

GMR Visakhapatnam International Airport Limited (“**GVI**AL”) possesses Confidential Information (*defined hereinafter*) and shall provide to the Recipient certain Confidential Information in their contemplated cooperation pertaining to the construction of the new greenfield airport at Bhogapuram, Andhra Pradesh (hereinafter referred to as the “**Project**”) for the Permitted Purpose (*defined hereinafter*);

The Recipient, in consideration of receipt of the said Confidential Information, agrees and undertakes to keep GVI

## **1. Confidential Information and Permitted Purpose**

As used in this Undertaking, the term confidential information (hereinafter referred to as the “**Confidential Information**”) shall mean and include all information, manuals, policies, flow charts, business plan, know-how, intellectual property, discoveries, ideas, concepts, papers, techniques, models, financial lay-out, business projections, passenger profile, technical or commercial information, information concerning any legal proceedings, design documents, drawings, diagrams, geographical data, assessment reports, research data, processes, procedures and guidelines and data in connection with the Project or otherwise whether in writing or orally and including, without limitation to, any written or printed documents, samples, models or any means of disclosing of such Confidential Information that GVI

AL (including its representatives, group companies, associates or advisors) may elect to use during the term of this Undertaking including any written or electronic information already furnished or that shall be disclosed from GVI

AL (including its representatives, group companies, associates or advisors) to the Recipient for the Permitted Purpose (*defined hereinafter*) only.

Confidential Information also includes the substance of any negotiations or communications relating to the Permitted Purpose, the existence or status of such negotiations or communications or other facts pertaining to the Permitted Purpose. Confidential Information may also include information disclosed by GVI

AL through authorized third parties.

The Recipient understands and acknowledges that the Confidential Information is being provided by GVI

## **2. Disclosure of Confidential Information**

AL without any representation, warranty or guarantee, express or implied, as to the accuracy or completeness of the Confidential Information. GVI

- (a) be protected and kept in strict confidence by the Recipient itself which must use the same degree of precaution that it uses to protect its own confidential information;
- (b) be only disclosed by the Recipient to its authorised representatives on a need-to-know basis strictly related to the Project and that no third party gains access to such Confidential Information without GVIAL's prior authorisation in writing, provide that such authorised representatives or third parties being bound by confidentiality obligations equivalent to those under this Undertaking;
- (c) not be used in whole or in part for any purpose other than the Permitted Purpose without GVIAL's prior written authorisation;
- (d) neither be copied nor otherwise reproduced and/or duplicated in whole or in part without GVIAL's prior written authorisation for any purpose other than the one stated herein; and
- (e) immediately notify GVIAL in writing upon the discovery of any loss or unauthorized disclosure of any Confidential Information.

### **3. Excluded Information**

The Confidential Information shall not include information that:

- (a) is or becomes publicly available other than as a result of acts or omissions by the Recipient in breach of this Undertaking;
- (b) is in the Recipient's possession prior to its disclosure by GVIAL (other than as a result of a prior disclosure to the Recipient by or on behalf of GVIAL) provided that the source of such information, insofar as it is known to the Recipient, was not prohibited from transmitting such information to the Recipient itself by a contractual, legal, fiduciary or other obligation;
- (c) has been lawfully disclosed to the Recipient by a third party on a non-proprietary basis without restrictions or breach of this Undertaking provided further that the source of such information, insofar as it is known to the Recipient itself, was not prohibited from transmitting such information to the Recipient by a contractual, legal, fiduciary or other obligation;
- (d) is independently developed in good faith by an employee or employees of the Recipient who did not have access to the Confidential Information; and
- (e) has been approved for release by prior written consent of GVIAL.

### **4. Permitted Disclosure**

Nothing in this Undertaking shall prevent the Recipient from disclosing Confidential Information to the extent required by law, subpoena and regulation, provided that the Recipient disclosing such Confidential Information shall inform the GVIAL in writing prior making such disclosure.

### **5. Indemnification and Remedies**

The Recipient agrees and acknowledges that any unauthorized disclosure of the Confidential Information shall constitute a breach of the obligations under this Undertaking and may cause irreparable damages to GVIAL.

The Recipient further agrees and undertakes to implement a control of information system fully ensuring that no disclosure of the Confidential Information shall be made, either directly or indirectly, by the Recipient itself to any third party.

The Recipient acknowledges that remedies at law may be inadequate to protect GVIAl against, and that damages would not be adequate compensation for, a breach of this Undertaking. In the event of a breach of this Undertaking by the Recipient, the Recipient hereby in advance agrees and consents to the granting of an injunction (whether interlocutory, specific performance or otherwise) against it to prevent disclosure or use by it of the Confidential Information.

## **6. Ownership and Return of Confidential Information**

The Confidential Information is the property of GVIAl and/or its associates and GVIAl retains all rights, titles and interest to the Confidential Information to which it has a legal title and ownership.

Promptly, upon written request of GVIAl, the Recipient shall return to GVIAl or destroy (and provide a written statement from a senior executive officer confirming that, to the best of his information, knowledge and belief, having made all proper enquiries, the Confidential Information has been destroyed) all copies of the Confidential Information, within 7 (seven) days of such request. Furthermore, in such case, the Recipient also undertakes not to retain any copies, extracts or other reproductions in whole or in part of such material including all notes, studies, reports, memoranda and other documents, whether in hard copy or electronic version, prepared by the Recipient itself that contain Confidential Information.

## **7. Rights on Confidential Information**

It is expressly agreed and understood by the Recipient that the disclosure and provision of Confidential Information under this Undertaking by GVIAl to the Recipient shall not be construed as granting to the Recipient under the laws of any country any rights whether expressed or implied by license or otherwise on the matters, inventions or discoveries to which such Confidential Information pertains or any copyright, trademark or trade secret rights, patentable or not. The ownership of all Confidential Information shall rest with GVIAl.

## **8. Duration, Termination and Surviving Provisions**

This Undertaking shall expire after 3 (three) years from the Effective Date.

## **9. Definitive Commitment**

GVIAl and the Recipient acknowledge and agree that no contract or agreement with respect to or in connection with the Permitted Purpose shall be deemed to exist unless and until GVIAl and the Recipient execute and deliver a final definitive agreement relating thereto (the “**Definitive Commitment**”). GVIAl and the Recipient further agree that unless and until GVIAl and the Recipient shall have executed and delivered a Definitive Commitment, neither GVIAl nor the Recipient shall be under any legal obligation of any kind whatsoever except for the matters specifically agreed to in this Undertaking. GVIAl shall have the liberty to negotiate and enter into similar kind of arrangements with any third party and this Undertaking shall not be deemed to have been entered into on exclusivity basis.

## **10. Governing Law and Jurisdiction**

The interpretation construction and effect of this Undertaking shall be governed and construed in all respects in accordance with laws of the Republic of India and shall be subject to the jurisdiction of competent Courts at Vishakhapatnam, Andhra Pradesh, to the exclusion of other Courts.

## **11. Miscellaneous**

### **Amendments**

Any changes or amendments to this Undertaking must be mutually agreed in writing by the Recipient and GVIAL in an appendix to this Undertaking. Such changes or amendments also include changes to or expansion of the purpose of this Undertaking as set out in the Preamble.

### **No Assignment**

The Recipient shall not assign this Undertaking (or any part hereof) without the prior written consent of GVIAL. Any assignment without such consent shall be void and is a material breach of this Undertaking. Subject to the foregoing, this Undertaking shall be binding upon the Recipient and its respective successors and assigns.

### **Severability**

If the competent Courts declare any provision or part of this Undertaking invalid, the other provisions or parts hereof shall not be affected or impaired. In the event any provision or part of this Undertaking are declared invalid, the Recipient and GVIAL shall agree to the fullest extent allowed by law on a substitute provision that more closely represents the intention and commercial bargain contained in the invalid provision(s) and amend this Undertaking accordingly.

### **No waiver**

The failure of GVIAL to enforce any right resulting from the breach of any provision of this Undertaking by the Recipient shall not be deemed as a waiver of any right relating to a subsequent breach of such provision or of any other right hereunder.

### **No Publicity**

The Recipient must not make any press or other public statements (which includes announcements and releases) relating to this Undertaking, the Confidential Information and/or the Permitted Purpose and any matter connected thereto. This provision shall survive the termination of this Undertaking.

### **Notices**

Any communication in connection with this Undertaking by the Recipient to GVIAL must be in writing and be delivered personally, or by registered mail or e-mail to the address set out below:

Attention of: The Tender Officer

Designation: Procurement & Contracts Department, GMR Visakhapatnam International Airport Limited

Address: GMR VISAKHAPATNAM INTERNATIONAL AIRPORT LIMITED, No. 10-1-43, Flat No. 202, Second Floor, Siripuram Fort, Siripuram, Visakhapatnam – 530 003, Andhra Pradesh, India

E-mail Address: [tender.gvial@gmrgroup.in](mailto:tender.gvial@gmrgroup.in)