GOVERNMENT OF HIMACHAL PRADESH

GENERAL ADMINISTRATION DEPARTMENT

TENDER DOCUMENT

FOR

HIRING OF HELICOPTER

ON WET LEASE BASIS BY THE

GOVERNMENT OF HIMACHAL PRADESH

TENDER NO. GAD-A(E)3-1/2018

DATED _____ , 2018

THIS TENDER DOCUMENT CONTAINS THE FOLLOWING :

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SECTION B: **GENERAL TERMS & CONDITIONS**

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GOVERNMENT OF HIMACHAL PRADESH
GENERAL ADMINISTRATION DEPARTMENT

No. GAD-A(E)3-1/2018 DATED SHIMLA-2 ____ _____, 2018.

NOTICE INVITING TENDER

For Hiring of Helicopter on Wet Lease Basis by the Government of Himachal Pradesh

1. The Department of General Administration, Government of Himachal Pradesh invites Tenders/ Bids from reputed and registered Aviation Companies having Non Scheduled Operators Permit from DGCA, Government of India for leasing of Helicopters on wet lease basis for a term of 5 years for multipurpose use of the State Government of Himachal Pradesh including VIP duty, emergency evacuations/ relief operations etc.

2. The State Government intends to hire transport Helicopter(s) having following specifications:
   (a) One twin engine helicopter having capacity to carry about 15 passengers plus baggage/ equipment.
   (b) One twin engine helicopter having capacity to carry about 5-6 passengers plus baggage/ equipment.
   (c) One single engine helicopter having capacity to carry about 4-5 passengers plus baggage/ equipment.

   The transport helicopter(s) offered should be capable to carry passengers to different places across the State of Himachal Pradesh upto an altitude of 12000 ft. having capacity of crossing passes, peaks upto the height of 15000 ft. and narrow valleys. The detailed terms & conditions and technical parameters required for the Helicopter(s) to be hired on wet lease basis are specified in the Tender Document. Interested Bidders may apply on prescribed format to the Secretary (General Administration Department) to the Government of Himachal Pradesh on or before due date.

3. The manufacturing Date of offered helicopter(s) preferably should not be more than 1 year.

4. The helicopter(s) must be positioned at Shimla **within 6 months from the date of issue of Letter of Intent (LOI)** failing which the earnest money and security taken as Bank Guarantee for this commitment shall be forfeited.

5. Sealed Tenders/ Bids are invited in Two Bid Formats i.e one for Technical bid and another for Financial bid – each bid should be filled separately and properly sealed for each requirement of helicopter(s) mentioned in column No.2. Both the Bids for each requirement of helicopter(s) should be placed in a single third cover, in the manner as specified in the Tender Document. The aforesaid Bids must reach in General Administration Department, Section-A, Room No. 34-G, Ellerslie Building, Himachal Pradesh Secretariat, Shimla-2 on or before _____ upto 2.00 P.M. The Sealed Bids shall be opened by the Committee in the office chamber of the Additional Secretary(General Administration Department) to the Government of Himachal Pradesh, Room No. 229, Armsdale Building, Himachal Pradesh Secretariat, Shimla-2 at 3.00 PM on _____. The Technical Bids shall be opened first for scrutiny of the Bid Documents and Technical Data as per the requirement of the Tender Document. Thereafter, the Financial Bids of only technically qualified Bidders shall be opened. However, if the Technical Bid(s) of any Bidder(s) is/are found incomplete or not supported by earnest money/ required documents or deficient viz. any technical parameters as specified in the Tender Document, the Financial Bid of such Bidder(s) shall not be opened.

6. A copy of the Tender Document can be obtained during working hours from the office of the General Administration Department, Section-A, Room No. 34G, Ellerslie Building, H.P. Secretariat, Shimla-2 from _____ onwards against the payment of non-refundable/ non-transferable Tender fee of A 500/- or can be downloaded from the official website i.e. www.himachal.nic.in/gad/. The downloaded tender form must be accompanied by a Demand Draft of A 500/- as Tender fee in favour of the Secretary (General Administration Department) to the

Government of Himachal Pradesh payable at Shimla in addition to earnest money to be deposited with application fee. It is advisable that the interested Bidders should browse the aforesaid official website for information regarding any changes, amendments and updates in the Tender Document or any terms & conditions thereof, if any, before submission of bids.

7. The Technical Bid(s) submitted by eligible Bidders shall be accompanied with Earnest Money Deposit of A 20.00 Lakh (in case of requirement at column 2(a)) and A 10.00 Lakh (in case of requirements at column 2(b) & 2(c)) in the form of a CDR/FDR in favour of the Secretary (General Administration Department) to the Government of Himachal Pradesh payable at Shimla.

8. Any conditional Bid/ Tender or Tenders which are not appropriately sealed or received after the specified date and time shall not be entertained. The scope of the helicopter services, activities and other terms and conditions, are detailed in the Tender Document.

9. The Government reserves the right to accept or reject any Bids or Tenders submitted by the Bidder(s) or to cancel the entire process and reject all bids submitted, at any time without assigning any reason and without incurring any liability to the affected Bidder(s). In that case the earnest money submitted by the bidders will be returned back to the concerned bidders/firms.

Additional Secretary (GAD) to the
Government of Himachal Pradesh.

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GOVERNMENT OF HIMACHAL PRADESH
GENERAL ADMINISTRATION DEPARTMENT

No. GAD-A(E)3-1/2018 DATED SHIMLA-2 _____June, 2018.

SECTION -B

GENERAL TERMS AND CONDITIONS

1. Introduction

1.1 The Department of General Administration, Government of Himachal Pradesh of HP invites Tenders/ Bids from reputed and registered Aviation Companies having Non Scheduled Operators Permit from DGCA, Government of India for leasing of Helicopters on wet lease basis for a term of 5 years for multipurpose use of the State Government of Himachal Pradesh including VIP duty, emergency evacuations/ relief operations etc. The helicopters must be positioned at Shimla latest by _____ failing which the earnest money and security taken as Bank Guarantee for this commitment shall be forfeited.

1.2 The State Government intends to hire transport Helicopter(s) having following specifications:

(a) One twin engine helicopter having capacity to carry about 15 passengers plus baggage/ equipment.

(b) One twin engine helicopter having capacity to carry about 5-6 passengers plus baggage/ equipment.

(c) One single engine helicopter having capacity to carry about 4-5 passengers plus baggage/ equipment.

The transport helicopter(s) offered should be capable to carry passenger to different places across the State of Himachal Pradesh and having capacity of flying upto the altitude of 12000ft. crossing over peak, passes & narrow valleys upto the height of 15000 ft. The Helicopter(s) should have excellent performance and technical fit for flights at high altitudes capable of take off/land at altitude upto 12000ft. ***The detailed terms & conditions and technical parameters required for the Helicopter(s) to be hired on wet lease basis are specified in the eligibility conditions in Para 4 of the document.***

1.3 Interested parties may apply to the Secretary (General Administration Department) to the Government of Himachal Pradesh on a prescribed format. The Bidders are advised to go through the Tender Document & further amendments, if any, carefully before submitting the bids.

1.4 The interested party/company should be incorporated in India. NRIs/Foreign Companies must have required clearances from the RBI & FBI (Foreign Investment Board) of the Government of India. Copies of Clearance must be attached with the technical bid(s).

2. Description of the Bidding Process

2.1 No Bidder shall submit more than one bid for each type of helicopter, as per the requirement of State Government as mentioned in Colum 1.2.

2.2 Bids of the eligible Bidders for rendering of helicopter(s) services to the State Government shall be evaluated on the basis of the different parameters i.e. the lowest financial rate quoted by a Bidder for providing the said services strictly in terms of the draft Deed of Wet Lease Agreement appended with the Tender Document, the terms & conditions whereof shall be deemed to be a part of the terms & conditions of this Tender Document.

2.3 During the bidding stage, the bidders may examine minutely the scope of services envisaged to be rendered, as mentioned in the Tender Document and the draft Deed of Wet Lease Agreement. ***The Bidders are expected to carry out the investigations and analysis as may be required for preparing and submitting their respective Bids at their own cost and own level.***

2.4 All Bidders are required to deposit, along with their Technical Bids, an Earnest Money Deposit of A20 Lakhs (in case of requirement of helicopter at column 2(a)) and A 10.00 Lakh (in case of requirements of helicopter(s) at column 2(b) & 2(c))by way of a ***CDR/FDR*** in favour of Secretary (GAD) to the Government of Himachal Pradesh, Shimla-2 payable at Shimla. The Bid(s) shall be summarily rejected if it is not accompanied by requisite Earnest Money Deposit. Also, in case, the application form is downloaded from website additional amount of ` 500/- be also deposited in the form of bank demand draft in favour of Secretary (GAD) to the Government of

Government upon the terms of this Tender including the Price Schedules accompanying the same.

2. We shall be prepared to provide the services on the location, to commence within the stipulated time period and to complete the same in accordance with the terms & conditions of the Deed of Wet Lease Agreement during the 5 years Term of the Agreement or any extension thereof. The aforesaid time schedule i.e. its beginning and completion dates are of the essence of the Agreement.

3. We undertake and confirm that prices quoted in our Financial Bid(s) shall remain firm and capable of acceptance by you in accordance with the provisions hereof for a period of 180 days from the Bid(s) Due Date.

Date _____day of _____

Signature _____

Name _____

In the capacity of _____

Duly authorized to sign Tender for and on behalf of _____(Name and address)

Witness : _____

SCHEDULE-IV

FORMAT OF PERFORMANCE SECURITY IN THE FORM OF

PERFORMANCE BANK GUARANTEE OF THE LESSOR

Bank Guarantee No.: Dated: _____

Issuer of Bank Guarantee:

_____(Name of the Bank)

_____

_____

(hereinafter referred to as the "Bank")

Beneficiary of Bank Guarantee:

The Secretary (GAD) to the
Government of Himachal Pradesh, Shimla.

Nature of Bank Guarantee:

Unconditional and irrevocable Bank Guarantee.

Context of Bank Guarantee

Performance during the Term of the Agreement in respect of the Deed of Wet Lease Agreement (hereinafter referred to as the "Agreement") to be executed between the Secretary, Department of General Administration, Government of Himachal Pradesh ("hereinafter referred to as the "LESSEE") and_____(hereinafter referred to as the "LESSOR") for providing of services by the LESSOR of one Twin Engine large/heavy duty Helicopter or a Helicopter of equivalent performance duly certified by the Directorate General of Civil Aviation (DGCA), Government of India to the LESSEE (hereinafter referred to as the "Services"), provided however, such context of the Bank Guarantee or reference to the Agreement in this Bank Guarantee shall in no manner to relied upon at any stage to adversely affect or dilute the unconditional and irrevocable nature of this Bank

Guarantee. The title of this Guarantee i.e. "Performance Security" shall in no manner and at no stage be relied upon to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee. The Contract of Bank Guarantee is an independent Contract between the Bank and the LESSEE and is not dependent upon execution or performance of any Agreement between LESSEE and _____ (name of the LESSOR).

Operative part of the Bank Guarantee:

1. At the request of the LESSOR, we _____, _____ (name and address of the bank), hereinafter referred to as the "Bank"), do hereby unconditionally and irrevocably affirm and undertake that we are the Guarantor and are responsible to the LESSEE i.e. the beneficiary on behalf of the LESSOR, upto a total sum of A 1.00 Crore (Rupees One Crore Only)/ f 50.00 Lakh (Fifty Lakh Only), such sum being payable by us to LESSEE immediately upon receipt of first written demand from the LESSEE.
2. We unconditionally and irrevocably undertake to pay to the LESSEE on an immediate basis, upon receipt of first written demand from the LESSEE and without any cavil or argument or delaying tactics or reference by us to LESSOR and without any need for the LESSEE to convey to us any reasons for invocation of the Guarantee or to prove the failure to perform on the part of the LESSOR or to show grounds or reasons for the demand or the sum specified therein, the entire sum or sums within the limits of A 1.00 Crore (Rupees One Crore Only)/50.00 Lakh.
3. We hereby waive the necessity of the LESSEE demanding the said amount from LESSOR prior to serving the Demand Notice upon us.
4. We further agree and affirm that no change or addition to or other modification to the terms of the Agreement, shall in any way release us from any liability under this unconditional and irrevocable Guarantee and we hereby waive notice of any such change, addition or modification. We further agree with the LESSEE that the LESSEE shall be the sole and the exclusive judge to determine that whether or not any sum or sums are due and payable to him by LESSOR, which are recoverable by the LESSEE by invocation of this Guarantee.

5. This Guarantee will not be discharged due to the change in constitution of the Bank or the LESSOR. We undertake not to withdraw or revoke this Guarantee during its currency/ validity period, except with the previous written consent of the LESSEE.

6. We unconditionally and irrevocably undertake to pay to the LESSEE, any amount so demanded not exceeding A 1.00 Crore (Rupees One Crore Only)/ 50.00 Lakh (Rupees Fifty Lakh only) notwithstanding any dispute or disputes raised by LESSOR or anyone else in any suit or proceedings before any dispute review expert, arbitrator, court, tribunal or other authority, our liability under this Guarantee being absolute, unconditional and unequivocal. The payment so made by us under this Guarantee to the LESSEE, shall be a valid discharge of our liability for payment under this Guarantee and the LESSOR shall have no claim against us for making such payment.

7. This unconditional and irrevocable Guarantee shall remain in full force and effect and shall remain valid until _____

Notwithstanding anything contained herein:

8. Our liability under this Bank Guarantee shall not exceed Indian A 1.00 Crore (Rupees One Crore Only)/ 50.00 Lakh (Rupees Fifty Lakh only).

9. This unconditional and irrevocable Bank Guarantee shall be valid w.e.f. _____to _____.

10. We are liable to pay the guaranteed amount or any part thereof under this unconditional and irrevocable Bank Guarantee only and only if the LESSEE serves upon us a written claim or demand on or before _____.

_____

Authorized Signatory, for Bank

SECTION -D

DRAFT DEED

OF

WET LEASE AGREEMENT

DEED OF WET LEASE AGREEMENT

This DEED OF WET LEASE AGREEMENT is hereby executed on this _____ day of _____, 2018

By and between

The Governor of Himachal Pradesh, represented by the Secretary (GAD) to the Government of Himachal Pradesh, hereinafter referred to as the "LESSEE" which expression shall include its successor and assigns;

…….. First Party

And

M/s _____
represented by _____, hereinafter referred to as the "LESSOR" which expression, unless repugnant to the context, shall include its successors and assigns;

…….. Second Party

……individually referred to as "Party" and collectively as "Parties".

WHEREAS, the LESSEE is desirous of hiring One Twin Engine Large/Heavy Duty Transport Helicopter having capacity of about 15 passengers/ One Twin Engine Helicopter having capacity of 5-6 passengers/ One Single Engine Helicopter having capacity of 4-5 passengers for its operations in the State of Himachal Pradesh as well as outside the State as and when required.

AND WHEREAS, the LESSOR is engaged in the business of providing helicopter services and pursuant to having selected the LESSOR through an open, transparent and competitive bidding process, the LESSEE has issued a Letter of Intent dated _____ to the LESSOR and the LESSOR has agreed to provide to the LESSEE, the services of _____Helicopter or a Helicopter of equivalent performance duly certified by the Directorate General of Civil Aviation (DGCA), Government of India on the mutually agreed terms and conditions herein contained.

NOW, THEREFORE, IT HAS BEEN AGREED BETWEEN THE PARTIES AS FOLLOWS :

1. **INTERPRETATION :**

The following words and phrases shall have the meanings hereby assigned to them:

1.1 **"Area of Operation"** denotes any area within the national boundaries of India;

1.2 **"Base"** means "**ANNANDALE SHIMLA**" where the Helicopter and Crew including maintenance facilities upto 300 hours servicing will be provided;

1.3 **"Main Base"** means "_____" where facilities of 500 and 1000 hours (including life development) shall be provided;

1.4 **"Delivery Date"** means the date by which the Lessor is required to mobilize the Helicopter at the Base for operation;

1.5 **"Flying Charges"** would mean the amounts set out in Clause 11.1;

1.6 **"Flying Time"** with respect to the Helicopter would mean the time from "rotor starts" of the Helicopter till "rotor stops";

1.7 **"Force Majeure"** would mean fire, flood, industrial action, bad weather, acts of God (like earthquake, landslide, lightning, tempest, tornado), war (whether declared in India or the country of the manufacture of major components or sub-assemblies of the Helicopter), civil disturbance, sabotage, epidemic, any Governmental restrain and any such like cause which is not reasonably within the control of either party claiming force majeure. Financial distress would, however, not constitute force majeure;

1.8 **"Regulatory Authority"** means any Government Body(ies) or Government Department(s) having the responsibility for regulating aviation related matters in the Area of Operation;

1.9 **"Emergency"** shall mean any situation which in the opinion of the authorized representative of the LESSEE is :

1.9.1 A matter of life or death of any person and/ or

1.9.2 A matter of serious threat of injury/ damage to any person or property of the "LESSEE";

1.10 **"Month"** means calendar month and "Monthly" shall have the corresponding meaning;

1.11 **"Scheduled Flight"** means a Helicopter flight scheduled in accordance with the programme for the Operational Day;

1.12 **"Security"** as it relates to the Helicopter means all actions taken towards:

(a) Avoidance of ingress by un-authorised personnel;

(b) Safety of the Helicopter from intentional damage by any external forces.

1.13 **"Service"** means the services carried out by the LESSOR and its personnel under this Agreement as set out in Clause 4;

1.14 **"Scheduled/ Unscheduled Maintenance"** means maintenance required for Helicopter as per DGCA's Regulations and as prescribed by the manufacturer, defect rectification etc;

1.15 **"Party" or "Parties"** means party or parties to this Agreement;

1.16 **"Out Station"** means any station other than the Base Station;

1.17 **"Term"** means the period set out in Clause 3;

1.18 **"Operational Day"** for a Helicopter means the time commencing from first scheduled flight as per the programme for the day to the estimated time of landing of last scheduled flight of the day;

1.19 **"Programme"** means written requisition of the Helicopter for a day indicating time of departure, destination and approximate flight time etc;

1.20 **"Night"** shall mean period between sun set and sun rise;

1.21 **"Watch Hours"** means the time notified by the Airports Authority of India from time to time for normal operation of different airports;

1.22 **"VFR"** means Visual Flight Rules as specified by DGCA;

1.23 **"IFR"** means Instrument Flight Rules as specified by DGCA; and

1.24 **"Headings"** are for convenience of reference only and shall not affect the meaning and interpretation of this Agreement.

2. DELIVERY OF HELICOPTER

The Lessor undertakes to deliver the Helicopter(s) at Annandale, Shimla, Himachal Pradesh on or before the Delivery Date. Adherence to the Delivery Date and starting of operations shall be the essence of this Agreement. The LESSOR shall ensure that their Helicopter(s) shall be available/ready for operations at Annandale, Shimla by the Delivery Date, which shall be _____. If the LESSOR fails to deliver and make the Helicopter(s) available/ by _____, the LESSEE shall have the right to cancel the offer/ LoI and forfeit the earnest money and the performance guarantee of the LESOR. There upon, the LESSEE may at its sole discretion, invite the second lowest bidder(s) to negotiate the rates for the purpose of providing the Helicopter and the LESSOR shall not object to the same.

3. TERM OF AGREEMENT

The Term of the Agreement shall be 5 years and it shall commence from _____ and terminate at the Base on the evening of _____. However, on or before the expiry of the agreed term of 5 years, the Parties shall, if mutually agreed upon in writing, have the option to renew this Agreement on such terms and conditions as may be agreed upon at the time of renewal of this Agreement. The LESSEE will however, give a written notice of not less than 60 days prior to the expiry of the initial term of this Agreement indicating its intention of such extension/ renewal and the LESSOR shall, within 15 days of receipt of such notice, inform the LESSEE of its intention to renew this Agreement.

4. SERVICE

4.1 The LESSOR shall during the Term of Agreement provide the Helicopter(s) as required by the LESSEE and the LESSOR shall ensure that the Helicopter(s) is/are available and maintained for operational use as demanded by the LESSEE and its authorized personnel.

4.2 The LESSOR shall always provide experienced VFR (Day) licensed crew for operations and qualified & experienced maintenance crew for servicing of the Helicopter(s) in order to maintain the Helicopter(s) for operational use during the Term of this Agreement. The LESSOR shall at times be required to undertake IFR flights (Day & Night) in plains, within the capability of the Helicopter(s) to meet specific requirements of the LESSEE.

4.3 The LESSEE shall, before programmed departure of a flight, provide to the LESSOR with a manifesto containing the number and name of the passengers, cargo weight, destination and the estimated time of departure/ arrival of the flight. All types of operational clearances from various agencies will be obtained by the LESSOR except “Defence Helipads”.

4.4 NOTWITHSTANDING the foregoing it shall be the LESSOR's sole responsibility to determine the acceptable number of passengers and/ or load before each flight and upon such determination, the LESSOR may seek variation in the proposed number of passengers and/ or load to be carried by the Helicopter(s).

4.5 Before any proposed flight, it shall be the LESSOR's responsibility to determine the route and the suitability of flying and landing conditions including the state of destination Helipad, and upon any such destination and after consultation and agreement with the LESSEE's authorized representative, which shall not be unreasonably withheld, the LESSOR may vary the proposed route or postpone or cancel the proposed flight, or seek a change in the proposed destination Helipad(s).

4.6 If the Helicopter(s) becomes, or is construed as total loss, the LESSOR shall use its best endeavor to replace at its expense, the contracted Helicopter(s) by an identical helicopter(s) or a helicopter(s) satisfactorily acceptable to the LESSEE within thirty days of the loss and after meeting the DGCA requirements, failing which the LESSEE may terminate this Agreement. The Flying Charges payable under this Agreement in respect of the lost Helicopter(s) shall cease after the date of loss until the LESSOR replaces it by a similar fully operational helicopter(s) at the said Base.

4.7 The LESSOR shall obtain necessary Non-Scheduled Operator's Permit to operate the Helicopter(s) and shall ensure that an airworthiness certificate for the Helicopter(s) is/are obtained and renewed during the term of the Agreement. The Helicopter(s) shall comply with all the laws, rules, regulations, orders, standards and schedules governing the aircraft in Non-Scheduled category of the DGCA India. The Helicopter(s) shall be flown and operated in compliance with such laws in force.

4.8 The LESSOR shall provide Protocol Officer(s) to accompany the VIPs/VVIPs from the Bay of helicopter(s) to Ceremonial Lounge and vice-versa at the Airports during the visit of VIPs/VVIPs.

5. HELICOPTER(S) SPECIFICATION

The LESSOR, in keeping with the requirements of the LESSEE mentioned in Clause 4.2 shall ensure that the Helicopter(s) is/are equipped to IFR standards and that the said equipment is serviceable and maintained to regulatory air worthiness standards of DGCA, Government of India.

6. HELICOPTER(s) POSITIONING, AVAILABILITY, MAINTENANCE, SCHEDULED INSPECTION/ TECHNICAL SNAGS - REPLACEMENT OF HELICOPTER(s) AND SAFETY

6.1 The LESSOR shall make available the Helicopter(s) to the LESSEE for operational use upto 480 hours of flying per year during the Term of this Agreement. The Helicopter(s) should be made available for approximately 40 flying hours in a month during the period of this agreement.

6.2 In the following eventualities the flying hours in a particular month and the corresponding minimum guaranteed amount of Flying Charges in respect of that particular month shall be reduced proportionately :

(i) When the Helicopter(s) is/ are grounded on account of necessary maintenance for days more than that allowed to the LESSOR as per Clause 6.3 hereof.

(ii) When the Helicopter(s) is/ are grounded due to Force Majeure conditions as per Clause 13 hereof.

6.3 The LESSOR shall be allowed to ground the Helicopter(s) for maintenance at the rate of 4 (Four) days per month during the Term of the Agreement. If the Helicopter(s) is/are grounded for days more than the limits specified herein above, the LESSEE shall have the discretion

to deduct Flying Charges on pro-rata basis for such excess days of grounding besides taking other action.

If the helicopter(s) is/are not available cumulatively for more than two hours and up to six hours except waiting for weather clearance in an operational day, it shall be deemed to be grounded for half a day and if it is not available for more than six hours in a operational day, it shall be deemed to be grounded for the full day.

6.4 The LESSOR will carry out its maintenance, repair, overhaul or servicing activities during such times other than the timings of an Operational Day so that the flying activity during the days other than ground time as specified in Clause 6.3 is not hampered or affected. The LESSOR shall give notice to the LESSEE of any scheduled maintenance to be carried out on the Helicopter(s) at least 7 days in advance.

6.5 If the Helicopter(s) is/are grounded for more than the authorized days in any calendar month, the LESSOR shall replace at its expenses, the Helicopter(s) with an identical Helicopter(s) acceptable to the LESSEE or the LESSOR shall indemnify the LESSEE the entire cost of alternative arrangements which the LESSEE may make.

Provided that the stipulation contained in Clause 6.3 regarding excess grounding will not be applicable when alternate arrangements are made by the LESSEE.

Provided further that hours flown under alternate arrangements by the LESSEE shall be added to the flying hours of the LESSOR.

6.6 The LESSOR shall keep one backup Helicopter(s) (of same type and capacity/ standard or as acceptable to the LESSEE) ready at their Main Base or at the Base at Shimla for immediate replacement of the Helicopter(s) under service prior to grounding of the Helicopter(s) for major (Scheduled) inspections which by DGCA regulations is required or if it becomes total loss or constructive total loss. The backup

(Replacement) of Helicopter(s) shall be positioned at the Base at Shimla before such scheduled inspection is due so that normal flying services are not disturbed.

6.7 The back up (replacement) Helicopter(s) shall be positioned at the Base at Annandale, Shimla within 48 hours if the Helicopter(s) under service is/are grounded for technical snag.

6.8 No ferry charges shall be paid by the LESSEE for the ferry of the back up Helicopter(s).

6.9 The LESSOR shall notify to the LESSEE immediately when the Helicopter(s) is/are grounded or when it is again fully operational and shall keep complete and accurate records of all groundings of the Helicopter(s) due to routine maintenance or otherwise which the LESSEE, at its discretion, may inspect at any reasonable time.

6.10 In the event of grounding of operating helicopter(s) for scheduled/routine inspection/maintenance or technical snag or whatsoever, for excess days of grounding beyond permissible down time of 4 days in a month, if the Bidder fails to provide back-up helicopter(s) of same type, a penalty of ` 60,000/- (` Sixty Thousand) only per day shall be imposed and the amount so calculated shall be deducted from the fixed monthly charges bill of that month or any other month. This penalty is in addition to the deduction of prorata Fixed Monthly Charges for the excess days of grounding beyond permissible Down Time of 4 days.

6.11 The LESSEE shall ensure that the Helicopter(s) flying programme(s) shall always be in conformity with DGCA regulations on air crew Flight Time Limitations (FTL), Flight Duty Time Limitations (FDTL) and seventh day off after six consecutive days of flying to prevent fatigue of the LESSOR’s air crew.

6.12 The LESSOR shall comply with all Indian Aviation Regulatory and all other applicable laws, rules & regulations of India. The LESSOR shall

indemnify the LESSEE/ State Government against the LESSOR's ignorance and/ or failing to comply with said laws, rules & regulations. The LESSOR shall also abide by Civil Airworthiness Requirements (CARs) including that of Sec 3 Series C Part-I, as amended from time to time and provide all assistance/ information to the State Government and Director General of Civil Aviation (DGCA) to ensure compliance. The LESSOR must agree to abide by any other new requirements introduced by DGCA, India from time to time.

6.13 All field replacement flying and test flying would be considered non-revenue and would be at the cost of LESSOR and shall be excluded for the purpose of billing to the LESSEE.

7. FIRST PARTY's PERSONNEL

LESSOR shall provide, for the duration of this Agreement for the Helicopter(s) and as per LESSEE's requirement, IFR rated pilots and necessary engineering crew to operate the Helicopter(s) and provide the services to the LESSEE in accordance with this Agreement. In order to meet the requirement of IFR, the crew shall undergo competency/ currency checks/ tests and keep their licences current.

8. BASE

The LESSEE has nominated ANNADALE SHIMLA as the Base for the Helicopter(s) where the LESSOR shall station the Helicopter(s) and provide the equipment, personnel, spare parts and tools etc. as may be required for the operation of the Helicopter(s).

9. OPERATIONAL DAY

The LESSEE's authorized representative may vary from time to time, the commencing and ending times of the Operational Day of the Helicopter(s) by giving the LESSOR written notice of at least 12 hours before the Operational Day commences.

10. PROVISION OF SERVICES AND FUEL

10.1 The LESSEE shall provide, at the Helipads with adequate fire fighting equipment, wind direction indicators and current weather information and other essential facilities required for the operation of the Helicopter(s) as per the DGCA guidelines wherever the said facilities/ equipment are not provided by National Airports Authority of India or any other Airport/ Helipad owner. The LESSEE will also provide Standard Base Maintenance Facilities such as technical accommodation, hard standing for the Helicopter(s), and commercial power supply facilities at its Base at Shimla. In case operations are to be undertaken from any Defence Helipads/ Airfield, necessary clearance from Defence Authorities will be obtained by the LESSEE.

10.2 Security of the Helicopter(s) at Helipads/ Airfield and security check of passengers, baggage and cargo are required to be carried out as per the guidelines issued by the Bureau of Civil Aviation Security. This is to be arranged by the LESSEE at all locations where Helicopter(s) service is intended to be availed.

10.3 All arrangements for fueling will be made by the LESSOR at the Base or at places where Indian Oil Corporation fuel is available. If the fuel is required to be positioned at any other station, the LESSOR may position the same at their own cost at all locations where Helicopter(s) services are intended to be availed.

10.4 The LESSOR shall provide portable oxygen equipment whenever the same is required for operations at high altitudes as specified by the DGCA.

10.5 Accommodation for the crew and maintenance personnel, their transportation and medical facility at the LESSEE’s Base at Shimla will be arranged by the LESSOR at its own expense.

10.6 Out Station Operations away from the LESSEE’s Base shall be forecasted 24 hours in advance and arrangements for crew’s lodging and transport facility within the State of Himachal Pradesh (but outside Shimla) and air crew medical check shall be made by the LESSOR at its cost. For overnight stay at places out side Himachal Pradesh,

accommodation, transport, meals etc. shall be arranged by the LESSOR at its own expense.

11. CHARGES

In consideration of the LESSOR carrying out the service, the LESSEE shall, in respect of the Helicopter(s), pay to the LESSOR, during the term of this Agreement, the following charges:

11.1 FLYING CHARGES

The LESSEE shall, subject to the provisions of this Agreement in respect of the Helicopter(s), pay to the LESSOR the corresponding Flying Charges per hour and pro-rata thereof to the nearest multiple of three minutes for the flying hours of the Helicopter @ ` _____/- (`_____Only) per hour plus GST or any other tax levied thereon as per the applicable laws from time to time. The LESSOR shall periodically provide to the LESSEE, copies of the relevant documents towards proof of having deposited with the concerned authorities, the amount collected from the LESSEE towards taxes.

11.2 The LESSEE shall guarantee minimum 40 hours of flying per month during the Term of the Agreement to the LESSOR, for which Flying Charges shall be payable by the LESSEE to the LESSOR each month.

11.3 In the event the 40 hours contemplated in Clause 11.2 and paid for by the LESSEE are not utilized in a particular month, The LESSEE shall have the facility to use the unutilized hours in period during the currency of agreement upto 480 hours in a year. For any increase in flying hours beyond 480 hours in a year during the currency of agreement, the LESSEE shall make payment to the LESSOR on prorata basis.

11.4 The Flying Charges shall be payable by the LESSEE to the LESSOR from the date of positioning the Helicopter at the Base or LESSEE's nominated location.

11.5 The aforesaid rate includes provision for catering to fluctuation in prices of fuel/ ATF, customs duty rates for purchase of spares etc. and as such no separate fluctuation charges for fuel/ATF, customs duty etc. shall be payable by the LESSEE to the LESSOR.

11.6 LANDING, PARKING AND WATCH EXTENSION CHARGES

11.6.1 All landing, parking, Route Navigation and Housing Charges shall be exclusively borne by the LESSOR.

11.6.2 Extension of watch hours at air fields to meet the requirements of operations, fueling, weather etc. shall be arranged and paid for by the LESSOR..

11.7 **FLIGHT LOG**

11.7.1 The LESSEE's authorized representative shall sign the "rotor starts" and "rotor stops" time of each flight which shall constitute prima facie evidence of the flying hours recorded therein.

11.7.2 The LESSOR shall, after each Operational Day, prepare a daily flight log in duplicate, indicating inter alia, the flying hours thereof on the basis of aforementioned document, the original copy whereof shall be retained by the LESSOR and the duplicate copy handed over to the authorised representative of the LESSEE. Also the LESSOR shall within 24 hours of each Operational Day, give the flight log of the same to the authorized representative of the LESSEE.

12 PAYMENT

12.1 Fixed monthly charges as indicated under clause 11.1 on account of the minimum guaranteed 40 flying hours per calendar month plus GST or any other tax levied thereon as per the applicable laws from time to time, shall be paid by the LESSEE to the LESSOR on a monthly basis before the 10th of the following month in respect of each month to be reckoned from _____' the date of stationing of the Helicopter at the Base for operation/ service. Actual number of hours

flown shall be computed annually and the LESSEE shall pay for any extra hours flown beyond 480 hours during the year.

12.2 The LESSEE shall pay to the LESSOR, the mobilization/ demobilization charges ex-Delhi and back based on actual flying hours at the rate mentioned at Clause 11.1 above.

12.3 All invoices shall be raised in Indian Rupees and all payments to be made by the LESSEE to the LESSOR, shall be made in Indian Rupees by way of RTGS/NEFT.

13. FORCE MAJEURE

In the event of either Party, being rendered unable by force majeure to perform any obligation required to be performed by it under the Agreement, the respective obligation of the Party affected by such force majeure shall after issuance of a written notice to the other Party be suspended for the period during which such cause lasts. The term “FORCE MAJEURE” as used herein shall mean Acts of God, War (declared or undeclared), riots or civil commotion, fires, floods and any change in laws, Acts and regulations of Government of India. Upon the occurrence of such cause and upon its termination, the Party alleging that it has been rendered unable by Force Majeure as aforesaid shall notify the other Party in writing within forty eight (48) hours of the alleged beginning and ending thereof giving full particulars and satisfactory evidence in support of its claim. During and in respect of the period as the obligations of the Parties are suspended by force majeure, the LESSOR shall not be entitled to any charges under Clauses 11.1 and 12.1 above.

In the event the Force Majeure conditions are reasonably expected to continue for a period of more than fifteen (15) days, the LESSEE shall have the option of terminating this Agreement by giving seven (7) days written notice thereof to the LESSOR.

14. INDEMNITY

14.1 The LESSOR shall indemnify the LESSEE and/ or its clients/ actual users from and against all claims, costs, demands, actions, including

legal fees costs, whatsoever, arising out of the LESSOR's third party liability for use of the Helicopter(s) (including damage or loss of Helicopter) during the term herein mentioned.

14.2 The LESSOR shall also indemnify the LESSEE against and from any and all claims including fees arising from the death or injury to any person including the LESSEE's personnel and/ or the loss of damage to the property of any person including the property of the LESSEE, resulting from any act of omission and commission in the performance of service by the LESSOR or any personnel employed by the LESSOR.

15. INSURANCE

15.1 The LESSOR shall maintain throughout the period of the Lease Agreement at its own expenses, full liability insurance/ self insurance of the Helicopter(s). The LESSOR shall also maintain, throughout the period of Lease at its own expense, insurance/ self insurance against the risks of war and hijacking.

15.2 The LESSOR shall comply with the laws in respect of Worker's compensation and all other laws in force with reference to employees, safeguarding insurance and protecting all labour employed or used by the LESSOR and shall insure and continue to insure against third party bodily injury liability or loss of life on each occurrence as per the statutory provisions.

15.3 Third party legal liability insurance cover of appropriate value shall be obtained by the LESSOR so as to indemnify the LESSEE in respect of all sums which the LESSOR may become legally liable to pay for bodily injury and property damage caused by an occurrence arising out of the ownership, leasing, maintenance or use of the aircraft.

15.4 Passengers insurance liability cover shall be obtained by the LESSOR in respect of all sums which the LESSEE may become legally liable to pay for or for the admitted liability of ` 7,50,000/- per passenger for

bodily injury (including death) arising out of contract of carriage of any passenger by an occurrence whilst the passenger is in the care, custody or contract of the LESSOR. The passenger admitted liability offered is against full legal discharge. In the event of non payment or delay in payment by the Insurer beyond 60 days from the date of lodging the claim, the LESSOR shall indemnify the LESSEE for discharging their legal liability.

15.5 Personnel baggage liability insurance shall be obtained by the LESSOR in respect of damage to or for loss of any property caused whilst the passengers are being carried by the Helicopter or in the course of any of the operations of loading or unloading to the extent of ` 75,000/- against each and every claim of each individual passenger.

15.6 Combined Single Limit in respect of bodily injury/ property damage/ baggage loss or damage shall be restricted to `50,00,00,000/- (Rupees Fifty Crores) as a cumulative amount for any one occurrence and in respect of any number of passengers including the crew.

16. TAXES AND DUTIES

16.1 All taxes including withholding taxes, duties, levies, fees, charges, costs etc. including freight insurance, landing and parking charges at various locations as applicable, except GST as may be applicable on the Flying Charges, shall be borne by LESSOR. The GST or any such tax as may be applicable on the Flying Charges payable to the Central Government at the prevailing rate, shall be paid by the LESSEE on the bills in respect of the Flying Charges raised by the LESSOR. Income Tax at Source at the rates applicable from time to time, shall be deducted by the LESSEE from the monthly bills of the LESSOR.

17. TERMINATION

TERMINATION ON EXPIRY OF THE TERM

17.1 This Agreement shall automatically stand terminated on the expiry of the Term of the Agreement including any extension thereof, as stated in Clause 3 hereinabove.

17.2 The LESSOR shall remove the Helicopter(s) from the Base within 7 days from the date of expiry of the Agreement. The LESSEE shall not be liable to pay any charges (other than demobilization charges) after the date of termination of this Agreement.

17.3 TERMINATION AT THE SOLE DISCRETION OF THE LESSEE

Notwithstanding anything contained elsewhere in this Agreement, the LESSEE may at any stage in its sole discretion terminate this Agreement by giving to the LESSOR 30 days prior written notice without assigning any reason whatsoever.

17.4 TERMINATION ON ACCOUNT OF FORCE MAJEURE

The Parties shall have the right to terminate this Agreement on account of Force Majeure as set forth in Clause 13.

17.5 TERMINATION DUE TO OPERATIONAL PROBLEMS

17.5.1 If during the currency of agreement, the LESSOR is not in a position to provide the Helicopter(s) due to inordinate delay in the supply of spare parts or repairs or rotables and engines by the manufactures/ other approved suppliers of the LESSOR, this Agreement may be terminated by giving 7 days notice in writing by the LESSEE.

17.5.2 If the LESSOR fails or neglect to perform or observe any of the terms, conditions and covenants of this Agreement, this Agreement shall be terminated by giving 30 days' notice in writing by the LESSEE.

17.5.3 The LESSEE shall have an unqualified option to forfeit the Earnest Money and/or Performance Bank Guarantee and/ or black list the LESSOR and/ or terminate this Agreement :

a) If the LESSOR fails to position the Helicopter(s) at the Base in Shimla on or before the stipulated date.

b) If the performance of the LESSOR is found unsatisfactory during the Term of the Agreement or the LESSOR contravenes any terms & conditions of the LOI or this Agreement or disobeys the directions of the LESSEE issued from time to time or fails to provide backup helicopter(s) during grounding of the leased Helicopter(s) for technical snags.

Provided that before invoking the provisions of Clause 17.5.3(a) and 17.5.3(b) for terminating this agreement, the LESSEE shall give a notice in writing in this behalf to LESSOR for a period not less than 30(thirty) days.

17.6 **CONSEQUENCES OF TERMINATION**

In all cases of termination herein set forth, the obligation of the LESSEE to pay the rates or any other charges shall be limited upto the period till the date of termination.

18. CONFIDENTIALITY

18.1 The LESSOR acknowledges that all material and information provided to it in connection with the services and all knowledge gained in connection with this Agreement and the performance hereof is confidential and disclosure of which to or use by a third party would be damaging to the interests of the LESSEE. The LESSOR agrees to hold such material information and knowledge in strictest confidence and not to divulge the same to any third party. Such material information of knowledge about the LESSOR's operational information and all such information related to Maintenance and Administration, will likewise be held as confidential by the LESSEE.

18.2 Clause 18.1 shall survive even after the termination of this Agreement.

19. PERFORMANCE GUARANTEE

At the time of or before the signing of this Agreement, the LESSOR shall furnish to the LESSEE, an irrevocable and unconditional Bank Guarantee

from a Scheduled Bank in India for a sum of `1.00 Crore/ f 50.00 Lakh (as the case may be) in the format provided in the Bid Document. Such irrevocable Guarantee shall be drawn in favour of the Secretary (GAD) to the Government of Himachal Pradesh and shall be valid for entire term & agreement, which shall be liable to be extended up to a date 60 days beyond the date of the initially envisaged 5 years Term of the Agreement. In the case the Term of the Agreement is extended, the validity of the Performance Guarantee shall also be renewed under written instructions from the LESSEE. In the event of the LESSOR failing to fulfill any of its obligations under this Agreement and/ or in respect of any amount due from LESSOR to LESSEE, the LESSEE shall have the absolute discretion to invoke the said Bank Guarantee without serving any prior notice in respect thereof to the LESSOR.

20. ARBITRATION

20.1 Any dispute or difference whatsoever arising between the Parties out of or relating to the construction, interpretation, application, meaning, scope of operation or effect of the Agreement or the validity or the breach thereof, shall be first tried for amicable settlement through consultation/ discussion between the Parties. If the disputes can not be settled by the Parties within 30 days from the date of consultation, such dispute shall be referred to the Chief Secretary to the Government of Himachal Pradesh, who shall be appointed as the Sole Arbitrator for adjudicating upon the disputes and differences in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The Award of the Arbitrator shall be a reasoned one and made in writing in English language. The Award shall be final and binding upon both the Parties.

20.2 The arbitration proceedings shall be conducted at Shimla in Himachal Pradesh.

20.3 During the period of arbitration, there shall be no suspension of the Agreement.

21. COURT JURISDICTION AND APPLICABLE LAWS

All questions, disputes or difference arising under or out of or in connection with this Agreement shall be subject to the laws of India and to the exclusive jurisdiction of the courts situated at Shimla, Himachal Pradesh.

22. SEVERABILITY

Should any provision of this Agreement be found to be invalid, illegal or otherwise not enforceable by any Court of Law, such finding shall not affect the remaining provisions hereto.

23. NOTICE

Any notice required to be given under the provisions of this Agreement, shall be in writing and shall be deemed to be properly given if sent by hand, registered mail or fax, addressed as follows :

TO THE FIRST PARTY -

THE SECRETARY (GAD) TO THE
GOVERNMENT OF HIMACHAL PRADESH, SHIMLA-2

TO THE SECOND PARTY-

In case of change in address, the concerned Party will inform the other in writing.

IN WITNESS WHEREOF THE authorised representatives of the Parties hereto have signed this Agreement on the day and year first above written.

IN PRESENCE OF

1.

2. **THE SECRETARY (GAD) TO THE**
GOVERNMENT OF HIMACHAL PRADESH, SHIMLA-2

IN PRESENCE OF

1.

2. **AUTHORISED REPRESENTATIVE OF COMPANY**