

Department of Civil Aviation, Daman & Diu (DCADD)

No. DS/CIVIL-AVIATION/AIR/2018-19/19

Dated:- 11/01/2019

TENDER DOCUMENT

FOR

**PROVIDING INTRA-UT AIR SERVICES & INTER-STATE
AIR CONNECTIVITY WITH GUJARAT
(ON-SHORE)**

DISCLAIMER

The information contained in this **tender document** (hereinafter referred to as “**Tender Document**”) document or subsequently provided to the Bidders, whether verbally or in documentary form by or on behalf of the DEPARTMENT OF CIVIL AVIATION, DAMAN & DIU (**DCADD**), their employees or any of its agencies/consultants/advisors, is provided to the Bidder(s) on the terms and conditions set out in this **Tender Document** and all other terms and conditions subject to which such information is provided.

The purpose of this **Tender Document** is to provide the Bidders with information to assist the formulation of their Eligibility and Financial Proposal. This **Tender Document** does not purport to contain all the information for all the persons, and it is not possible for DCADD, their employees or any of its agencies/consultants/advisors to consider the business/investment objectives, financial situation and particular needs of each Bidder who reads or uses this **Tender Document**. Each Bidder should conduct its own investigations and analysis, and should check the accuracy, reliability and completeness of the information in this **Tender Document** and where necessary obtain independent advice from appropriate sources. DCADD, their employees or any of its agencies/consultants/advisors make no representation or warranty and shall incur no liability under any law, statute, rule or regulation as to the accuracy, reliability or completeness of the **Tender Document**. DCADD may in its own discretion, but without being under any obligation to do so, update, amend or supplement the information in this **Tender Document**.

ContentsoftheTenderDocument

Section I	Instructions to Bidders (ITB)
Section II	Air Service Operation Agreement (AOA)

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

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Section – I - Instruction to Bidders (ITB)

INTRODUCTION

1. Background

The UT Administration of Daman & Diu desires to make available intra-state & inter-state air-connectivity. This bid document & air services agreement has been designed to encourage to start air services in the UT with connectivity to Gujarat.

2. Brief Description of Bidding Process

- 2.1 Department of Civil Aviation, Daman and Diu (**DCADD**), **hereafter known as Authority**, invites bids from interested parties “Providing Intra-State Air Connectivity within Daman and Diu (ON-SHORE)”
- 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 TENDER DOCUMENT stage shall depend upon the Bids being responsive in terms of this Tender Document and upon their meeting in entirety the minimum qualification criteria as laid down in this Tender Document. **Financial Bids are to be submitted in the form of subsidy per Flying Hour which shall be payable to him in accordance with the conditions contained herein.**
- 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 TENDER DOCUMENT. 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 Financial Bid, provided the Bid is responsive in terms of the ITB, shall be asked by Authority immediately after the opening of the Bids, to furnish a Bank Guarantee, of Rs _____/- (Rupees _____) within 45 (forty five) days of the receipt of Authority’s letter to show its commitment (the “Commitment Security”) towards its Financial Bid. The Financial Bid of the LOWEST Bidder shall be considered for declaration as the selected bidder (the “Selected Bidder”) only when Authority receives the Commitment Security within the specified time herein above.

3. Availability of Tender Document

The Tender Document can be downloaded from the website i.e. www.daman.nic.in from 11/01/2019 to 05/02/2019 till 18:00 hrs. The Bidders should pay Rs. 20,000/- through demand draft drawn on any Scheduled Bank in favour of “Department of Civil Aviation, Daman and Diu (**DCADD**)”, payable at Daman (the “Tender Document Fee”). Bidders must submit the Tender Document Fee along with their Bid Document as specified in Clause no. 6 of Section I. The Bid unaccompanied with the Tender Document Fee may be summarily rejected. Tender Document Fee shall be non-refundable.

4. Pre-Bid Meeting

A Pre Bid Meeting of the interested parties shall be convened at the designated date, time and place. Only those Bidders who have purchased the Tender document shall be allowed to participate in the Pre Bid Meeting and those Bidders who have not purchased the Tender document will not be allowed to attend the Pre Bid Meeting. A maximum of two representatives of each Bidder shall be allowed to participate in the Pre Bid Meeting. During the course of Pre Bid Meeting, the Bidder will be free to seek clarifications. The Authority shall endeavor for consideration/ rejection of clarifications sought by the Bidders and any further information as it may be required, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process. The Authority shall issue the Pre Bid Minutes to all those who have purchased the Tender Document or those who have attended the Pre Bid Meeting as the case may be.

A pre-bid meeting will be held on date 21/01/2018 at 11:00 hrs at the following address:

Dy. Secretary (Civil Aviation),
Department of Civil Aviation, Daman and Diu (DCADD),
Secretariat, Fort area,
Moti Daman – 396 220.

(Note: If any changes in the address, DCADD, will notify the same through letter or email)

5. Validity, Bid Security and Rejection of the Bid

The Bids shall remain valid for 180 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 receiving the acceptance of the Letter of Acceptance (LoA) from the selected bidder. However, no interest shall be payable on the Bid Security. Authority 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 Authority's action.

6. Schedule of Bidding Process

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

Sr. No.	Event Description	Date (s)
1	Commencement of Sale of Bid Document	12 th January, 2019
2	Last date of receiving queries	16 th January, 2019
3	Pre-Bid Conference/Meeting	21 st January, 2019 at 11:00 hrs
4	Reply to queries, Uploading of Amendments to TENDER DOCUMENT, if any	24 th January, 2019
5	Bid Due Date/ last date of submission of TENDER DOCUMENT (the "Bid Due Date")	08 th February, 2019 till 15:00 hrs.
6	Opening of Bids on Bid Due date	08 th February, 2019 on 17:00 hrs.

7. Further Information

Interested Bidders may obtain further information from:

Name of Contact Person: Ms. Gurpreet Singh,

Dy. Secretary, DCADD. Tel. – 0260 2230023

e-mail – pers-dd@nic.in

For technical queries of bidding, please contact:

Phnoe No.: 0120-4001 002, 4200 462, 4001 005, 6277 787.

E-mail: - support-eproc@nic.in , cphp-doe@nic.in

7.1 The Bids must be submitted on or before 9th February, 2019 till 16:00 hrs. on the Bid Due Date in the office with Dy. Secretary (Civil Aviation) as mentioned above. (Tenders sent Registered Air mail, Speed Post or hand delivered. DCADD shall not be responsible if the Bid documents are misplaced/ delayed in transit and not received by the prescribed date and time).

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

“TENDER DOCUMENT”

AND

“BID for providing Intra-UT Air Services and Inter State Air Connectivity with GUJARAT for Onshore Air Services”

7.3 Official website (the “Official Web Site”) for notices: www.daman.nic.in/ www.ddtenders.gov.in

All notices related to this TENDER DOCUMENT including Clarifications/Amendments to the Tender Document shall be available on

8. General terms of Bidding

8.1 A Bidder is eligible to participate in only one Bid for providing intra-UT Air Services and inter-State air connectivity with Gujarat. If a Bidder bidding individually or as a member of a consortium 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 TENDER DOCUMENT, 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”) authorizing the signatory of the Bid to commit the Bidder. The Power of Attorney must include the specimen signature of the authorized signatory (the “Authorized Signatory”) duly attested by a director from the Board of Directors of the Bidder.

8.4 In case the Bidder is a consortium of body corporate (the “Consortium”), the members (the “Members”) thereof should furnish a Power of Attorney in favour of the Lead financial Member (the “Lead Member”). The Power of Attorney must be signed by the respective director(s) from the Board of Directors of all the Members. The maximum number of parties in a consortium shall not exceed three (3).

8.5 The Bidding documents including this TENDER DOCUMENT and all attached documents are and shall remain the property of Authority 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. Authority will not return any Bid or any information provided to it by the Bidders.

9. Conflict of Interest

9.1 Authority considers conflict of interest (the “Conflict of Interest”) to be a situation in which a party has interests that could improperly influence the Bidding Process, or that party’s performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations. Any Bidder, which in the opinion of Authority has or may have the likelihood of having a Conflict of Interest, shall be liable to be disqualified.

9.2 Notwithstanding anything contained herein above, Authority may, after opening of the Eligibility Proposal, seek a confirmation (in a proforma to be provided by Authority) that there is no Conflict of Interest among the Bidders, Members and/or Constituents of the Bidder/Member of the Consortium, within a period to be stipulated by Authority in future.

10. Scope of the Project

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

- a) Managing the air service operations using aircrafts which shall not be less than 9 and not more than 19 passenger seats in sectors as described in schedule A of the AOA (Air service Operations Agreement).
- b) Ensuring safety, security and convenience of the passengers using the air service.
- c) Performance and fulfillment 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) Authority has finalized 6 sectors for running the flights. Apart from these proposed Sectors, the bidder shall run the flights at minimum 2 other sectors/routes.
- e) The minimum flying hours to be covered by the bidder in a month shall be 200 to avail the quoted subsidy.

11. Eligibility of Bidders /Technical Parameters

The Bidder's competency and capability is proposed to be evaluated on the basis of a single stage, two envelope process:

Stage 1: Technical Evaluation (to be submitted through www.ddtenders.gov.in and 1 set to be submitted as hard copy at the communication address mentioned in clause 7.

This stage is divided in two segments-

Technical Capability

Financial Capability

Stage 2: Price Bid (to be submitted through www.ddtenders.gov.in; No hard copies to be submitted)

The Price Bid shall not be submitted along with the hard copy of Technical Bids. It shall be submitted only through www.ddtenders.gov.in. If the Price bids are submitted with the technical bids, it will lead to disqualification of the Bidder.

A Basic Eligibility

- The Bidder must be a body corporate and a company incorporated and registered in India under the Companies Act, 1956, or a Consortium of the same.
- The Bidder shall have a valid proof of ownership of at least two aircrafts which he will deploy for the said services. The aircraft deployment shall be completed within the stipulated timeframe mentioned in the tender.
- The Bidder should have at least two persons at senior managerial level each having at least three (3) years of experience of managing civil air service operations on the rolls of the companies at the time of submitting the bids.
- Director / Major shareholder / Consortium should have at least five (5) years of experience in senior position in aviation sector preferably airline/general aviation.
- Bidder shall have a minimum aggregate Turnover of Rs. 5 Crore in the three financial years. Bidder shall submit the certified copy of audited annual reports by authorised Auditor.
- The Bidder shall have an Indian Non Scheduled Operator's Permit (NSOP/NOC) from Ministry of Civil Aviation (MoCA)

B Technical Bid

The Bidder/any Member of the Consortium (holding at least 26% equity in Consortium) should fulfill the following parameters:

1. Technical Criteria (45 marks)

- Bidder shall have an Indian Non Scheduled Operator's Permit (NSOP)/ NOC from Ministry of Civil Aviation (MoCA)

Number of years of NSOP/ NOC	Maximum Marks
Less than 1 year	5
1 to 5 years	10
More than 5 years	15

In case the NSOP validity expires by the year 2014, Bidder shall submit the validation document of the pre-issuance of the NSOP as received from DGCA.

- b. Bidder shall have aircraft deployment, for the proposed air service operations each with not less than 9 passenger seats and not more than 19 passenger seats, as per the below mentioned table. Marks shall be allocated as follows

Age of Aircrafts deployed	Maximum Marks
1-5 years	10
6-8 years	5

The age of the Aircrafts to be deployed by the Operator shall not exceed 8 years. The Bidder shall submit an undertaking/Certificate indicating the age of the aircraft.

- c. If the Company is a ISO certified company – **5 marks**
- d. The Bidder attaching a valid proof of deploying a third aircraft in case the two previously deployed aircrafts are grounded due to certain unforeseen reasons- **5 marks**
- e. If the bidder has an experience in running similar services

Bidder's Experience	Maximum Marks
Only exposure in similar services	5
Experience of running similar service	10

2. Financial Criteria (30 marks)

- a. The aggregate tangible Net Worth of the Bidder should be profit making as on the date of submission of Bid

Net Worth of the Bidder	Maximum Marks
1 – 3 Cr	5
3 – 5 Cr	10
More than 5 Cr	15

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]].

- b. The Aggregate Turnover of the Bidder in any of the last two financial years and current financial year.

Net Worth of the Bidder	Maximum Marks
5 – 10 Cr	5
10 – 20 Cr	10
More than 20 Cr	15

Submission of audited annual reports for the last three financial years duly certified by the statutory auditor of the Bidder and in case of Consortium, by statutory auditor of the respective Member of the Consortium.

3. Business Proposal Presentation (25 marks)

Presentation to be made to the Technical Committee (this will be binding on the Bidder and shall be a part of the AOA)

- a. Project Operations Plan – 25 marks

The Bidders scoring more than 50 marks in Technical Bid shall only be considered for the opening of Financial Bid

C Financial Bid

Financial Bids are to be submitted in the form of subsidy per Flying Hour which shall be payable to him in accordance with the conditions contained in this tender document.

The Financial Bid shall be accompanied with a Project Business Plan (should showcase Detailed workings of expenditure and revenues and justify the subsidy quoted with respect to projected operation's schedule as prescribed compulsory within the tender document.)

Notes:

Relevant documents to be furnished for evaluation of Technical and Financial Capabilities.

Submission of audited annual reports for the last two financial years duly certified by the statutory auditor of the Bidder and in case of Consortium, by statutory auditor of the respective Member of the Consortium.

If so requested by Authority, 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 Authority in this regard to enable Authority to make enquiries from the Bidder's bankers.

The Financial Bid shall not be submitted along with the Technical Bid. It shall be submitted only through www.ddtenders.gov.in. If the Financial Bid is submitted with the Technical Bids, it will lead to disqualification of the Bidder.

Authority may call the shortlisted bidder to discuss the Business Plan.

12. Consortium

12.1 Bids submitted by a Consortium must comply with following requirements:

- a) The number of Members shall not exceed 3 Members.
- b) The Consortium shall furnish a joint bidding agreement (the "Joint Bidding Agreement") on non-judicial Stamp Paper of minimum Rs 100/- (Rupees one hundred only) which shall be legally binding on all the Members. The Joint Bidding Agreement should be valid for a minimum period of 180 (one hundred and eighty) days from the Bid Due Date.
- c) One of the Members, holding at least 26% (twenty six percent) of equity stake in the Consortium, shall be nominated as the Lead Member to act on behalf of the others as their representative for bidding and implementation of the Project. This authorization shall be evidenced by submitting a Power of Attorney signed by legally authorized signatory of all the Members.
- d) Change of the Lead Member or equity participation as described in joint bidding document would not be allowed under any circumstance till 18 months after the beginning of AO.
- e) A body corporate can be a Member in only one Consortium; if a body corporate participates in more than one Bid, all Bids of which it is a part would be summarily rejected.

- f) All Members of the Consortium shall however, be liable jointly and severally, for the execution of the Project in accordance with the terms of the Development Agreement.
- g) If the Member of Consortium whose technical experience has been considered for bid evaluation is different from lead financial member the same should hold minimum 26% equity in the SPV.

13.Special Purpose Vehicle (SPV) and Equity Lock in

13.1 The Selected Bidder may on its request be allowed to incorporate a company under the Companies Act, 1956, to be called SPV, within 30 (thirty) days from the date on which commitment security is deposited.

13.2 It is made clear that the consortium members will have to register a new company, within a period of 30 days from the date of which commitment security is deposited, dedicated to the proposed air service operations and this company shall be the SPV (special purpose vehicle). All permits, clearances shall be obtained in the name of this SPV. Authority will execute the AOA only with the SPV and not with any member of the consortium.

13.3 Any change in Equity participation of Members of the Consortium and total shareholding pattern in the proposed SPV, which shall be in accordance with the Joint Bidding Agreement (which is being submitted by the Bidder as part of this Bid), is not allowed at any stage of the Bidding Process, during preparatory period and till the end of a period of 18 months beginning with the commencement date.

14.Cost of Bidding

14.1 The non-refundable document fee for the TENDER DOCUMENT is Rs 20,000/- (Rupees Twenty Thousand only), which is to be submitted with the Bid, the document is to be downloaded from the website i.e. www.daman.nic.in / www.ddtenders.gov.in The Bid unaccompanied with the Tender Document Fee may be summarily rejected as non-responsive.

14.2 The Bidders shall bear all costs associated with the preparation and submission of their Bids, and Authority will, in no case, be responsible or liable for those costs, regardless of the conduct or outcome of the Bidding Process.

14.3 The Bidder is expected to examine all instructions, forms, terms and conditions in this Tender Document before submitting its Bid. Submission of a Bid that is not responsive in any respect shall be liable to be rejected.

15.Clarification of Tender Document:-

15.1 Any Bidder requiring any clarification of the Tender Documents may notify DCADD at the communication details mentioned in clause 7.

15.2 At any time prior to the Bid Due Date, Authority may, for any reason, whether at its own initiative or in response to a clarification requested by a Bidder, modify the Tender Documents by issuing an amendment.

15.3 All Bidders who have bought the Tender Documents will be notified of the amendment in writing or fax or e-mail at the address provided by them, and the same will be binding on them. The amendments will also be posted on the Official Website of DCADD.

i.e. www.daman.nic.in/ www.ddtenders.gov.in

15.4 In order to allow Bidders reasonable time in which to take the amendment into account in preparing their Bids, the Authority may, at its discretion, extend the deadline for the submission of Bids.

16. Language of Bid

The Bid prepared by the Bidder, as well as all correspondence and documents relating to the Bid exchanged by the Bidder and Authority 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.

17. Bid Security and Commitment /Performance Security

17.1 Each Bidder shall furnish as the Bid Security for an amount of **Rs 30,00,000/- (Rupees Thirty Lakh only)** in the form of a Demand Draft drawn in favour of the **Department of Civil Aviation, Daman and Diu (DCADD)**, Daman issued by a Scheduled Bank. For the avoidance of doubt, Scheduled Bank shall mean a bank as defined under Section 2(e) of the Reserve Bank of India Act, 1934. Authority 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 Authority as non-responsive.

17.2 The lowest Bidder shall be asked by Authority to furnish a Bank Guarantee for a sum of Rs. 2 Crores (Rupees Two Crores only) toward Commitment Security/Performance Security within 45 (forty five) days of the receipt of Authority's letter. The LoA shall be issued only after receipt of the Commitment Security/Performance Security by Authority. In the event the Commitment Security/Performance Security is not provided within the stipulated time, Authority at its own discretion shall have the right to reject the bid, forfeit the Bid Security submitted by such Bidder. Thereafter Authority shall be at liberty to take such further action as deemed appropriate. The bidder after he has deposited the valid commitment security/performance security shall be called the selected bidder.

17.3 The Bid Security submitted by the Selected Bidder shall be returned. The Commitment /Performance Security (CS) shall remain valid for the entire period of AOA.

17.4 Commitment/Performance security shall be returned to the operator on successful completion of the agreement.

18. Bid Variable and other conditions

18.1. The operator shall have to operate flights in such manner that, air service connectivity is provided as per Schedule 'A'. Apart from the sectors mentioned in Schedule A, Bidder shall also select 2 other sectors for running the services. The bidder will quote the tariff per Flying Hour and will also indicate the number of Flying Hours that he wants to be underwritten for various sectors. The tariff per Flying Hour quoted for each sector shall remain fixed during the currency of the AOA. The manner in which the tariff will be quoted is prescribed in the format for Financial Bid (Form-A).

For the purpose of determining the Lowest Bid, the total tariff subsidy (sum of the number of underwritten Flying Hours on each sector multiplied by tariff/Flying Hour quoted) shall be calculated.

However, if for any sector the bidder quotes less than the average amount calculated for that sector, the amount quoted shall not be considered for determining the total tariff subsidy and instead the average amount for that sector shall be taken into account and the bids shall be accordingly evaluated. It is however clarified that the he will be paid according to the actual quoted tariff subsidy if he becomes the selected Bidder and starts the actual air operations in accordance with the provisions of the AOA. The amounts used for bid evaluation shall not entitle him to make any claims against Authority

Illustration

1) Suppose bidder 'A' quotes the following tariff subsidy for each route:

Sr. No	Sector	Total Tariff Amount	No. of underwritten Flying Hours
1	Daman – Diu - Daman	1200*	2*
2	Daman – Ahmedabad - Daman	1200*	1*
3	Diu – Surat - Diu	1200*	2*
	Total	3400*	5*

*This figures are for illustration and not accurate.

Say the total distance of the above three sectors is 151+53+186= 390 nautical miles. Therefore average tariff (tariff/Flying Hour) quoted will be =3400/5 = Rs 680 per Flying Hour. Therefore the average total tariff for each sector shall be –

1	Daman – Diu - Daman	680 x 2	= Rs 1360
2	Daman – Ahmedabad - Daman	680 x 2	= Rs 680
3	Diu – Surat - Diu	680 x 2	= Rs 1360

Since the quoted rate for sector 2 is more than the average therefore the quoted rate shall be used for evaluation of the bid. However since the quoted rate for sector 1 and 3 is less than the average calculated above therefore this average tariff shall be used in the evaluation of the bid.

2) **Fuel escalation would be permitted for amount of minutes, of a flying sector, as per the formula given in below mentioned example:-**

- Fuel consumption per min of Aircraft to be taken as per flight manual.
- Considering the cost of Fuel per ltr = X Rs

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c) Considering the Fuel consumption per min = Y ltr

d) Assuming that the Escalation in fuel price is 2%

e) Now the cost of the fuel after 2% escalation will be = $2X/100 = 0.02X$

Hence, permissible escalation in quoted price = $Y * 0.02X$ (whereas 'Y' will be quoted fuel consumption as per Aircraft flight manual) will be allowed as escalation in quote price. The Escalation of Fuel Price above 10% shall not be considered for subsidy. Any escalation above 10% in the Fuel prices shall be payable by the Operator. A corresponding increase or decrease may be compensated on actual basis on further escalation or reduction.

18.2. The VAT charged on ATF bought from within the State by the operator shall be refunded on quarterly basis to the operator by Authority subject to the conditions mentioned in the agreement.

18.3. The Government officials or any official on Govt. duty authorized by DCADD can travel free against the subsidies seat; However, To avail the seat they will have to book seat 24 hours before the departure.

18.4. The Operator shall prepare a web based Booking Portal for providing online booking services for private persons and govt. officials. All the bookings shall be done through a secure payment gateway permitting the use of credit/debit cards.

18.5. The period of AOA shall be three years from the date of signing of agreement provided that if the authority is satisfied with the performance of the operator during the agreement period it may by order extend the agreement period by one year on such terms and condition as may be mutually agreed by both the parties.

18.6. The Operator must maintain operational efficiency as mentioned in the agreement and shall adhere to the requirements stipulated under DGCA.

18.7. The Bidder shall be able to deploy a third aircraft within 72 hours, in case the previously deployed aircrafts are grounded due to unforeseen reasons.

18.8. In the event of the AOA being terminated due to operators default the commitment guarantee shall be revoked and the amount forfeited.

18.9. The operator shall be responsible for paying all charges (e.g. landing cost, etc.) levied by Government agencies at all the Airstrip, except the ones owned by the UT Administration of Daman and Diu. In case the Operator decides to start operations on air service strips owned by the UT Administration of Daman & Diu, the security shall be provide free of cost by the local district administration.

18.10. The operator will have to pay Rs 750/- for ambulance service and Rs 2,000/- for fire brigade to the authority responsible for providing these facilities for each landing. Authority shall intimate to the operator the authorities who will provide these facilities and the manner of such payment. The Operator shall be responsible to take the booking counters and waiting areas on lease at the Airports other than the airstrips owned by UT Administration of Daman & Diu.

18.11. The Operator shall be responsible to provide the transport facility, security, water supply and other basic facilities to the users within the premise at UT Administration owned Airstrips.

19. Bid Validity:-

The Bid shall remain valid for a period of 180 days from the Bid Due Date (the “Bid Validity Period”) or the extended bid due date.

20. Format and Signing of Bid:-

20.1. The Bidding Process for selection of suitable operator for this Project will be carried out in a single stage- two packet system i.e. by submission of Eligibility Proposals and Financial Bids.

20.2. The Bidder shall provide all the information sought under this TENDER DOCUMENT. Authority will evaluate only those Bids that are received in the required formats and are complete in all respects. The Bids will comprise of two parts, as described below:

ENVELOPE 1 will contain the requisite Bid Security and other compliance documents/enclosures as mentioned below:

- a. Checklist on Documents enclosed
- b. Covering Letter
- c. General Information about the Bidder
- d. Non Refundable Tender Fee of Rs. 20,000/- shall be paid by way of a crossed demand draft drawn on any Scheduled Bank payable at Daman. The Demand Draft shall be drawn in favor of “Department of Civil Aviation, Daman & Diu (DCADD)”
- e. Bid Security of Rs. 30,00,000/- (Thirty Lakh Only) shall be paid by way of a crossed Demand Draft drawn on any Scheduled Bank payable at Daman. The Demand Draft shall be drawn in favor of “Department of Civil Aviation, Daman & Diu (DCADD)”
- f. Documentary proof, where applicable, as evidence of satisfaction of the Technical Qualification
- g. Information about Financial Qualification along with Audited Balance Sheets of past 2 financial years and current financial year provisional financial statement duly signed by the statutory auditor.
- h. Joint Bidding Agreement (in case of consortium)
- i. Tender Document Fee of Rs 20,000/- (Rupees Twenty Thousand only)
- j. Power of Attorney for signing of Bid
- k. Power of Attorney for Lead Member of Consortium
- l. A copy of the complete set of Tender Documents, along with corrigendum to TENDER DOCUMENT, if issued with each page initialed by the Authorized Signatory as a token of acceptance;
- m. Tentative schedule of the flights in form-B

Bidders have to submit the Financial Bid in the Daman and Diu Tenders website i.e. www.ddtenders.gov.in The format for submitting the Financial Bid is provided in Bid Form A of this Tender Document. **Any Bidder submitting the Financial Bid along with the Envelope 1 shall stand disqualified.**

20.3. The documents / enclosures in ENVELOPE 1 of the Bids shall be submitted by the Bidder in 1 (one) copy.

20.4. The contents of the Bid in ENVELOPE 1 shall be typed and signed by the Authorized Signatory of the Bidder who shall also initial each page, in blue ink. All the alterations, omissions, additions or any other amendments made to the Bid shall also be initialed by the person(s) signing the Bid.

20.5. The documents/enclosures in ENVELOPE 1 shall be submitted together in bound form, with all the pages numbered serially. Demand Drafts shall not be bound directly but be placed in plastic jackets, which are bound as part of the main booklet. Along with the Covering Letter, the Bidder should submit a Checklist as per prescribed format enclosed with this document duly signed by the Authorized Signatory and mentioning whether each document has been submitted, its page number, total number of pages of that particular document/enclosure, and whether each page has been initialed in blue ink by the Authorized Signatory.

21. Sealing and Marking of Bids

21.1. ENVELOPE 1 shall be sealed, and marked as **“Bid for providing intra-UT air services and inter-state air connectivity with Gujarat (Onshore) - Eligibility Proposal and other Compliances”**. The envelope must bear the name and address of the Bidder to facilitate return of the envelopes unopened, if required. In addition, the Bid Due Date should be indicated on the right hand top corner of each of the envelopes.

21.2. If the outer envelope is not sealed and marked as required hereinabove the Bid shall be liable to be considered as non-responsive.

21.3. The envelope shall be addressed to the address mentioned in Clause 7.

22. Deadline for Submission of Bids

22.1. Bids must be submitted to Authority on or before 15:00 hours on the Bid Due Date at the address mentioned at clause 7.2.

22.2. Authority may extend this deadline for submission of Bids by amending the bidding documents, in which case all rights and obligations of Authority and Bidders will thereafter be subject to the deadline as extended.

23. Late Bids

Any Bid received by Authority after the deadline for submission of Bids prescribed by Authority 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. The hard copies of the Technical Bids shall also be submitted within the stipulated time period. The hard copies of the Bids received after the last date of submission shall be summarily rejected.

24. Opening of Bids

24.1. Authority will open the Bids received on the Bid Due Date at 15.30 hours at the address mentioned in Clause 6, or the address intimated to you by Authority, in presence of the Bidder's representatives, who may choose to attend the opening. In case Authority extends the deadline for submission of Bids, the same shall be intimated to all the Bidders through phone call, fax or email. 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 Authority, may consider appropriate, will be announced at the opening.

24.2. Authority will determine whether each Bid (Envelope 1) is 'responsive' to the requirements of the TENDER DOCUMENT. A Bid shall be considered 'responsive' only if:

- a. The Bidder meets the Eligibility Criteria as laid down in this Tender 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 Tender Document; the document is accompanied by Tender Document Fee of Rs 20,000/- (Rupees twenty thousand only)
- d. It is accompanied by the Bid Security as specified in this Tender Document;
- e. It is accompanied by the relevant Power(s) of Attorney (ies) and Undertakings as specified in this Tender Document;
- f. It does not contain any condition or qualification; there is no Conflict of Interest,
- g. The document is accompanied by the Checklist as prescribed;
- h. The information given in the Bid (Envelope 1) is complete in all respects and is strictly in accordance with the Forms/ formats prescribed in the bidding document;
- i. The information is true and correct.
- j. Envelope 1 contains all documents prescribed in clause 20.

24.3. If any of the above criteria is not fulfilled, in any manner whatsoever, the Bid shall be treated as non-responsive. The decision of Authority 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. Authority, 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 Authority or to request either Authority 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.

Authority shall give cogent reason to ask for additional or modify documents that it considered necessary to make the bid responsive and any such request or directions of Authority shall not be called in question by any other bidder.

24.4. Financial Bids 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 Authority may consider appropriate, will be announced at the time of opening of Bids.

25. Evaluation and Comparison of Bids

25.1. It is clarified that the selection of the Bidder shall be subject to its meeting the Eligibility Criteria as laid down in this Tender Document and the scrutiny of the Bid submitted by the Bidder.

25.2. 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 Tender Document, that the Bidder has submitted.

25.3. To facilitate evaluation of Bids, Authority may, as per the discussion with Authority, seek clarifications in writing from any Bidder regarding its Bid.

25.4. Notwithstanding anything to the contrary contained in this TENDER DOCUMENT, Authority 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, Authority'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.

25.5. The waiver by Authority 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 Authority shall in any way affect, diminish or prejudice the right of Authority to seek strict compliance or rectification of irregularity. Any waiver or forbearance by Authority 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 TENDER DOCUMENT. No party shall have any right to demand waiver or forbearance from Authority. Waiver of any infirmity, non-conformity or irregularity on one occasion in favor of one Bidder shall not in any manner constitute a continuing waiver. The waiver, by Authority, 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 Authority under this Tender 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 Authority, whether under this Tender Document or otherwise.

- 25.6. Authority 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.
- 25.7. Bidders shall note that in case of difference between the calculations submitted by Bidder and the calculations computed by Authority (if any), the calculations computed by Authority shall prevail.
- 25.8. The Bidder found eligible and asking the LOWEST subsidy in the Financial Bid and who has submitted the Commitment Security shall be declared as the Selected Bidder.
- 25.9. In the event that two or more Bidders quote the same amount of **lowest subsidy** (the “Tie Bidders”), Authority shall ask the Tie Bidders to submit their revised Financial Bid with the amount of subsidy quoted earlier by the Tie Bidders as the fresh Reserve Price for such Bid. The Bidder among the Tie Bidders, who quotes the LOWEST subsidy in the fresh bidding, will be declared as the lowest Bidder.
- 25.10. In the event that the lowest Bidder withdraws or is not selected for any reason in the first instance (the “first round of bidding”), Authority, 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 Bidder (the “Second round of bidding”) or annul the Bidding Process. If in the second round of bidding, only one Bidder matches the lowest Bidder, it shall be the Selected Bidder. If two or more Bidders match the said lowest 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 Bidders in the first round of bidding offer to match the said lowest Bidder in the second round of bidding, the said third lowest Bidder shall be the Selected Bidder.
- 25.11. In the event that no Bidder offers to match the lowest Bidder in the second round of bidding as specified in Clause 25.10, Authority may, in its discretion, invite fresh Bids (the “third round of bidding”) from all Bidders except lowest 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 Bidder in the first round of bidding.

26. Fraud and Corrupt Practices

- 26.1. 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, Authority 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, Authority shall forfeit and appropriate the Bid Security or **COMMITMENT SECURITY**, as the case may be, genuine pre-estimated compensation and damages payable to Authority towards, inter alia, time, cost and effort of Authority without prejudice to any other right or remedy that may be available to Authority hereunder or otherwise.

- 26.2. Without prejudice to the rights of Authority hereinabove and the rights and remedies which Authority may have under the LoA or the Agreement, if a Bidder or Operator, as the case may be, is found by Authority 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 TENDER DOCUMENT issued by Authority during a period of 2 (two) years from the date such Bidder or Operator, as the case may be, is found by Authority 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.

27. Authority's Right to Accept any Bid and to Reject any or all Bids

- 27.1. Notwithstanding anything contained in this TENDER DOCUMENT, Authority 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 Authority's action.
- 27.2. Authority 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 Authority, the supplemental information sought by Authority for evaluation of the Bid.

Such misrepresentation/ improper response shall lead to the disqualification of the Bidder. If the Bidder is a Consortium, then the entire Consortium shall be disqualified / rejected. If such disqualification / rejection occur after the Bids have been opened and the lowest Bidder gets disqualified / rejected, then Authority reserves the right to:

- a) Take any such measure as may be deemed fit in the sole discretion of Authority, including annulment of the Bidding Process.
- 27.3. 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 TENDER DOCUMENT, be liable to be terminated, by a communication in writing by Authority to the Bidder or operator, as the case may be, without Authority liable in any manner whatsoever to the Bidder or operator, as the case may be. In such an event, Authority shall forfeit and appropriate the Bid Security and or the Commitment security/Performance Security, as the case may be, without prejudice to any other right or remedy that may be available to Authority.

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

28. Communication of Acceptance

- 28.1. After the determination of the lowest bidder, a Letter of Acceptance (the "LoA") shall be issued, in duplicate, by Authority to the **lowest 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, Authority 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 Authority on account of failure of the Bidder to acknowledge the LoA.
- 28.2. Letter of Acceptance (LoA) will constitute the Contract between the **Lowest Bidder and Authority** pending execution of AO Agreement. The Letter of Acceptance shall constitute part and parcel of the subsequent Agreement to be entered between the parties.
- 28.3. The lowest Bidder shall deposit the Commitment Security/ Performance Security within 45 days from the date of issue of Letter of Acceptance.

29. Execution of the AOA

The selected bidder shall have to execute Air Service Operation Agreement with **Department of Civil Aviation, Daman and Diu (DCADD)** - The Authority

- 29.1. Compliance of following conditions by the Selected Bidder shall be the pre-requisites for signing of the Agreement:
- a) Acknowledgment of LoA in terms of this TENDER DOCUMENT within 15 days of issuance of LoA
 - b) Submission of Commitment Security/ Performance Security
 - c) Creation of a SPV, if required
- On compliance of the pre-requisites specified hereinabove, the AOA shall be executed, in the enclosed format, with the bidder/SPV.

30. Return /Forfeiture of Bid Security and Commitment Security

- 30.1. 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.

- 30.2. The Bid Security of the Selected Bidder will be returned when the Selected Bidder has executed the Agreement with Authority as specified in Clauses 30.
- 30.3. Without prejudice to the specific provisions in this regard the Bid Security and/or the Commitment Security shall be liable to be forfeited:
- a) If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice
 - b) If the Bidder withdraws its Bid during the Bid Validity Period
 - c) If the Bidder imposes any condition within the Bid Validity Period,
 - d) If the Bid of any Bidder is non-responsive;
 - e) If the Bidder fails, within the specified time limit;
 - To acknowledge the receipt of LoA
 - To execute the Agreement as per the format enclosed;
 - To furnish the commitment security;
- 30.4. Authority 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.

31. 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 Authority in relation to or matters arising out of, or concerning the Bidding Process. Authority 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. Authority 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.

32. Miscellaneous

- 32.1. The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at MUMBAI shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Bidding Process.
- 32.2. Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- a) Suspend and/or cancel the Bidding Process and/or amend and/or supplement the Bidding
 - b) Process or modify the dates or other terms and conditions relating thereto;
 - c) Consult with any Bidder in order to receive clarification or further information;
 - d) Retain any information and/or evidence submitted to Authority by, on behalf of, and/or in relation to any Bidder; and/or
 - e) Independently verify, disqualify, reject and/or accept any and all submissions or other
 - f) Information and/or evidence submitted by or on behalf of any Bidder.

- 33.3 No assignment, sale, transfer, conveyance of the Project shall be permitted except as otherwise expressly permitted by Authority. Any breach of this condition shall lead to rejection of the Bid and/or termination of the Agreement.
- 33.4 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 Tender Document, which includes the Forms, and on a similar issue some additional conditions are mentioned under another clause of any other part of the Tender 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.
- 33.5 It shall be deemed that by submitting the Bid, the Bidder agrees and releases Authority, 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 Authority, its employees, agents, consultants and advisers.

FORM – A (FINANCIAL BID)

(To be submitted through ddtenders. No hard copies to be submitted. Along with this a presentation indicating the Business Plan shall also be uploaded on the website)

To

Dy. Secretary (Civil Aviation),

Department of Civil Aviation, Daman and Diu (DCADD),

Secretariat, Fort area,

Moti Daman – 396220.

Dear Sir,

The number of Flying Hours in each sector and the corresponding tariff that Authority shall have to pay in accordance with the terms and condition of the AOA is as follows.

In response to the tender document, I hereby quote the total subsidy of Rs._____ INR per month as desired from the government for running the sectors as mentioned in the tender and minimum of 200 flying hours.

Yours faithfully,

Signature_____

Full Name_____Designation_____

Name of the Firm_____Address_____

Note:

1. All the prices quoted above must be inclusive of all taxes and duties.
2. No escalation would be allowed due to changes in taxes and duties, during the bid validity period.
3. No conditions should be attached to the price proposal
4. 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.
5. Price bid validity should be for at least 180 days.
6. The Escalation is Fuel Price above 10% shall not be considered for subsidy. Any escalation above 10% in the Fuel prices shall be payable by the Operator.

Signature

Full Name : _____ Designation: _____

Date : _____ Place: _____

Yours sincerely,

Authorized Signatory

Date : _____ Place: _____

FORM –B

TENTATIVE SCHEDULE OF FLIGHTS

Sector No	Sector for ONSHORE	Frequency of Flight	Days in the week when flight is scheduled	Departure time from both destination
1	Daman - Diu			
	Diu - Daman			
2	Diu – Surat			
	Surat – Diu			
3	Daman – Ahmedabad			
	Ahmedabad - Daman			

The Sectors mentioned above are the fixed sectors on which the Operator shall run the air transport facility. These sectors forms 70% of the expected sectors on the services are to be carried out. Apart from them, the Operator shall propose minimum 2 other sectors/routes, in the technical bid, on which the operator shall be running the air transport facility.

APPENDIX – I
Letter Comprising the Bid

dated:

To,

Dy. Secretary (Civil Aviation),
Department of Civil Aviation, Daman and Diu (DCADD),
Secretariat, Fort area,
Moti Daman – 396220

Sub: Providing Intra-U T Air Services and Inter-State Air connectivity with Gujarat “ONSHORE”.

Dear Sir,

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

- 1) I/We acknowledge that the Authority will be relying on the information provided in the Application and the documents accompanying such Application for qualification of the Applicants and award of the aforesaid project, and we certify that all information provided in the Application and in Annexes I to VIII is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Application are true copies of their respective originals.
- 2) This statement is made for the express purpose of qualifying and award as a Bidder for providing Intra-UT Air Services and Inter-State Air Connectivity with (Onshore).
- 3) I/ We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Qualification statement.
- 4) I/ We acknowledge the right of the Authority to reject our Application without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
- 5) I/ We certify that in the last three years, we/ any of the Consortium Members 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.
- 6) I/ We declare that:
 - a) I/ We have examined and have no reservations to the Tender Document, including any Addendum issued by the Authority.
 - b) I/ We do not have any conflict of interest in accordance with the Tender Document; and
 - c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in the Tender Document, in respect of any tender or 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; and

- d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 9 of the Tender Document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
- 7) I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Application that you may receive nor to invite the Applicants to Bid for the Project, without incurring any liability to the Applicants.
- 8) I/ We believe that we/ our Consortium/ proposed Consortium satisfy(ies) the Net Worth criteria and meet(s) all the requirements as specified in the Tender Document and are/ is qualified to submit the Bid and for award of Project.
- 9) I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium applying for pre-qualification.
- 10) I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium 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.
- 11) I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge- sheeted by any agency of the Government or convicted by a Court of Law.
- 12) I/ We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Consortium or against our/ their Associates or against our Dy. Secretary (CA) or any of our directors/ managers/ employees.
- 13) I/ We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Consortium or against our/ their Associates or against our Dy. Secretary (CA) 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 TENDER DOCUMENT; we shall intimate the Authority of the same immediately.
- 15) The Statement of Legal Capacity as per format provided at Appendix - VIII of the Tender Document, and duly signed, is enclosed. The power of attorney for signing of application and the power of attorney for Lead Member of consortium, as per format provided at Appendix VI and VII respectively of the TENDER DOCUMENT, are also enclosed.
- 16) In the event of my/ our being declared as the Selected Bidder, I/We agree to enter into a Air Operation Agreement 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, we shall have no claim, right or title arising out of any documents or information provided to us by Authority or in respect of any matter arising out of or concerning or relating to the Bidding Process including the award of Air Operation.
- 18) The subsidy have been quoted by me/us after taking into consideration all the terms and conditions stated in the TENDER DOCUMENT, Air Operation Agreement, our own estimates of costs and after a careful assessment of all the conditions that may affect the Bid.

- 19) I/We offer a Bid Security of Rs_____ (Rupees _____ only) to Authority in accordance with the Tender Document.
- 20) The Bid Security in the form of a Demand Draft is attached.
- 21) I/We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/We shall have any claim or right of whatsoever nature if the Project is not awarded to me/us or our Bid is not opened.
- 22) I/ We understand that the selected Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956, or shall incorporate itself as such prior to execution of the Air Operation Agreement.
- 23) We agree and undertake to be jointly and severally liable for all the obligations in accordance with the Air Operation Agreement.
- 24) I/We hereby irrevocably waive any right which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by Authority in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
- 25) I/We agree to keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the TENDER DOCUMENT.
- 26) I/We agree and undertake to abide by all the terms and conditions of the Tender Document.

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

Yours faithfully,

(Signature, name and designation of the Authorized Signatory)

Name and seal of the Applicant/ Lead Member

Date:

Place:

APPENDIX II

General Information about Bidders

1. (a) Name :
- (b) Country of incorporation :
- (c) Address of the corporate headquarters and its branch office(s), if any, in India:
- (d) Date of incorporation and/ or commencement of business:
2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project:
- 3) Details of individual(s) who will serve as the point of contact/ communication for the Authority:
 - a) Name :
 - b) Designation :
 - c) Company :
 - d) Address :
 - e) Telephone Number :
 - f) E-mail Address :
 - g) Fax Number :
- 4) Particulars of the Authorized Signatory of the Applicant:
 - a) Name :
 - b) Designation :
 - c) Address :
 - d) Phone Number :
 - e) Fax Number :
- 5) In case of a Consortium:
 - a) The information above (1-4) should be provided for all the Members of the Consortium
 - b) A copy of the Jt. Bidding Agreement, as envisaged in Clause 13.1(b) should be attached to the Application.
 - c) Information regarding the role of each Member should be provided as per table below:

Sr. No.	Name of Member	Role	Percentage of equity in the Consortium
1			
2			
3			

The role of each Member, as may be determined by the Applicant, should be indicated in accordance with instruction 4 at Annex-IV.

- d) The following information shall also be provided for each Member of the Consortium:

Name of Applicant/ member of Consortium

Sr. No.	Criteria	Yes	No
1	Has the Applicant/ constituent of the Consortium been barred by the Central/ State Government, or any entity controlled by it, from participating in any project		
2	If the answer to 1 is yes, does the bar subsist as on the date of Application		
3	Has the Applicant/ constituent of the Consortium paid liquidated damages of more than 5% (five percent of the contract value in a contract due to delay or has been penalized due to any other reason in relation to execution of a contract, in the last one year)		
4	Has the Applicant/ constituent of the Consortium not fully discharged its contractual responsibilities pertaining to aircraft availability and operation in a Govt. contract over the last one year? Please give details of the same.		

- 6) A statement by the Applicant and each of the Members of its Consortium (where applicable) or any of their Associates disclosing material non-performance or contractual non-compliance in past projects (over the last one year), contractual disputes and litigation/ arbitration in the recent past (over the last one year) is given below (Attach extra sheets, if necessary)

APPENDIX III

Technical Capacity of the Applicants @

Applicant Type # (1)	Member Code *	Project	Rs. in Crores	
	(2)	(3)	(4)	(5)
Single Entity Applicant				
Consortium Member 1				
Consortium Member 2				
Consortium Member 3				
Aggregate Experience				

@ 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 and ignore the rows titled Consortium Member. In case of a Consortium, the row titled Single entity Applicant may be ignored. In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Applicant with such Associate shall be provided.

* Member Code shall indicate NA for Not Applicable in case of a single entity Applicant. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member, OM means Other Member.

APPENDIX IV
Financial Capacity of the Applicant

(In Rs Crores)

Applicant Type \$ (1)	Member Code £ (2)	Net Cash Accruals					Net Worth # (8)
		(3)	(4)	(5)	(6)	(7)	
Single Entity Applicant							
Consortium Member 1							
Consortium Member 2							
Consortium Member 3							
TOTAL							

Name & address of Applicant's Bankers:

\$ An Applicant consisting of a single entity should fill in details as per the row titled Single entity Applicant and ignore the rows titled Consortium Members. In case of a Consortium, row titled Single entity Applicant may be ignored.

£ Member Code shall indicate NA for Not Applicable in case of a single entity Applicant. For other Members, the following abbreviations are suggested viz. LM Means Lead Members, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member; and OM means Other Member. In case the Eligible Project relates to an Associate of the Applicant or its Member, write "Associate" along with Member Code.

The Applicant should provide details of its own Financial Capability or of an Associate.

Instructions:

- 1) The Applicant/ its constituent Consortium Members shall attach copies of the balance sheets, financial statements and Annual Reports for 5 (five) years preceding the Application Due Date. The financial statements shall:
 - (a) Reflect the financial situation of the Applicant or Consortium Members and its/ their Associates where the Applicant is relying on its Associate's financials;
 - (b) Be audited by a statutory auditor;
 - (c) Be complete, including all notes to the financial statements; and
 - (d) Correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
- 2) Net Cash Accruals shall mean Profit after Tax + Depreciation
- 3) Net Worth shall mean (Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off + reserves not available for distribution to equity shareholders).

- 4) Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on.
- 5) In the case of a Consortium, a copy of the Jt. Bidding Agreement shall be submitted in accordance with Clause 13.1(b) of the Tender document.
- 6) The applicant shall also provide the name and address of the Bankers to the Applicant.
- 7) The Applicant shall provide an Auditor's Certificate specifying the net worth of the Applicant and also specifying the methodology adopted for calculating such net worth in accordance with Clause 11.2 (1) of the Tender document.

APPENDIX V
Joint Bidding Agreement

(To be executed on Stamp Paper of appropriate value)

THIS JOINT BIDDING AGREEMENT is entered into on this the day of 20..... AMONGST

1. {..... Limited, a company incorporated under the Companies Act, 1956} and having its registered office at (hereinafter referred to as the “First Part” which expression shall, unless repugnant to the context include its successors and permitted assigns).

AND

2. {..... Limited, a company incorporated under the Companies Act, 1956} and having its registered office at (hereinafter referred to as the “Second Part” which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

3. {..... Limited, a company incorporated under the Companies Act, 1956 and having its registered office at (hereinafter referred to as the “Third Part” which expression shall, unless repugnant to the context include its successors and permitted assigns)}

The above mentioned parties of the FIRST, SECOND and THIRD PART are collectively referred to as the “Parties” and each is individually referred to as a “Party”

WHEREAS

- (A) Department of Civil Aviation, Daman and Diu (DCADD) hereinafter referred to as the “Authority” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited applications (the Applications”) by its TENDER DOCUMENT No. Dated (The “TENDER DOCUMENT”) for Providing Air Services to various destinations located in and outside DAMAN & DIU.
- (B) The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the Tender Document and other bid documents in respect of the Project, and
- (C) It is a necessary condition under the Tender Document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Application.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

In this Agreement, the capitalized terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the TENDER DOCUMENT.

2. Consortium

2.1 The Parties do hereby irrevocably constitute a consortium (the “Consortium”) for the purposes of jointly participating in the Bidding Process for the Project.

2.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates

3 Covenants

The Parties hereby undertake that in the event the Consortium is declared the selected Bidder and awarded the Project, it shall incorporate a special purpose vehicle (the “SPV”) under the Indian Companies Act 1956 for entering into a Concession Agreement with the Authority and for performing all its obligations as the Concessionaire in terms of the Concession Agreement for the Project.

4. Role of the Parties

The Parties hereby undertake to perform the roles and responsibilities as described below: (a) Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding.

Process and until the Commencement Date under the Concession Agreement when all the obligations of the SPV shall become effective;

(b) Party of the Second Part shall be {the Technical Member of the Consortium}

(c) Party of the Third Part shall be the other Member of the Consortium}

5. Joint and Several Liability

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the TENDER DOCUMENT and the Concession Agreement, till such time as the Project Completion is achieved under and in accordance with the Concession Agreement.

6. Shareholding in the SPV

6.1 The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows:

First Party :

Second Party :

{Third Party}

6.2 The Parties undertake that a minimum of 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV shall, at all times till the second anniversary of the date of commercial operation of the Project, be held by the Parties for the Project in terms of the TENDER DOCUMENT.

- 6.3 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the Concession Agreement.

7. Representation of the Parties

Each Party represents to the other Parties as of the date of this Agreement that:

- (a) Such Party is duly organized, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- (b) The execution, delivery and performance by such Party of this Agreement has been authorized by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:
 - (i) Require any consent or approval not already obtained;
 - (ii) Violate any Applicable Law presently in effect and having applicability to it;
 - (iii) Violate the memorandum and articles of association, by-laws or other applicable organizational documents thereof;
 - (iv) Violate any clearance, permit, concession, grant, license or other Governmental authorization, approval, judgment, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
 - (v) Create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- (c) This Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) There is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.

8. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the Completion of the Project is achieved under and in accordance with the Concession Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium is either not pre-qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Applicant is not pre-qualified or upon return of the Bid Security by the Authority to the Bidder, as the case may be.

9. Miscellaneous

9.1 This Joint Bidding Agreement shall be governed by laws of India.

9.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Authority.

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

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of
LEAD MEMBER by:

SECOND PART

(Signature)
(Name)
(Designation)
(Address)

(Signature)
(Name)
(Designation)
(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of
THIRD PART

(Signature)
(Name)
(Designation)
(Address)

Notes:

1. The mode of the execution of the Joint Bidding Agreement 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.
2. Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member.
3. For a Joint Bidding Agreement executed and issued overseas, the document shall be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.

APPENDIX VI

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 authorize Mr/ Ms (name), son/daughter/wife of and presently residing at, who is presently employed with us/ the Lead Member of our Consortium and holding the position of, as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our application for qualification and submission of our bid for Providing Air Services to various Destinations located in and outside DAMAN&DIU, 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.

(Notarized)

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 legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Applicants from countries that have signed the Hague Legislation Convention 1961 are not required to be legalized by the Indian Embassy if it carries a conforming Appostille certificate.

APPENDIX – VII

Power of Attorney for Lead Member of Consortium

Whereas the Department of Civil Aviation, Daman and Diu (DCADD) has invited applications from interested parties for Providing Air Services to various Destinations located in DAMAN&DIU.

Whereas,,,and (collectively the “Consortium”) being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal (TENDER DOCUMENT) and other connected documents in respect of the Project, and

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’s bid for the Project and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We,.....having our registered office at, and M/s. having our registered office at, (hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorise M/s having its registered office at, being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the “Attorney”). We hereby irrevocably authorise the Attorney (with power to sub- delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the concession/contract, during the execution of the Project and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the pre- qualification of the Consortium and submission of its bid for the Project, including but not limited to signing and submission of all applications, bids and other documents and writings, participate in bidders and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with the Authority, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium’s bid for the Project and/ or upon award thereof till the Concession Agreement is entered into with the Authority.

AND 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/ Consortium.

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

For
(Signature)

.....
(Name & Title)

For
(Signature)
.....
(Name & Title)

Witnesses:

1.

2.

.....
(Executants)
(To be executed by all the Members of the Consortium)

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.

Also, 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 – VIII

Statement of Legal Capacity

(To be forwarded on the letterhead of the Applicant/ Lead Member of Consortium)

Ref. Date:

To,

The Secretary (Civil Aviation)
Secretariat, Fort Area,
Moti Daman, Daman.

Dear Sir,

We hereby confirm that we/ our members in the Consortium (constitution of which has been described in the application) satisfy the terms and conditions laid out in the Tender Document.

We have agreed that (insert member's name) will act as the Lead Member of our consortium.*

We have agreed that (Insert individual's name) will act as our representative/ will act as the representative of the consortium on its behalf* and has been duly authorized to submit the TENDER DOCUMENT. Further, the authorized signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorized signatory)

For and on behalf of.....

*Please strike out whichever is not applicable.

AIR SERVICE OPERATION AGREEMENT

This Agreement is entered into on this the _____ day of _____, 2019

Between

The Department of Civil Aviation, Daman and Diu represented by its Secretary (Civil Aviation) and having its principal office at (hereinafter referred to as “DCADD” which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns) of One Part,

AND

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

WHEREAS

The DEPARTMENT OF CIVIL AVIATION, DAMAN&DIU (hereinafter referred to as “ DCADD” is interested in PROVIDING intra-state Air connectivity within Daman & Diu (Onshore) referred to as the “air service operations (AO)” through a private operator.

DEPARTMENT OF CIVIL AVIATION, DAMAN & DIU has authorized DCADD vide notification no. [__] dated [__] to undertake the selection of an operator for such air service operations on the terms and conditions contained in the Tender document and addendums and clarifications thereto and this Agreement including the Schedules and Annexure hereof.

DCADD 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 Tender Document.

After evaluation of the Bids so received, DCADD had accepted the Bid of M/s/the Consortium comprising of M/s. (Lead member), M/s.(Member), and M/s.(Member), and issued its Letter of Acceptance No..... dated (“LOA”) to the bidder/Consortium requiring, inter alia, the execution of this Development Agreement.

The Consortium/bidder has since promoted and incorporated the operator, and has requested DCADD to accept the operator as the entity which shall undertake and perform the obligations and exercise the rights of the Consortium/bidder under the LOA, for starting the AO. (Applicable in case of Consortium & in case bidder has promoted an operator.)

Authority in accordance with the provisions of TENDER DOCUMENT has agreed accordingly to enter into this Air service operation Agreement (AOA) with the operator for starting AO subject to and on the terms and conditions set forth hereinafter.

The Operator has duly provided the Commitment Security/Performance Security of Rs 2 Crore to the Authority in terms hereto.

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

PRELIMINARY

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions:

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

- i. **"Accounting Year"** means the financial year commencing from 1st April of any calendar year and ending on 31st March of the next calendar year.
- ii. **"Agreement"** or the **"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.
- iii. **"Applicable Laws"** means all laws, promulgated or brought into force and effect by the State Government and/or the Government of India including rules, regulations and notifications made there-under, and judgments, decrees, injunctions, writs and orders of any court or record, applicable to this Agreement and the exercise of performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this agreement.
- iv. **"Applicable Permits"** means all clearances, permits, authorizations, consents and approvals required to be obtained or maintained under Applicable Laws in connection with the air service operations during the subsistence of this Agreement.
- v. **"Agreement Period (AP)"** means the period beginning from the signing date of the agreement and ending on completion of 3 years of such date.
- vi. **"Air service Operations (AO)"** means deployment of the requisite aircrafts by the operator for operating the flights in sectors described in schedule A (as amended from time to time) maintaining such aircrafts so that the declared schedule of flying commitments are met while complying with all applicable laws, permits and good industry practice.
- vii. **"Bid"** means the documents in their entirety comprised in the bid submitted by the Bidder in response to the Tender Notice in accordance with the provisions thereof.
- viii. **"Commencement Date"** means the date on which the first flight for carrying the passengers shall start in accordance with the provisions contained in this Agreement.
- ix. **"Consortium Member"** and **"Lead Member"** means the members and lead member of the Consortium referred to in recital D.

- x. **“Commitment Security”** shall have the meaning as described in Clause 4.
- xi. **“Dispute”** shall have the meaning set forth in Clause 19.
- xii. **“Dispute Resolution”** means the procedure for Dispute resolution set forth in Clause 19.
- xiii. **“DCA”** means the Department of Civil Aviation, U. T. ADMINISTRATION OF DAMAN & DIU.
- xiv. **“Effective date”** means the date on which this agreement is signed.
- xv. **“Event of Default”** shall have the meaning set forth in Clause 16 &17.
- xvi. **“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.
- xvii. **“DCADD”** means the Department of Civil Aviation of Daman and Diu.
- xviii. **“GOI”** means the Government of India.
- xix. **“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 and which would be expected to result in the performance of its obligations by the operator and in the operation and maintenance of the AO in accordance with this Agreement, Applicable Laws, Applicable Permits, reliability, safety, environment protection, economy and efficiency.
- xx. **“Government Agency”** means GOI, GOG or any Ministry, Department, Commission, Board, Authority, instrumentality or agency, under the control of GOI or GOG having jurisdiction over or the performance of all or any of the services or obligations of the Authority and the operator under or pursuant to this.
- xxi. **“Indemnifying Party”** means the Party obligated to indemnify the other Party pursuant to clause 13.
- xxii. **“LOA”** or **“Letter of Acceptance”** means the letter of acceptance referred to in the Recital (D).
- xxiii. **“DCADD Representative”** means such person or persons as may be authorised in writing by Managing Director, DCADD to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfill any obligations of DCADD under this Agreement.

- xxiv. **“New sector”** means a sector other than 6 sectors define in RFP.
- xxv. **“Operator”** means the limited liability company incorporated under the companies Act (which may have been promoted by the bidder/members of the consortium to exercise the rights of the Consortium/bidder) which shall undertake and perform the obligations under the LOA and the AOA for starting AO.
- xxvi. **“Parties”** means the parties to this Agreement collectively and “Party” shall mean any of the Parties to this Agreement individually.
- xxvii. **“Preparatory Period”** means the period beginning with signing of the agreement and ending on the commencement date.
- xxviii. **“UT Administration”** means the Government of Daman and Diu.
- xxix. **“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.
- xxx. **“Termination Notice”** means the communication issued in accordance with this Agreement by any one Party to the other Party terminating this Agreement.

1.2 In this Agreement, unless the context otherwise requires

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

- h) Any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- i) Any reference to day shall mean a reference to a calendar day;
- j) Any reference to month shall mean a reference to a calendar month;
- k) Any reference to year unless the context otherwise requires shall mean the calendar year.
- l) The Schedules to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- m) Any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference provided that this clause shall not operate so as to increase liabilities or obligations of Authority hereunder or pursuant hereto in any manner whatsoever except as expressly provided in this agreement.
- n) References to Recitals, Articles, Clauses, Sub-clauses, Paragraphs, or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to Recitals, Articles, Clauses, Sub-clauses, paragraphs, and Schedules of or to this Agreement;
- o) Any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effectual only if it is in writing under the hands of duly authorized representative of such Party, as the case may be, in this behalf and not otherwise;
- p) Any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates;
- q) Unless otherwise expressly provided in this Agreement any Documentation required to be provided or furnished by the operator to Authority shall be provided free of cost and in three copies and on a computer CD or such media as is required for a Soft Copy storage and if Authority is required to return any such Documentation with their comments and/ or approval, they shall be entitled to retain two copies thereof;
- r) In the event of any dispute in respect of interpretation of any clause of the agreement, the decision of Authority shall be final and binding subject to the parties to this agreement taking recourse to legal action under any other law for the time being in force in the State of DAMAN & DIU in terms of the agreement.

1.3 Measurements and Arithmetic Conventions

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

1.4 Priority of contract documents and errors/ discrepancies

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

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

2. SCOPE OF PROJECT

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

- a) Managing the air service operations using aircrafts which can carry passengers in sectors described in schedule A
- b) Ensuring safety and security of the passengers using the air service operations.
- c) Performance and fulfillment of all obligations of the operator in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the operator under this Agreement.

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 Deputy Secretary (Civil Aviation) DCADD and executed by the person expressly authorized by a resolution of the operator in this behalf.

4. COMMITMENT SECURITY/ PERFORMANCE SECURITY

4.1 The operator has agreed to for the due and faithful performance of its obligations under the Agreement, provide to the Authority a commitment security for a sum of 2 Crore for both Aircraft 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 Authority valid for at least three years and six months from the effective date.

4.2 The commitment Security shall be released by the Authority 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 Authority 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/Performance Security as Damages for such operator Default. Upon such encashment and appropriation from the Commitment Security/Performance Security, the operator shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the commitment Security/Performance Security, and in case of appropriation of the entire commitment Security/Performance Security provide a fresh Commitment Security/Performance Security, as the case may be, failing which Authority shall be entitled to terminate this Agreement in accordance with Clause 18 and appropriate entire commitment Security/Performance Security as Damages. Provided that the operator shall be given an adequate opportunity of hearing before any amount is appropriated from the Commitment Security/Performance Security.

- 4.3 The Commitment Security/Performance Security shall remain in force for entire agreement period and will be released on the expiry of its successful completion.

5. EQUITYLOCKIN

The Parties agree as follows:

In case the Selected Bidder is a Consortium, each Member of Consortium whose technical experience has been considered to fulfill the Technical Eligibility, should hold minimum 26% (twenty six percent) equity in the SPV and whose Net Worth has been considered to fulfill the Financial Capability, should also hold minimum 26% operator up to a minimum period of 18 months from the commencement date. In case the bidder not being a consortium incorporates a SPV for undertaking the performance of the obligations under the agreement its share in the SPV shall not be less than 50% for a minimum period of 18 months from the commencement date.

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 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) Comply with all the Applicable Permits and Laws as prescribed by DGCA.
 - e) Be responsible for safety, security, soundness of the flights in the AO.
 - f) Indemnify Authority 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;
 - g) The Operator shall prepare a web based Booking Portal for providing online booking services for private persons and Govt. officials authorized by the Directorate of Civil Aviation Department. All the bookings shall be done through a secure payment gateway

- permitting the use of credit/debit cards.
- h) The Operator shall deploy and maintain requisite aircrafts for operating such flights and strictly observe the declared flying schedule;
 - i) Be solely responsible for complying with all applicable laws, permits and good industry practice as prescribed by DGCA, be liable to pay all tax, levies etc. as may be levied by any Government agency.
 - j) Not hold Authority liable in any manner what so ever for the non-receipt of any clearance/permission from any government agency.
 - k) Take all necessary steps during the Preparatory Period so that the air service operations can start unencumbered from the commencement date.
 - l) For each landing on an air strip owned and maintained by the UT Administration, be liable to pay Rs.750/- for an ambulance and Rs. 2000/- for fire brigade to the authority.
 - m) Responsible for providing these facilities in a manner prescribed by Authority. Start air service operations from the commencement date which is conveyed by the Administration
 - n) Submit Invoices with Authority at the end of the month.
- 6.2 The operator shall start Air Service Operations **as offered in his Bid** and shall compulsorily operate on the sectors defined in Schedule A and shall be free to choose other 2 sectors which will provide connectivity between any two cities. In case commercial considerations so require, Operator shall be permitted to make changes in the sectors with a prior permission and approval from the Authority.
- 6.2.1 Stop Air Service Operations from any of the cities offered in his bid, if the sector becomes unviable due to unavailability of traffic or any technical reasons beyond the control of the operator with the permission and approval of Authority. **If the Air Service Operations are stopped from more than 30% of the sectors, in such a case the Bank Guarantee of the Operator shall be forfeited.**
- 6.2.2 To start air service operations in any New Sector with the permission and approval of Authority.
- 6.3 All sectors in which the air service operations have to be maintained shall be mentioned in Schedule A annexed to this agreement. The schedule shall be modified from time to time in accordance with the changes in the sector. Any change shall take effect from the date the schedule is amended. All the changes to be made in the schedule shall be made in consultation with the Authority and with their due permission.
- 6.4 In the event that a flight is diverted due to technical reasons or adverse weather, the operator shall make such alternate ground and transport arrangement 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.
- 6.5. Any additional seat demanded by Government official will be sold at open market price only. The seats shall be sold on first come first basis.
- 6.6 Replenish and keep commitment security as prescribed in clause 4.

- 6.7 The Operator shall abide by all the rules as specified in the Aircraft Rules, 1937.
- 6.8 The Operator shall be responsible to provide the transport facility, security, water supply and other basic facilities to the users within the premise at UT Administration owned Airstrips.
- 6.9 The Operator shall be responsible to take the booking counters and waiting areas on lease at the Airports other than the airstrips owned by UT Administration.
- 6.10 The operator shall be responsible for paying all charges (e.g. landing cost, etc.) levied by Government agencies at all the Airstrip, except the ones owned by UT Administration. In case the Operator decides to start operations on air service strips owned by the UT Administration, the security shall be provide free of cost by the local district administration.
- 6.11 The operator shall operate for a minimum of 200 flying hours in a month to avail the quoted subsidy by the bidder.
- 6.12 The Bidder shall be able to deploy a third aircraft within 72 hours, in case the previously deployed aircrafts are grounded due to unforeseen reasons.

7 OPERATIONAL EFFICIENCY

- 7.1 Authority shall not take any action against the operator without giving it an adequate opportunity of being heard.
- 7.2 The operator shall provide information about departure times of its flights on a daily basis to Authority in a prescribed format given by the Authority. Authority shall review the delays and cancellations of flights on a weekly basis with an authorized representative of the operator. It shall inquire into all the relevant factors which caused the delays in or cancellations of the flights to ascertain the extent to which the operator is responsible for the default.

8. OBLIGATIONS OF DCADD

DCADD 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) Subsidize sector in each identified sector located within the State and described in schedule A as amended from time to time. Subsidy as quoted in tender would be awarded every month.
- b) Refund the VAT charged on the ATF (Aviation Turbine Fuel) taken from a station within the state and used by him in operating the flights mentioned in the schedule A on quarterly basis for a period of at least three years from the commencement date. However in the event of the agreement being terminated due to the operators default the operator shall not be entitled to claim the refund of VAT from the termination date under this agreement.
- c) Assist the operator in bookings and business promotion on best effort basis.

- d) Make security arrangements free of cost at the airstrips owned or controlled by the UT Administration in case air service operations are started from such airstrips.
- e) Observe and comply with its obligations set forth in this Agreement.
- f) Release all the payments of the bidder within 15 days of receipt of invoice.
- g) The Government will provide hangar facility and office at main base eg. Daman.

9. REPRESENTATIONS AND WARRANTIES

9.1 Representations and Warranties of the Operator

The operator represents and warrants to Authority that:

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

- k) It shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.
- l) The selected bidder/ Consortium Members 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/ each Consortium Member is duly organized and validly existing under the laws of the jurisdiction of its incorporation, and has requested Authority to enter into this Agreement with the operator pursuant to the Letter of Acceptance, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- n) No representation or warranty by it contained herein or in any other document furnished by it to Authority 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 DCADD in connection therewith; and
- p) All information provided by the selected bidder/ Consortium Members 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 DCADD

DCADD 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 authorize the execution, delivery and performance of this Agreement;
- c) The financial standing and capacity to perform its obligations under this Agreement;
- d) Agreed that this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- 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 Authority '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 Authority and has determined to its satisfaction the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by the 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 Authority shall not be liable for the same in any manner whatsoever to the operator, the Consortium Members/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. Keep the aircraft and crew in a state of readiness to ensure that the declared flying schedule is strictly adhered to
 - c. Maintain a public relations unit to interface with and attend to suggestions from anyone users of the service operations
 - d. Adhere to the safety standards as per the DGCA regulations and other best industry practice
- 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 Authority 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 Authority harmless against all cost, damages, liabilities, expenses arising out of any third party claims relating to torts or contracts relating to the operation and maintenance of the AO.

14. INSURANCE

- 14.1 The operator shall effect and maintain, or cause to be affected and maintained, at no cost to Authority during the AO such insurance as is commensurate with prevailing applicable laws and good industry practice.
- 14.2 The operator shall be liable to insure all assets and take necessary insurance for loss of life due to any unforeseen incidence or occurrence during operations; the same shall remain in existence through the concession period. The operator shall also be liable to take third party insurance. No claims, whatsoever, shall be liable to be borne by Authority and/or any other Govt. bodies.

15. FORCEMAJEURE

- 15.1 The operator or Authority, 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 Authority, 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:
- a. War (whether declared or undeclared), invasion, armed conflict or act of foreign enemy in each case involving or directly affecting the AO;
 - b. Revolution, riot, insurrection or other civil commotion, act of terrorism or sabotage affecting the AO;
 - c. 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;
 - d. Strikes, working to rule, go-slows and/or lockouts which are in each case widespread, nationwide or political and affects the AO;
 - e. Any effect of the natural elements, including epidemic or plague, lightning, fire, earthquake, unprecedented rains, tidal wave, flood, storm, cyclone, typhoon or tornado, affecting the AO;
 - f. Explosion (other than a nuclear explosion or an explosion resulting from an act of war) affecting the AO;
 - g. 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 ForceMajeure

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:

- a. That the Force Majeure Event(s) that has occurred; 3
- b. The obligation(s) affected
- c. The dates of commencement and estimated cessation of such event of Force Majeure; and
- d. The manner in which the Force Majeure event(s) affect the Party's ability to perform its obligation(s) under this Agreement.
- e. 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. DEFAULTANDTERMINATION

16.1 OPERATOR- EventofDefault

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

- i. Any breach, including but not limited to the events specified hereunder by the operator of its obligations under this Agreement, and such breach if capable of being remedied, is not remedied within a period mentioned in the written notice issued by Authority specifying such breach and requiring the operator to remedy the same;
- ii. 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;
- iii. Suspension by the operator of the performance of the obligations under this Development Agreement for a period exceeding 7 consecutive days (except during the subsistence of a Force Majeure Event);
- iv. 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;
- v. Failure of the operator to comply with the conditions of operational efficiencies mentioned in clause7.
- vi. Failure of the operator to maintain insurance(s) as required in terms of Clause 14.
- vii. 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;
- viii. 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;
- ix. The operator has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority , a Material Adverse Effect;
- x. The operator doing or permitting to do any act, matter, deed or thing in violation of Applicable Law and/or Applicable Permits
- xi. Non-compliance of Equity lock-in provisions set forth in the bid document
- xii. Failure to start operations from the commencement date
- xiii. Commits a breach of its any obligations as contained in this agreement.

17. **DCADD Event of Default**

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

- a) Failure to pay tariff subsidy or the refund the VAT.
- b) Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the performance of the Obligations of the Operator.
- c) Fails to fulfill 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 Authority Event of Default, the defaulting Party shall be liable for the breach caused and consequences thereof and the non-defaulting Party shall have the right to issue a notice expressing its intention to terminate this Agreement to the other Party (the "Notice of Intention to Terminate"). Upon the issuance of a Notice of Intention to Terminate, the defaulting Party shall have the right to represent against such notice to the non-defaulting Party who will consider the representation and assess if the default can be and or should be permitted to be cured. If not satisfied it may terminate this Agreement by issuance of a termination notice (the "Termination Notice"). In case the breach or the default can be cured and the non-defaulting party considers it appropriate to allow curing of the default it will give such period as it may consider appropriate to cure, failing which the non-defaulting party may terminate the agreement by issuing a termination notice (the "Termination Notice"). On the event of failure on the part of defaulting party to cure the breach or default in specified time limit the contract agreement tensed to be terminated forthwith.

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

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 **AmicableResolution**

In the event of any Dispute between the Parties, either Party may call upon Dy. Secretary (Civil Aviation), Authority 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 Daman and High Court in the state of Maharashtra.

19.3 **Arbitration Awardstobebinding**

- a) The operator and Authority undertake to carry out any decision or award of the arbitrators (the "Award") without delay. Awards relating to any Dispute shall be final and binding on the Parties as from the date they are made
- b) The operator and Authority agree that an Award may be enforced against the operator and the Authority as the case may be and their respective assets wherever situated.
- c) This Agreement and rights and obligations of the Parties shall remain in full force and effect pending the Award in any arbitration proceeding hereunder

20. **DISCLOSURE**

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

21. **GOVERNING LAW AND JURISDICTION**

This Agreement shall be construed and interpreted in accordance with the Applicable Laws and the Courts in DAMAN 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 authorized representative of the Party; and
- c) Shall not affect the validity or enforceability of this Agreement in any manner.

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

22.3 In case, it is found after the execution of this agreement and during the period of subsistence thereof, that one or more of the eligibility conditions have not been met by the Bidder, or the Bidder has made material misrepresentation, or has given any materially incorrect or false

information, this agreement shall, notwithstanding anything to the contrary contained therein or in this TENDER DOCUMENT, be liable to be terminated, by a communication in writing by Authority to the Bidder or Operator, as the case may be, without Authority liable in any manner whatsoever to the Bidder or Operator, as the case may be. In such an event, Authority shall forfeit and appropriate the Bid Security or the COMMITMENT security, as the case may be, without prejudice to any other right or remedy that may be available to Authority.

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

23 **SURVIVAL**

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

II. All obligations surviving the cancellation, expiration or Termination of this Agreement shall only survive for a period of 5 (five) years following the date of such Termination or expiry of this Agreement.

III In the event that the agreement terminates on completion of agreement period, Authority shall be liable to refund of VAT paid by the operator on the ATF as provided in this agreement for a period of 5 years beginning with commencement date.

24. **NOTICES**

- 24.1 Any notice or other communication to be given by a Party to the other Party under, or in connection with the matters contemplated by this Agreement shall be in writing and shall in the case of the operator, be marked for the attention of the person set out opposite the corresponding signature below or to such other address marked for such other attention as the operator may from time to time designate by notice to the Authority, provided that notices or other communications be confirmed by sending a copy thereof by first class registered mail or by courier and/or also be sent by facsimile to the number as the operator may from time to time designate by notice to Authority; and In the case of Authority, be given by letter and be addressed to the Dy. Secretary (Civil Aviation), of the Authority

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

25. **SEVERABILITY**

If for any reason 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. **NOPARTNERSHIP**

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.

30. **CONDITION PRECEDENCE**

- i. The Aircraft deployment by the Operator shall not be more than 8 years old at the time of commencement of services.
- ii. The Operator shall initiate the web based Booking Portal for providing online booking services before the Commercial Operations Date.
- iii. The Operator shall comply to all the commitments mentioned as part of the Presentation, which includes Business Plan and Operations Plan, showcased to the members of the Technical Committee.

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
DEPARTMENT OF CIVIL AVIATION DAMAN AND DIU.**

By

_____(Signature)

DEPARTMENT OF CIVIL AVIATION DAMAN AND DIU.

Providing Intra-UT air services & inter-State Air Connectivity with Gujarat (On- Shore)

(The U. T. Administration of Daman & Diu)

DCADD, Secretariat, Fort Area,

Moti Daman, Daman. Phone: 0260-----

Fax: _____(Name)

_____(Designation)

SIGNED, SEALED AND DELIVERED

**For and on behalf of
OPERATOR by:**

_____(Signature)

_____(Name)

_____(Designation)

In the presence of:

Schedule- 'A'

Route 1: Daman-Diu-Daman

Route 2: Daman-Ahmedabad-Daman

Route 3: Diu-Surat-Diu

The above mentioned Routes are the fixed Routes that the operator shall operate on. Apart from these routes, the Operator shall propose 2 other routes to run the regional air connectivity operations.

Appendix IX

Sr. No.	Sector	Total Nautical Miles	Approximate Flying Hours for Twin Engine Turbo prop
1.	Surat – Diu (VASU-VADI) –ICAO CODE	50	1:00
2.	Diu – Surat (VADI-VASU)	50	1:00
3.	Ahmedabad - Daman (VAAH-VADA)	170	01:20
4.	Daman - Ahmedabad (VADA-VAAH)	170	01:20
5.	Diu - Daman (VADI-VADA)	190.5	01:00
6.	Daman - Diu (VADA-VADI)	190.5	01:00
<u>TOTAL</u>		1208	09:01