our/ their associates have not been convicted by a court of law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the project or which relates to a grave offence that outrages the moral sense of the community.
12. I/ We further certify that in regard to matters relating to security and integrity of the country, we or any of our/ their associates have not been charge-sheeted by any agency of the Government or convicted by a court of law.
13. I/ We further certify that no investigation by a regulatory authority is pending either against us or against our/ their associates or against our CEO or any of our directors/ managers/ employees.

14. I/ We undertake that in case due to any change in facts or circumstances during the bidding process, we are attracted by the provisions of disqualification in terms of the provisions of this RFP, we shall intimate the authority of the same immediately.
15. The Statement of legal capacity as per format provided at Appendix - VI of the RFP document, and duly signed, is enclosed. The power of attorney for signing of application , as per format provided at Appendix V of the RFP, are also enclosed.
16. In the event of my/ our being declared as the selected bidder, I/We agree to enter into an Air Operation Agreement (AOA) in accordance with the draft that has been provided to me/us prior to the bid due date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
17. I/We have studied all the bidding documents carefully. We understand that except to the extent as expressly set forth in the Air Operation Agreement (AOA), we shall have no claim, right or title arising out of any documents or information provided to us by MPTB or in respect of any matter arising out of or concerning or relating to the bidding process including the award of air operation.
18. The per flying hour VGF/Premium has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, Air Operation Agreement (AOA), our own estimates of costs and after a careful assessment of all the conditions that may affect the bid.
19. I/We offer a bid security of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) to MPTB in accordance with the RFP document.
20. The bid security in the form of online payment receipt is attached.
21. I/We agree and understand that the bid is subject to the provisions of the bidding documents. In no case, I/We shall have any claim or right of whatsoever nature if the project is not awarded to me/us or our bid is not opened.
22. I/ We understand that the selected bidder shall either be an existing company incorporated under the Indian Companies Act or shall incorporate itself as such prior to execution of the Air Operation Agreement (AOA).
23. I/ We agree and undertake to be jointly and severally liable for all the obligations in accordance with the Air Operation Agreement (AOA).
24. I/We hereby irrevocably waive any right which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by MPTB in connection with the selection of the bidder, or in connection with the bidding process itself, in respect of the above mentioned project and the terms and implementation thereof.
25. I/We agree to keep this offer valid for 120 (one hundred and twenty) days from the bid due date specified in the RFP.

26. I/We agree and undertake to abide by all the terms and conditions of the RFP document.

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

Yours faithfully,

Date:

(Signature,  
Name and designation  
of the Authorized  
Signatory)

Place:

Name and seal of the Applicant/ Lead Member



**APPENDIX - II**  
**General Information about Bidders**

<b>1.</b>	Name of the Organization	
<b>2.</b>	Name of the authorized person	
<b>3.</b>	Address & contact numbers	
<b>4.</b>	Year of establishment	
<b>5.</b>	Status of the firm ( whether Pvt Ltd company/ Public Ltd. Company)	
<b>6.</b>	Names of Directors	
<b>7.</b>	Whether registered with Registrar of Companies – mention number and date with proof	
<b>8.</b>	Whether registered for VAT – mention number and date. Also furnish copies of GST number allotted	
<b>9.</b>	Whether registered for service tax – mention number and date. Also furnish copies of GST number allotted	
<b>10.</b>	Whether assesses of Income tax payee. Mention PAN, furnish copy of last income tax return.	
<b>11.</b>	Name and Address of Bankers	
<b>12.</b>	EMD details :DD Number/Bank Name/ Date/ Online Payment UTR	
<b>13</b>	Number of Aircraft the operator will deploy on the project	
<b>14</b>	Type of Aircraft/Aircrafts the bidder will deploy on the project i.e., Twin Engine Aircraft under Category 1 or Category 1A	
<b>15</b>	Total number of passenger seats available on the Aircraft/ Aircrafts to be deployed on the project	
<b>16</b>	Number of Pilots on payroll of the bidder	
<b>17.</b>	Any other information	

## APPENDIX - III

### Technical Capacity of the Applicant @

Applicant type # (1)	Member Code* (2)	3 years of experience of at least 2 Managers and above ** (3)
Single entity Applicant		

@ Provide details of only those projects that have been undertaken by the applicant under its own name and/ or by an associate or by a project company.

# An applicant consisting of a single entity should fill in details as per the row titled single entity applicant

\*\* The necessary supporting documents required i.e. experience certificate/ appointment letters etc.

#### APPENDIX - IV

##### Financial Capacity of the Applicant (In Rs. crore<sup>\$\$</sup>)

Applicant type <sup>\$</sup>	Member Code <sup>£</sup>	Net Worth <sup>€</sup>
(1)	(2)	(Year 1)
Single entity Applicant		

##### Name & address of Applicant's Bankers:

<sup>\$</sup> An applicant consisting of a single entity should fill in details as per the row titled single entity

<sup>€</sup>The Applicant should provide details of its own Financial Capability.

##### Instructions:

1. Networth shall mean (Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + Miscellaneous Expenditure not written-off + Reserves not available for distribution to equity shareholders).
3. The applicant shall also provide the name and address of the bankers to the applicant.
4. The applicant shall provide an auditor's certificate specifying the networth of the applicant and also specifying the methodology adopted for calculating such networth in accordance with clause 11.2 (1) of the RFP document.

## APPENDIX - V

### Power of Attorney for signing of Application

Know all men by these presents, We..... (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr/ Ms (name), ..... son/daughter/wife of ..... and presently residing at ....., who is presently employed with us and holding the position of ....., as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our application for qualification and submission of our bid for Request for Proposal for Selection of Operator for Providing Air Services to various destinations in Madhya Pradesh , including but not limited to signing and submission of all applications, bids and other documents and writings, participate in pre-applications and other conferences and providing information/ responses to the authority, representing us in all matters before the authority, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the authority in all matters in connection with or relating to or arising out of our bid for the said project and/ or upon award thereof to us and/or till the entering into of the Concession Agreement with the Authority.

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

IN WITNESS WHEREOF WE, ....., THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ..... DAY OF ..... 2.....

For .....

(Signature, name, designation and address)

Witnesses:

1.

(Notarised)

2.

Accepted

.....

(Signature)

(Name, Title and Address of the Attorney)

*Notes:*

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

**APPENDIX - VI**

**Statement of Legal Capacity**

*(To be forwarded on the letterhead of the Applicant)*

Ref:

Date:

To,

The Managing Director,  
Madhya Pradesh Tourism Board  
6th Floor, Lily Trade Wing, Jahangirabad, Bhopal  
M.P. Pincode 462008

Dear Sir,

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

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

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of.....

***\*Please strike out whichever is not applicable.***

**Section II**  
**AIR SERVICE OPERATION AGREEMENT**

## **AIR SERVICE OPERATION AGREEMENT**

This Agreement is entered into on this the \_\_\_\_\_ day of \_\_\_\_\_, 20....

### **BETWEEN**

The Madhya Pradesh Tourism Board represented by its Managing Director and having its principal office at ..... (hereinafter referred to as “ MPTB ” which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns) of one part,

### **AND**

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

### **WHEREAS**

- A. The DEPARTMENT OF TOURISM, GOVERNMENT OF MADHYA PRADESH (hereinafter referred to as “DOT” is interested in providing passenger Air Service Operations (AO) to various cities located in the State referred to as the “Air Service Operations (AO)” through a private Operator.
- B. Department of Tourism has authorized MPTB vide notification no. [\_\_] dated [\_\_] to undertake the selection of an Operator for such Air Service Operations (AOA) on the terms and conditions contained in the Request for Proposal (RFP) and addendums and clarifications thereto and this agreement including the schedules and annexure hereof.
- C. MPTB had accordingly invited proposals vide Tender Notice No \_\_\_\_/ dated \_\_\_\_\_ (“the Tender Notice”) for selection of a bidder for the aforesaid AO subject to and on the terms and conditions contained in the RFP document.
- D. After evaluation of the bids so received, MPTB had accepted the bid of M/s \_\_\_\_\_/ comprising of M/s. \_\_\_\_\_ (Lead member), M/s. \_\_\_\_\_ (Member), and M/s. \_\_\_\_\_ (Member), and issued its Letter of Acceptance (LOA) No..... dated ..... (“LOA”) to the Bidder/ Consortium requiring, inter alia, the execution of this development agreement.



- E. The bidder has since promoted and incorporated the Operator and has requested MPTB to accept the Operator as the entity which shall undertake and perform the obligations and exercise the rights of the bidder under the LOA, for starting the AO. (Applicable in case of in case bidder has promoted an Operator.)
- F. MPTB in accordance with the provisions of RFP has agreed accordingly to enter into this Air Service Operations Agreement (AOA) with the Operator for starting AO subject to and on the terms and conditions set forth hereinafter.
- G. The Operator has duly provided the commitment security of Rs 50 lakhs (Rupees Fifty Lakhs only) to the MPTB in terms hereto.

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

## PRELIMINARY

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions :

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

1. **"Accounting Year"** means the financial year commencing from 1st April of any calendar year and ending on 31st March of the next calendar year.
2. **"Agreement"** or the **"Air Service Operation Agreement (AOA)"** means this Agreement, its recitals, schedules and annexure hereto and any amendments thereto made in accordance with the provisions contained in this agreement.
3. **"Applicable Laws"** means all laws, promulgated or brought into force and effect by the State Government and/or the Government of India including rules, regulations and notifications made there-under, and judgments, decrees, injunctions, writs and orders of any court or record, applicable to this agreement and the exercise of performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this agreement.
4. **"Applicable Permits"** means all clearances, permits, authorisations, consents and approvals required to be obtained or maintained under applicable laws in connection with the Air Service Operations during the subsistence of this Agreement.
5. **"Agreement Period (AP)"** means the period of Agreement for a period of Six (6) Years from the date of execution of Agreement. However, if the performance of the operator is not found satisfactory, MPTB would be at liberty to rescind the agreement with 04-month prior notice.
6. **"Air Service Operations (AO)"** means deployment of the requisite aircraft(s) by the Operator for operating the flights, maintaining such aircraft(s) so that the declared schedule of flying commitments are met while complying with all applicable laws, permits and good industry practice.
7. **"Bid"** means the documents in their entirety comprised in the bid submitted by the Bidder in response to the tender notice in accordance with the provisions thereof.
8. **"Commencement Date"** means the date on which the first flight for carrying the passengers shall start in accordance with the provisions contained in this agreement.
9. **"Commitment Security"** shall have the meaning as described in clause 4.
10. **"Dispute"** shall have the meaning set forth in clause 19.
11. **"Dispute Resolution"** means the procedure for dispute resolution set forth in clause 19.
12. **"DOT"** means the Department of Tourism Govt. of Madhya Pradesh.

13. **“Effective date”** means the date on which this agreement is signed.
14. **“Event of Default”** shall have the meaning set forth in clauses 16 & 17.
15. **“Force Majeure”** or **“Force Majeure Event”** shall mean an act, event, condition or occurrence specified which is not in the control of any parties to the agreement as stated and described in clause 15.
16. **Flying hours shall mean the total flying time between two destinations from ‘chocks-on’ to ‘chocks -off’.** The validity of the flying hours shall be authenticated by DGCA or ATC.
17. **“GOMP”** means the Government of the State of Madhya Pradesh.
18. **“GOI”** means the Government of India.
19. **“Good Industry Practice”** means those practices, methods, techniques, standards, skills, diligence and prudence which are generally and reasonably expected of and accepted internationally from a reasonably skilled and experienced Operator engaged in the same type of undertaking as envisaged under this agreement and acting generally in accordance with the provisions of applicable law, and would mean good engineering practices in the Air Service Operations Agreement (AOA) and which would be expected to result in the performance of its obligations by the Operator and in the operation and maintenance of the Air Services Operations (AO) in accordance with this agreement, applicable laws, applicable permits, reliability, safety, environment protection, economy and efficiency.
20. **“Government Agency”** means GOI, GOMP or any Ministry, Department, Commission, Board, Authority, instrumentality or agency, under the control of GOI or GOMP having jurisdiction over or the performance of all or any of the services or obligations of the MPTB and the Operator under or pursuant to this agreement.
21. **“Indemnifying Party”** means the Party obligated to indemnify the other Party pursuant to clause 13.
22. **Intra State Operations** shall mean air taxi operations within the State of Madhya Pradesh.
23. **Inter State Operations** shall mean air taxi operations between destinations of Madhya Pradesh and any destination outside the State of Madhya Pradesh.
24. **“LOA”** or **“Letter of Acceptance”** means the letter of acceptance referred to in the Recital (D).
25. **“MPTB Representative”** means such person or persons as may be authorised in writing by Managing Director, MPTB to act on its behalf under this agreement and shall include any person or persons having authority to exercise any rights or perform and fulfil any obligations of MPTB under this agreement.

26. **“Operator”** means the limited liability company incorporated under the Companies Act (which may have been promoted by the bidder to exercise the rights of the bidder) which shall undertake and perform the obligations under the LOA and the AOA for starting AO.
27. **“Parties”** means the parties to this agreement collectively and “Party” shall mean any of the Parties to this agreement individually.
28. **“Per Flying Hour VGF”** shall mean any amount payable by the MPTB to the Operator for declared flights for intra-state operations. **“Per Flying Hour Premium”** means the fixed amount quoted by the bidder at the time of tendering to be paid to MPTB for declared flights for intra-state operations.
29. **“Preparatory Period”** means the period beginning with signing of the agreement and ending on the commencement date.
30. **“State Government”** means the Government of Madhya Pradesh.
31. **“Termination”** means the expiry or termination of this agreement and “Termination Date” means the date on which this agreement is terminated by a Termination Notice.
32. **“Termination Notice”** means the communication issued in accordance with this Agreement by any one Party to the other Party terminating this Agreement.
33. **“Zero Passenger Load”** shall mean ‘Nil’ passenger load on the both sectors (to and fro) between two destinations.

**1.2 In this Agreement, unless the context otherwise requires:**

- a) Any reference to a statutory provision shall include such provision as is from time-to-time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder.
- b) References to Indian law shall include the laws, acts, ordinances, rules, regulations, or bye laws which have the force of law in any State or Union Territory forming part of the Union of India.
- c) The words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organisations or other entities (whether or not having a separate legal entity).
- d) The headings are for convenience of reference only and shall not be used in and shall not affect the construction or interpretation of this agreement.
- e) Terms and words beginning with capital letters and defined in this agreement shall have the meaning ascribed thereto herein and the terms and words defined in the schedules and used therein shall have the meaning ascribed thereto in the schedules.
- f) The words “include” and “including” are to be construed without limitation.

- g) References to “construction” include, unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction.
- h) Any reference to any period of time shall mean a reference to that according to Indian Standard Time (IST).
- i) Any reference to day shall mean a reference to a calendar day.
- j) Any reference to month shall mean a reference to a calendar month.
- k) Any reference to year unless the context otherwise requires shall mean the calendar year.
- l) The schedules to this agreement form an integral part of this agreement and will be in full force and effect as though they were expressly set out in the body of this agreement.
- m) Any reference at any time to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference provided that this clause shall not operate so as to increase liabilities or obligations of MPTB hereunder or pursuant hereto in any manner whatsoever except as expressly provided in this agreement.
- n) References to Recitals, Articles, Clauses, Sub-clauses, Paragraphs, or Schedules in this agreement shall, except where the context otherwise requires, be deemed to be references to Recitals, Articles, Clauses, Sub-clauses, paragraphs, and schedules of or to this agreement.
- o) Any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this agreement from or by any Party shall be valid and effectual only if it is in writing under the hands of duly authorised representative of such Party, as the case may be, in this behalf and not otherwise.
- p) Any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates.
- q) Unless otherwise expressly provided in this agreement any documentation required to be provided or furnished by the Operator to MPTB shall be provided free of cost and in three copies and on a computer CD/floppy or such media as is required for a soft copy storage and if MPTB is required to return any such documentation with their comments and/ or approval, they shall be entitled to retain two copies thereof.
- s) In the event of any dispute in respect of interpretation of any clause of the agreement, the decision of MPTB shall be final and binding subject to the parties to this agreement taking recourse to legal action under any other law for the time being in force in the State of Madhya Pradesh in terms of the agreement.

### 1.3 Measurements and Arithmetic Conversions

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

### 1.4 Priority of contract documents and errors/ discrepancies

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

- a) Between two clauses of this agreement, the provisions of the specific clause relevant to the issue under consideration shall prevail over those in other clauses.
- b) Between the clauses and the schedules, the clauses shall prevail save as otherwise expressly set forth in this agreement.
- c) Between any value written in numerals and that in words, the latter shall prevail.

## 2.1 SCOPE OF PROJECT

The scope of the Project shall mean and include, during the agreement period:

- (a) Managing the air service operations using/utilising twin engine aircraft with atleast two pilot seats falling under the below mentioned category:

S.No.	Category	Passenger Seating Capacity
1	Category-1A	<9
2	Category-1	9 – 20

.

- (b) Ensuring safety and security of the passengers using the air service.
- (c) Performance and fulfilment of all obligations of the Operator in accordance with the provisions of the AOA and matters incidental thereto or necessary for the performance of any or all of the obligations of the operator under the Agreement.
- (d) At least a twin engine aircraft to be operated.
- (e) Tariff for seats to be fixed by the Operator and sold in the open market.
- (f) The Operator, keeping in view, the viability can propose routes for air services

operation within the state and shall ensure connectivity amongst the destinations mutually decided between MPTB and the Selected Operator (Destinations/Airstrips mentioned in Annexure B)

The operator may be permitted to change or increase the routes with the written consent of MPTB.

(g) The operator is expected to operate the aircraft for at least four (4) days in every week in destinations as mutually decided in point f above.

## 2.2 Period of AOA

- a. The period of Agreement shall be for a period of Six (6) years from then date of execution of Agreement. However, if the performance of the operator is not found satisfactory, MPTB would be at liberty to rescind the agreement with 04-month prior notice.
- b. The MPTB shall grant Per Flying Hour VGF to the operator for the first four years at a diminishing ratio of 25 % every year and for Fifth and Sixth year the operator shall operate at its own cost. If the operator fails to operate aircraft the Authority will have right to cancel the agreement and forfeit the Bank Guarantee and blacklist the agency for future work.
- c. Further, this reduction in VGF at 25% shall not be applicable in the second year if the operator doubles (a 100% increase) his operating capacity in second year of operation (for example if operator initially deploy 6 passenger seat aircraft, then from second year operator has to deploy atleast a 12 passenger seat aircraft). In such a case the reduction shall be applicable from the third years onwards and from the fifth and sixth year the operator shall have to operate aircraft at its own cost.

Particular	Year1	Year 2	Year 3	Year 4	Year 5	Year 6
Per Flying Hour VGF (In case of non- capacity augmentation)	100%	75%	50%	25%	0%	0%
Per Flying Hour VGF ( In case of capacity augmentation@ 100%	100%	100%	75%	50%	25%	0%

## 2.3 Additional Operations

- a) MPTB shall undertake evaluation for augmentation of services as and when deemed suitable. In case an increase in demand/ increase in passenger traffic is observed in the mutually decided route, the first right of refusal shall be given to the selected operator to deploy an additional aircraft/increase the number of seats on the same terms and conditions within 30 days to cater to such demand. However, if the operator declines to deploy the additional aircraft/increase the number of seats the Authority reserves the right to open the market to other aircraft operators to cater to the increased demand. These operators may be the bidders who had submitted

proposals for the same tender previously, however, were positioned at L2, L3, L4 etc. Such bidders will be invited to match the terms and conditions of the existing operator. MPTB may also issue a fresh tender and invite fresh bids for the selected route as deemed appropriate.

- b) The same shall be applicable if MPTB decides to open other routes (other than the mutually decided route with the selected operator) where the first right of refusal shall be given to the selected operator to deploy an additional aircraft on the same terms and conditions within 30 days on the new route. However, if the operator declines to deploy the additional aircraft/increase the number of seats the Authority reserves the right to open the market to other aircraft operators to cater to the increased demand. These operators may be the bidders who had submitted proposals for the same tender previously, however, were positioned at L2, L3, L4 etc. Such bidders will be invited to match the terms and conditions of the existing operator. MPTB may also issue a fresh tender and invite fresh bids for the selected route as deemed appropriate.

### **3 ENTIRE AGREEMENT**

This agreement, and the schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless expressly previously approved in writing by the Managing Director, MPTB and executed by the person expressly authorised by a resolution of the Operator in this behalf.

### **4 COMMITMENT SECURITY**

- 4.1. The Operator has agreed to for the due and faithful performance of its obligations under the agreement, provide to the MPTB a commitment security for a sum of Rs. 50 lakhs on or before signing of this agreement, in the form of bank draft/an irrevocable and unconditional bank guarantee from a scheduled bank issued in favour of the MPTB.

- 4.2 The commitment security shall be released by the MPTB to the Operator upon successful completion of the agreement period.

In the event the Operator does not start Air Service Operations from the commencement date or the Operator is in breach of the terms of the agreement, the MPTB shall, without prejudice to its other rights and remedies hereunder or in law may encash and appropriate such amounts it may determine from the commitment security as damages for such Operator default. Upon such encashment and appropriation from the commitment security, the Operator shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the commitment security, and in case of appropriation of the entire commitment security provide a fresh commitment security, as the case may be, failing which MPTB shall be entitled to terminate this agreement in accordance with clause 18 and appropriate entire commitment security as damages. Provided that, the Operator shall be given an adequate opportunity of hearing before any amount is appropriated from the commitment security.



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

## **5. Deleted**

## **6. OBLIGATIONS OF THE OPERATOR**

6.1 The Operator shall at its own cost and expense observe, undertake, comply with and perform, in addition to and not in derogation of its obligations elsewhere set out in this agreement, the following:

- (a) Obtain and maintain in force on and from the commencement date all insurance in accordance with the provisions of this agreement and good industry practice.
- (b) Make reasonable efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of the its obligations under this agreement.
- (c) Comply with all applicable permits and applicable laws in the performance of the Operator's obligations under this agreement.
- (d) Be responsible for safety, security, soundness of the flights.
- (e) Indemnify MPTB against all actions, suits, claims, demands and proceedings and any loss or damage or cost or expense that may be suffered by any person on account of anything done or omitted to be done by the Operator in connection with the performance of its obligations under this agreement.
- (f) Make a web-based application for providing online booking service. All such bookings shall be made through secure online payment system, at least permitting the use of credit/debit card with a facility to revert payment online if flight is cancelled.
- (g) Operate flights on all sectors, deploy and maintain requisite aircraft for operating such flights and strictly observe the declared flying schedule.
- (h) Be solely responsible for complying with all applicable laws, permits and good industry practice, be liable to pay all taxes, levies etc as may be levied by any government agency.
- (i) Not hold MPTB liable in any manner whatsoever for the non-receipt of any clearance/permission from any government agency.
- (j) Take all necessary steps during the preparatory period so that the air service operations can start unencumbered from the commencement date.
- (k) Submit invoices with authority at the end of the month.
- (l) Be solely responsible for complying with all applicable laws, permits and good industry practice as prescribed by DGCA, be liable to pay all taxes, levies etc. as may be levied by any government agency.
- (m) The Operator shall be responsible for paying all charges (e.g., landing & parking charges, etc.) levied by Government agencies at all the airports.

- (n) To provide reports sector-wise /flight-wise of the daily passenger load to the authority on a monthly basis.
- (o) All the staff of the Operator should be provided with uniforms and shall maintain a standard dress code.
- (p) Ground Handling Services, Manpower and requisite system for the issuance of boarding pass, Special Assistance to physically challenged shall be provided by the Air Service Operator at its own expense.
- (q) No aircraft to be relocated by the Operator outside Madhya Pradesh without prior permission of the Authority.
- (r) Replenish and keep commitment security as prescribed in the RFP.
- (s) The Operator shall abide by all the rules as specified in the aircraft Rules, 1937.
- (t) The Operator shall be responsible to provide transport facility between the aircraft and the terminal building, bottled drinking water in the aircraft to the passengers.
- (u) The Operator shall provide security staff for frisking of passengers for security to be provided for flights operated to/from airstrips owned and controlled by the State Government.
- (v) The Bidder shall start Air Service Operations within 45 days from the date of issuing of Letter of Award by MPTB.
- (w) The Operator shall be responsible for all payments of insurance related matters including payments to third party and the passengers on its flights as per DGCA norms.
- (x) The Operator shall handle /entertain all passenger complaints/ suggestions /queries.
- (y) The Operator's base of operation shall be within the state of Madhya Pradesh.
- (z) In case of scheduled maintenance of Aircraft, the Operator shall give advance intimation to MPTB regarding dates of non- availability of Aircraft and its re- induction for flight operations. However, if the plane is non- operational/ replacement or backup is required for any contingencies (such as damage/repair/breakdown/maintenance, etc.) beyond 48 hours (2 days), the operator shall deploy another aircraft to fulfil the committed flight operations and ensure continued smooth operations.
- (aa) Start Air Service Operations from the commencement date which is -----.

6.2 The Operator shall provide air connectivity within the selected routes in the State.

6.3 In the event that a flight is diverted due to technical reasons or adverse weather, the Operator shall make such alternate ground and transport arrangements in a chartered bus as may be required for the passengers so as to transport them from such diverted place to the original destination at his own cost. Alternatively, the passenger(s) can choose to make their own accommodation arrangement at such diverted destination and shall be eligible to use the rescheduled flight from the diverted destination. The Operator shall provide all necessary assistance to the passengers in making their ground arrangements.

## **7. OPERATIONAL EFFICIENCY**

- 7.1 Each scheduled flight would be evaluated out of a maximum of 10 (ten) marks on the basis of delay in scheduled departure. For each flight that departs on scheduled time or a delay of up to 90 minutes 10 marks shall be noted. If delayed for more, 7 marks shall be noted. If the flight is cancelled for whatever reason zero (0) marks shall be noted. For each month the total of such marks shall be submitted by the Operator to MPTB. If the Operator scores less than 90%, the Air Service Operations shall not be considered satisfactory for the month and MPTB shall appropriate damages as provided in the table below not exceeding 10 % of the VGF/Premium paid for the month:

Score of the Operator	Amount of penalty
75% to < 90%	2.5%
50% to < 75%	5.0%
25% to < 50%	7.5%
Less than 25%	10.0%

The damages as above shall be appropriated after the Operator is given an opportunity of hearing and the performance was affected for reasons attributable to the Operator.

- 7.2 Without any prejudice to its right of appropriation in clause 7.1 above, in case the scores continue to be less than 90% for three consecutive months, it shall be treated as an event of Operator's default which may lead to termination of the agreement. Without prejudice to its right to appropriate the commitment security and terminate the agreement MPTB may invite any other willing person to start air service operations in any sector covering any cities of the State on the same terms and conditions as are applicable to the Operator.
- 7.3 In the event the Operator fails to score 90% marks as calculated in clause 7.1 for three months in a block of six months, the block being calculated from the commencement date, the air service operations shall be considered unsatisfactory, and it shall be treated as an event of Operator's default which may lead to termination of the agreement. Without prejudice to its right to appropriate the commitment security and terminate the agreement MPTB may invite any other willing person to start air service operations in any sector covering any cities of the State on the same terms and conditions as are applicable to the Operator.
- 7.4 MPTB shall not take any action against the Operator without giving it an adequate opportunity of being heard.
- 7.5 The Applicant shall be required to keep daily records of flights for the Aircraft for each day of operation, which record shall include the number of hours flown to be recorded from --- to ---, sectors/areas visited. At the conclusion of each day of operations, the Applicant shall have a copy of record duly certified under the signature of Company Secretary, in charge of Aviation (Cell), MPTB/or other representative of Aviation (Cell), MPTB and each shall retain a copy of such

records for billing. The flying time shall mean the time from “engine on till engine off” .

- 7.6 In case of scheduled maintenance of Aircraft, the Operator shall give advance intimation to MPTB regarding dates of non- availability of Aircraft and its re-induction for flight operations. However, if the plane is non-operational/ replacement or backup is required for any contingencies (damage/ repair/breakdown/ maintenance, etc.) beyond 48 hours (2 days), the operator shall deploy another aircraft to fulfil the committed flight operations and ensure continued smooth operations.
- 7.7 In case, the Operator fails to fly the minimum 4 days in every week in cities selected by the operator, an amount equivalent to 10% of the VGF/Premium due for the month shall be deducted as penalty.
- 7.8 In case, the Operator fails to comply with 7.7 in a month, an amount equivalent to 10 % of the VGF/Premium for the month shall be deducted as penalty. This penalty will be levied over and above the penalty levied under clause 7.1.

## **8. OBLIGATIONS OF MPTB**

8.1 MPTB shall undertake, comply with and perform in addition to and not in derogation of its obligations elsewhere set out in this agreement, the following:

- a) Per flying hour VGF (in case the selected bidder has quoted lowest VGF) as quoted by the Operator in the financial bid would be payable every month.
- b) Assist the Operator in bookings and business promotion on best effort basis.
- c) Observe and comply with its obligations set forth in this agreement.
- d) Assist the Operator in bookings and business promotion on best effort basis.
- e) The MPTB shall reimburse the Ambulance and Fire Brigade charges on actual basis, for Airports/Airstrips owned and controlled by the State Government. Security shall be provided free of charge for flights operated to/from airports owned and controlled by the State Government.

### **8.2 Payment Terms**

- 8.2.1 Payment will be released on monthly basis after submission of original invoice with all relevant documents of operation after the end of the month. Total Monthly VGF shall be calculated on the basis of total flying hours per month restricted to 150 hours (per month).
- 8.2.2 The Authority shall be entitled to deduct, in accordance with Applicable Law, applicable Taxes or any other deductions (as the case may be), from any payments made to the Preferred Bidder. The Authority shall provide the details of deduction and a certificate to the Preferred Bidder certifying the deduction so made. It is further clarified that the deductions on account of non-performance / damages on account of the Preferred Bidder/ its' personnel shall also be made from payment of the VGF by the Authority.
- 8.2.3 No payment of the VGF shall be made in advance by the Authority.
- 8.2.4 All taxes duties, levies etc., imposed by the GoMP, GoI and local bodies are inclusive of rates in connection with the Services in force at time of submission of Bids, shall be borne by the Preferred Bidder.

8.2.5 The GST will not be payable on VGF claim.

8.2.6 In case the selected bidder is the operator who quoted the highest premium per flying hour, they shall pay MPTB the quoted premium GST extra as applicable as per the total flying hours recorded in the month. This payment shall be duly justified with flying hour details and be completed within 15 days of the previous months end. For instance, the payment for January 1st to 31st shall be made before 15th February to MPTB.

## **9. REPRESENTATIONS AND WARRANTIES**

### **9.1 Representations and Warranties of the Operator**

The Operator represents and warrants to MPTB that:

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

which may result in the breach of this agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this agreement.

- (i) It has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any government instrumentality which may result in any material adverse effect on its ability to perform its obligations under this agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this agreement.
- (j) It has complied with applicable laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this agreement.
- (k) It shall at no time undertake or permit any change in ownership.
- (l) The selected bidder/ and its/their associates have the financial standing and resources to fund the required equity and to raise the debt necessary for undertaking AO in accordance with this agreement.
- (m) The selected bidder/ is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested MPTB to enter into this agreement with the Operator pursuant to the Letter of Acceptance (LOA), and has agreed to and unconditionally accepted the terms and conditions set forth in this agreement.
- (n) No representation or warranty by it contained herein or in any other document furnished by it to MPTB or to any government instrumentality in relation to applicable permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading.
- (o) No sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the concession or entering into this agreement or for influencing or attempting to influence any officer or employee of MPTB in connection therewith.
- (p) All information provided by the selected bidder/ in response to the Request for Qualification and Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects.

## **9.2 Representations and Warranties of the MPTB**

MPTB represents and warrants to the Operator that it has:

- (a) Full power and authority to execute, deliver and perform its obligations under this agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this agreement, exercise its rights and perform its obligations, under this agreement.
- (b) Taken all necessary actions under the applicable laws to authorise the execution, delivery and performance of this agreement.
- (c) The financial standing and capacity to perform its obligations under this agreement.
- (d) Agreed that this agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof.
- (e) No knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any government instrumentality which may result in any material adverse effect on the MPTB 's ability to perform its obligations under this agreement.
- (f) Complied with applicable laws in all material respects.

## **10. DISCLOSURE**

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of either Party under this agreement.

## **11. DISCLAIMER**

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

## **12. OPERATIONAL MAINTENANCE AND SAFETY REQUIREMENT**

12.1 The Operator shall at its own cost operate and maintain the AO and other requirements set forth in this agreement follow good industry practice, comply with applicable laws and applicable permits and more specifically:

- a) Ensure safe travel of the passengers.
- b) Charge, collect and retain the tariff.
- c) Keep the aircraft and crew in a state of readiness to ensure that the declared flying schedule is strictly adhered to.
- d) Maintain a public relations unit to interface with and attend to suggestions from anyone users of the service operations.
- e) Adhere to the safety standards as per the best industry practice and more specifically DGCA regulations.

12.2 The Operator shall ensure safe conditions for the users, and in the event of unsafe conditions, it shall follow the relevant operating procedures. Such procedures shall conform to the provisions of this agreement, applicable laws, applicable permits and good industry practice.

12.3 MPTB may carry out necessary inspections at any time for a review of the compliance by the Operator of its obligations under this agreement.

12.4 All costs and expenses arising out of or relating to safety requirements shall be borne by the Operator to the extent such costs and expenses form part of the work and services included in the scope of the project.

## **13. INDEMNITY**

The Operator hereby undertakes to indemnify and hold MPTB harmless against all cost, damages, liabilities, expenses arising out of any third-party claims relating to torts or contracts relatable to the operation and maintenance of the AO.

## **14. INSURANCE**

The Operator shall effect and maintain, or cause to be affected and maintained, at no cost to MPTB during the AO such insurance as is commensurate with prevailing applicable laws and good industry practice.

## **15. FORCE MAJEURE**

15.1 The Operator or MPTB as the case may be, shall be entitled to initially suspend the performance of its respective obligations under this agreement to the extent that the Operator or MPTB as the case may be, is unable to render such performance by an event of Force Majeure (a "Force Majeure Event").



- 15.2 In this agreement, no event or circumstance and/or no combination and circumstances shall be treated as a “Force Majeure Event” unless it satisfies all the following conditions:
- (a) Materially and adversely affects the performance of an obligation.
  - (b) Are beyond the reasonable control of the affected party.
  - (c) Such party could not have prevented or reasonably overcome with the exercise of good industry practice or reasonable skill and care.
  - (d) Do not result from the negligence or misconduct of such party or the failure of such party to perform its obligations hereunder.
  - (e) Which, by itself or consequently disables either party to perform its respective obligations under this agreement.
- 15.3 “Force Majeure Event” includes the following events and/ or circumstances to the extent that they or their consequences satisfy the requirements set forth in Clause 15.2:
- i. War (whether declared or undeclared), invasion, armed conflict or act of foreign enemy in each case involving or directly affecting the AO.
  - ii. Revolution, riot, insurrection or other civil commotion, act of terrorism or sabotage affecting the AO.
  - iii. Nuclear explosion, radioactive or chemical contamination or ionizing radiation directly affecting the AO, unless the source or cause of the explosion, contamination, radiation or hazard happens due to any act of the Operator or any affiliate of the Operator or any sub-contractor of the Operator or any of their respective employees, servants or agents.
  - iv. Strikes, work –to- rule, go-slows and/or lockouts which are in each case widespread, nationwide or political and affects the AO.
  - v. Any effect of the natural elements, including epidemic or plague, lightning, fire, earthquake, unprecedented rains, tidal wave, flood, storm, cyclone, typhoon or tornado, affecting the AO.
  - vi. Explosion (other than a nuclear explosion or an explosion resulting from an act of war) affecting the AO.
  - vii. Any event or circumstances of a nature analogous to any events set forth in paragraphs (i) to (vi) of this clause.

#### **15.4 Procedure for Force Majeure**

- 15.4.1 If a party claims relief on account of a Force Majeure Event, then the party claiming to be affected by the Force Majeure Event shall, immediately on becoming aware of the Force Majeure Event, give notice of and describe in detail:
- (i) That the Force Majeure Event(s) that has occurred.
  - (ii) The obligation(s) affected.
  - (iii) The dates of commencement and estimated cessation of such event of Force Majeure.

- (iv) The manner in which the Force Majeure event(s) affect the Party's ability to perform its obligation(s) under this agreement.
  - (v) The nature and extent of relief sought if any. No party shall be able to suspend or excuse the non-performance of its obligations hereunder unless such party has given the notice specified above.
- 15.4.2 The affected party shall have the right to suspend the performance of the obligation(s) affected, upon delivery of the notice of the occurrence of a Force Majeure Event in accordance with sub-clause 15.4.1 above. The affected party, to the extent rendered unable to perform its obligations or part thereof under this agreement, as a consequence of the Force Majeure Event, shall be excused from performance of the obligations provided that the excuse from performance shall be of no greater scope and of no longer duration than is reasonably warranted by the Force Majeure Event.
- 15.4.3 The time granted for performance of any obligation or compliance and for the exercise of any right by the party affected by Force Majeure Event, shall be extended over the period during which such Force Majeure Event continues and by such additional period thereafter as is necessary to enable the affected party to achieve the level of activity prevailing before the event of Force Majeure Event.
- 15.4.4 Each party shall bear its own costs, if any, incurred as a consequence of the Force Majeure Event.
- 15.4.5 The party receiving the claim for relief under Force Majeure Event shall, if it wishes to dispute the claim, give a written notice of dispute to the party making the claim within 30 (thirty) days of receiving the notice of claim. If the notice of claim is not contested within 30 (thirty) days as stated above, all the parties to this agreement shall be deemed to have accepted the validity of the claim. If any party disputes a claim, the Parties shall follow the procedures set forth in clause regarding dispute settlement.
- 15.4.6 It is clarified that the agreement period shall be deemed to have been extended by a period which shall be equal to the duration for which such Force Majeure Event continued and by such additional period thereafter as is necessary to enable the affected party to achieve the level of activity prevailing before the event of Force Majeure Event.
- 15.5 Mitigation**
- The party claiming to be affected by a Force Majeure Event shall take all reasonable steps to prevent, reduce to a minimum and mitigate the effect of such Force Majeure Event. The affected party shall also make efforts to resume performance of its obligations under this agreement as soon as possible and upon resumption, shall forthwith notify the other party of the same in writing.

## **16. DEFAULT AND TERMINATION**

### **16.1 OPERATOR- Event of Default**

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

- (a) Any breach, including but not limited to the events specified hereunder by the Operator of its obligations under this agreement, and such breach if capable of being remedied, is not remedied within a period mentioned in the written notice issued by MPTB specifying such breach and requiring the operator to remedy the same.
- (b) Any representation or warranty of the Operator herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Operator is at any time hereafter found to be in breach thereof.
- (c) Suspension by the Operator of the performance of the obligations under this agreement for a period exceeding 7 consecutive days (except during the subsistence of a Force Majeure Event).
- (d) Failure by the Operator to operate and maintain the AO in accordance with the applicable laws or committing a default of its obligation as provided for in clause 6.
- (e) Failure of the Operator to comply with the conditions of operational efficiencies mentioned in clause 7.
- (f) Failure of the Operator to maintain insurance(s) as required in terms of clause 14.
- (g) The Operator is ordered to be wound up by a court; filing of a petition for voluntary winding up by the Operator, or levy of an execution or restraint on the Operators assets, or appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of Operator by a court of competent jurisdiction.
- (h) The Operator is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Operator or for the whole or material part of its assets that has a material bearing on the AO.

- (i) the Operator has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the MPTB , a material adverse effect.
- (j) The Operator doing or permitting to do any act, matter, deed or thing in violation of applicable law and/or applicable permits.
- (k) Non-compliance of equity lock-in provisions set forth in the bid document.
- (l) Failure to start operations from the commencement date.
- (m) Commits a breach of its any obligations as contained in this agreement.

## **17 MPTB Event of Default**

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

- (i) Failure to pay per flying hour VGF / reimbursement of VAT on ATF uplifted from within M.P./ reimbursement of ambulance & fire brigade charges on actual basis for State owned airstrips every month.
- (ii) MPTB commits a material default in complying with any of the provisions of this agreement and such default has a material adverse effect on the performance of the obligations of the Operator.
- (iii) Fails to provide free security at State owned airstrips.
- (iv) Fails to fulfil its obligations laid down in clause 8.

## **18 TERMINATION**

18.1 Without prejudice to any other rights or remedies which the non-defaulting party may have under this agreement, upon the occurrence of either a Operator event of default or a MPTB event of default, the defaulting party shall be liable for the breach caused and consequences thereof and the non-defaulting party shall have the right to issue a notice expressing it's intention to terminate this agreement to the other party (the "Notice of Intention to Terminate"). Upon the issuance of a Notice of Intention to Terminate, the defaulting party shall have the right to represent against such notice to the non-defaulting party who will consider the representation and assess if the default can be and or should be permitted to be cured. If not satisfied it may terminate this agreement by issuance of a termination notice (the "Termination Notice"). In case the breach or the default can be cured and the non-defaulting party considers it appropriate to allow curing of the default it will give such period as it may consider appropriate to cure, failing which the non-defaulting party may terminate the agreement by issuing a termination notice.

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

## **19. DISPUTE AND ITS RESOLUTION-**

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

### **19.1 Amicable Resolution**

In the event of any dispute between the parties, either party may call upon Principal Secretary, Tourism Department, GOMP to mediate and assist the parties in arriving at an amicable settlement thereof.

### **19.2 Arbitration**

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

19.2.2 The sitting of all challenges arising out of the agreement or to its implementation shall be the district court of Bhopal and High Courts in the State of Madhya Pradesh.

### **19.3 Arbitration Awards to be binding**

- a. The Operator and MPTB undertake to carry out any decision or award of the arbitrators (the "Award") without delay. Awards relating to any dispute shall be final and binding on the parties as from the date they are made.
- b. The Operator and MPTB agree that an Award may be enforced against the Operator and MPTB as the case may be, and their respective assets wherever situated.

- c. This agreement and rights and obligations of the parties shall remain in full force and effect pending the award in any arbitration proceeding hereunder.

## **20 DISCLOSURE**

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

## **21. GOVERNING LAW AND JURISDICTION**

This agreement shall be construed and interpreted in accordance with the applicable laws and the courts in Madhya Pradesh shall have jurisdiction over all matters arising out of or relating to this agreement.

## **22 MISCELLANEOUS**

22.1 Waiver by either party of any default by other party in the observance and performance of any provision of or obligations of or under this agreement:

- a) Shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this agreement.
- b) Shall not be effective unless it is in writing and executed by a duly authorised representative of the party.
- c) Shall not affect the validity or enforceability of this agreement in any manner.

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

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

- a) One or more of the eligibility conditions have not been met by the Bidder, or
- b) the Bidder has made material misrepresentation, or
- c) has given any materially incorrect or false information.

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

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

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

## **23 SURVIVAL**

I. Termination of this agreement:

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

## **24 NOTICES:**

- 24.1 Any notice or other communication to be given by a party to the other party under, or in connection with the matters contemplated by this agreement shall be in writing and shall:

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

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

## **25 SEVERABILITY:**

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

**26 NO PARTNERSHIP :**

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

**27 LANGUAGE**

All notices required to be given by one party to the other party and all other communications, documentation and proceedings which are in any way relevant to this agreement shall be in writing and in english language.

**28 EXCLUSION OF IMPLIED WARRANTIES.**

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

**29 COUNTERPARTS**

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

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

SIGNED SEALED AND DELIVERED  
For and on behalf of  
MADHYA PRADESH TOURISM BOARD  
LTD.  
By

SIGNED, SEALED AND DELIVERED  
For and on behalf of  
OPERATOR by:

\_\_\_\_\_(Signature)  
\_\_\_\_\_(Name)  
\_\_\_\_\_(Designation)  
MADHYA PRADESH TOURISM BOARD  
Ltd. (A Govt. of M.P. Undertaking)  
6th Floor, Lily Trade Wing,  
Jahangirabad, Bhopal- 462008,  
(Madhya Pradesh)  
Phone:  
Fax:

\_\_\_\_\_(Signature)  
\_\_\_\_\_(Name)  
\_\_\_\_\_(Designation)  
Name of the OPERATOR  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

In the presence of:



**ANNEXURE - A**  
**SATISFACTORY SERVICE PARAMETERS**

**Definition of Satisfactory Performance. Satisfactory services shall be judged on the following criteria:-**

**Punctuality**

- Operational efficiency as per clause 7.1 of the AoA.
- Daily maintenance / servicing / cleaning of aircraft.
- Airworthiness certification by authorized personnel.

**Safety & Security**

- As per DGCA guidelines

**Passenger Services**

- Passenger complaint registers to be made available at all airports.
- In case the flight is cancelled, full refund of fare to be made to the passengers.
- In case the flight is diverted to another station other than the destination, boarding and lodging arrangements to be made for the passengers.
- Assistance / wheelchair arrangements for differently abled passengers.

**Booking/Reservations**

- Online/offline booking.
- Bookings through MPTB website.

**Reporting**

- Weekly/Monthly reporting to be made available to MPTB as per the approved formats.

**Staffing**

- All staff to have common uniform and ensure polite behaviour.

**Compliance of Central & State Government rules/norms**

- All Central & State Government rules/ norms to be adhered to.

**Timely submission of Bills/invoice to MPTB**

- All bills and invoices to be submitted to MPTB in time.

Supporting documents duly verified by competent authority to be submitted along with the bills/ invoices.

**ANNEXURE - B**  
**List of Operational Air strips are as follow –**

<b>Sr.No.</b>	<b>Air Strips</b>
<b>1</b>	Bhopal
2	Indore
3	Gwalior
4	Khajuraho
5	Jabalpur
6	Ujjain
7	Mandla
8	Pachmarhi